The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

HEALTH REGULATION
Senator Garcia, Chair
Senator Sobel, Vice Chair

MEETING DATE: Thursday, February 16, 2012
TIME: 10:30 a.m.—12:45 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Garcia, Chair; Senator Sobel, Vice Chair; Senators Diaz de la Portilla, Fasano, Gaetz, Jones, and Norman

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1378** Altman (Identical H 983)	Payment for Services Provided by Licensed Psychologists; Adding licensed psychologists to the list of health care providers who are protected by a limitations period from claims for overpayment being sought by health insurers or health maintenance organizations; adding licensed psychologists to the list of health care providers who are subject to a limitations period for submitting claims to health insurers or health maintenance organizations for underpayment; adding licensed psychologists to the list of health care providers who are eligible for direct payment for medical services by a health insurer under certain circumstances, etc. HR 02/09/2012 Not Considered HR 02/16/2012 Fav/1 Amendment BI BC	Fav/1 Amendment (249756) Yeas 5 Nays 0
2	**SB 1750** Siplin (Identical H 1195)	Advanced Registered Nurse Practitioners; Authorizing advanced registered nurse practitioners to initiate involuntary examinations under the Baker Act of persons believed to have mental illness, etc. HR 02/09/2012 Not Considered HR 02/16/2012 Fav/1 Amendment BC	Fav/1 Amendment (913088) Yeas 5 Nays 0
3	**SB 1294** Garcia	Florida Kidcare Program; Deleting a provision preventing children who do not meet the definition of a qualified alien from participating in the program, etc. HR 02/09/2012 Not Considered HR 02/16/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 654** Regulated Industries / Hays (Similar CS/H 479)	Animal Control; Requiring animal control officers, wildlife officers, and disease laboratories to report potential health risks to humans from animals; providing for use of additional prescription drugs for euthanasia and chemical immobilization of animals; providing for rulemaking to expand the list of additional prescription drugs; providing that the Board of Pharmacy or the Department of Health may revoke or suspend a permit upon a determination that the permittee or its employees or agents is using or has used an authorized drug for other purposes or if a permittee has committed specified violations; restricting the use of intracardial injection for euthanizing animals; prohibiting the delivery of a lethal solution or powder by adding it to food, etc. RI 02/02/2012 Fav/CS HR 02/16/2012 Favorable BC	Favorable Yeas 5 Nays 0
5	**CS/SB 1286** Regulated Industries / Thrasher (Similar CS/H 1019)	Treatment Programs for Impaired Professionals; Providing that an emergency medical technician or paramedic or radiologic technologist who is certified or has applied to be certified may be subject to a treatment program for impaired practitioners at the election of the impaired practitioner consultant; exempting an entity retained by the Department of Health as an impaired practitioner consultant from certain licensing requirements if the entity employs or contracts with licensed professionals; limiting the liability of certain medical schools and schools that prepare health care practitioners and veterinarians for licensure for referring a student to an impaired practitioner consultant, etc. RI 02/02/2012 Fav/CS HR 02/16/2012 Favorable BC	Favorable Yeas 5 Nays 0
6	**CS/SB 1502** Criminal Justice / Evers (Similar CS/CS/H 1175)	Controlled Substances; Adding to the list of Schedule I controlled substances certain specified materials, compounds, mixtures, or preparations that contain hallucinogenic substances or that contain any of these substances' salts, isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; providing that it is a misdemeanor of the first degree to possess specified amounts of certain synthetic cannabinoids in nonpowdered form, etc. CJ 01/25/2012 Not Considered CJ 01/31/2012 Fav/CS HR 02/16/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 956** Regulated Industries / Hays (Identical CS/CS/H 625)	Disposition of Human Remains; Revising procedures for the reporting and disposition of unclaimed remains; revising procedures for the anatomical board's retention of human remains before their use; providing for claims by, and the release of human remains to, legally authorized persons after payment of certain expenses; revising exceptions from requirements for notice to the anatomical board of the death of indigent persons; revising provisions prohibiting the selling, buying, or bartering of human remains or the transmitting or conveying of such remains outside the state to include application to transmissions and conveyances within the state; allowing certain accredited schools and organizations to convey human remains in or out of state for medical or research purposes; establishing criteria for the anatomical board to approve the conveyance of human remains, etc. RI 02/07/2012 Fav/CS HR 02/16/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 0
	A proposed committee substitute for the following bill (SB 1824) is expected to be considered:		
8	**SB 1824** Garcia (Compare CS/H 1263, H 4037, H 7053, H 7073, S 884, S 2086)	Department of Health; Providing for a type two transfer of the administration of the Nursing Student Loan Forgiveness Program from the Department of Health to the Department of Education; including emergency medical technicians and paramedics in the professions regulated by the Division of Health Care Regulation, rather than the Division of Medical Quality Assurance; specifying that the delivery of tuberculosis control services is best accomplished by the coordinated efforts of the respective county health departments, a hospitalization program administered by the department, and the private health care delivery system, rather than the A.G. Holley State Hospital; requiring that the Florida Building Code contain provisions or requirements for facilities relative to sanitation, etc. HR 02/16/2012 Fav/CS GO BC	Fav/CS Yeas 5 Nays 0
9	**SB 1646** Flores	Medicaid Hospital Rates; Revising the date for adjusting hospital inpatient rates, etc. HR 02/16/2012 Favorable BC	Favorable Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 1292** Bogdanoff (Similar CS/CS/H 787, Compare CS/H 621, CS/H 1419, S 482, CS/S 1884)	Nursing Home Facilities; Providing requirements for a nursing home facility operated by a licensee that provides respite care services; providing for rights of persons receiving respite care in nursing home facilities; requiring a prospective respite care recipient to provide certain information to the nursing home facility; revising provisions relating to other needed services provided by licensed nursing home facilities, including respite care, adult day, and therapeutic spa services; revising the period of time allotted for approval of the nursing home moratorium on a certificate of need for additional community nursing home beds, etc. HR 02/16/2012 Fav/CS CF BC	Fav/CS Yeas 5 Nays 0
11	**SB 362** Lynn (Compare CS/H 425)	Surgical Technology; Creating part XVII of ch. 468, F.S., relating to minimum requirements to practice surgical technology; prohibiting a person from practicing surgical technology in a health care facility unless he or she meets certain criteria; prohibiting a health care facility from employing or contracting for the services of a surgical technologist unless the surgical technologist meets certain requirements; requiring a health care facility to verify that a person who is qualified to practice surgical technology meets continuing education requirements and maintains the credential of certified surgical technologist; requiring a health care facility to supervise persons employed or contracted by a health care facility to practice surgical technology; requiring the Agency for Health Care Administration to adopt rules, etc. HR 02/16/2012 Fav/CS BC	Fav/CS Yeas 5 Nays 0
12	**SB 668** Hays (Compare CS/H 511)	Workers' Compensation Medical Services; Revising requirements for determining the amount of a reimbursement for repackaged or relabeled prescription medication; providing limitations, etc. BI 01/19/2012 Fav/1 Amendment HR 02/16/2012 Temporarily Postponed BC	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**SB 1602** Latvala (Similar H 1225)	Pharmacies; Revising requirements for the audit of Medicaid-related pharmacy records; authorizing third-party payor and third-party administrator audits of pharmacies; providing that claims containing certain errors are not subject to financial recoupment under certain circumstances; prohibiting certain accounting practices used for calculating the recoupment of claims; prohibiting the audit criteria from requiring the recoupment of claims except under certain circumstances; providing procedures for the audit of third-party payor and third-party administrator audits; prohibiting a third-party payor or state agency from requiring the delivery by mail of pharmacy provider services and prescription drugs; authorizing a third-party payor or state agency to offer an incentive program for the delivery of prescription drugs by mail, etc. HR 02/16/2012 Fav/1 Amendment BC	Fav/1 Amendment (795548) Yeas 5 Nays 0
14	**SB 290** Flores (Identical H 277, Compare CS/H 839, H 1151, S 1374)	Abortions; Restricting the circumstances in which an abortion may be performed in the third trimester or after viability; requiring a physician who offers to perform or who performs abortions to complete continuing education related to ethics; providing that an infant born alive subsequent to an attempted abortion is entitled to the same rights, powers, and privileges as are granted by the laws of this state; providing that it is a first-degree misdemeanor to unlawfully advertise how to obtain an abortion; prohibiting a person from establishing, conducting, managing, or operating a clinic in this state without a valid and current license issued by the Agency for Health Care Administration; revising the amount of the fine that the Agency for Health Care Administration may impose for a violation of ch. 390, F.S., relating to abortion, or part II of ch. 408, F.S., relating to licensure, etc. HR 02/16/2012 Temporarily Postponed CJ BC	Temporarily Postponed
	Other Related Meeting Materials		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1378

INTRODUCER: Senator Altman

SUBJECT: Payment For Services Provided By Licensed Psychologists

DATE: February 16, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Steele	Stovall	HR	**Fav/1 amendment**
2.			BI	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....		Statement of Substantial Changes
B. AMENDMENTS.....	X	Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill:

- Amends provisions relating to health insurance policies and health maintenance organizations (HMOs) to add psychologists to the list of health care providers protected by a 12-month limitations period from claims by health insurers or health maintenance organizations for *overpayment*, and adding psychologists to the list of health care providers subject to a 12-month limitations period for submitting claims to health insurers or health maintenance organizations for a claim for *underpayment*;
- Adds psychologists to the list of health care providers eligible for direct payment for medical services by a health insurer in accordance with the provisions of each policy; and
- Provides an effective date of July 1, 2012.

This bill substantially amends the following sections of the Florida Statutes: 627.6131, 641.3155, and 627.638.

II. Present Situation:

Chapter 490, F.S., the "Psychological Services Act," governs the practice of psychology and school psychology in Florida. A person desiring to practice psychology or school psychology in

Florida must be licensed by the Department of Health. "Practice of psychology" means the observations, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological health.[1] "Practice of school psychology" means the rendering or offering to render to an individual, a group, an organization, a government agency, or the public any of the following services:[2] assessment, counseling, consultation, and development of programs.

Psychologists who contract as preferred providers[3] (also network providers) with an insurer receive payment directly from the insurer, instead of the insured, for services rendered.[4] In contrast, non-network psychologists are generally paid by the insured. After paying the psychologist, the insured then files a claim for reimbursement with the insurer. In comparison, non-network recognized hospitals, licensed ambulance providers, physicians, dentists, and other persons who provided services to the insured, in accordance with the provisions of the policy between the insured and the insurer, are directly reimbursed by the insurer if the insured specifically authorizes payment of benefits to the provider of services.[5]

After payment is made to a psychologist for services rendered to an insured, health insurers and HMOs are time-limited to making a claim for overpayment within 30 months (2-½ years) from the date of that payment.[6] If a claim for overpayment is made, the psychologist has 40 days to pay it.[7] If the psychologist denies or contests the claim, he/she must do so in writing within 35 days of receiving the claim.[8] In comparison, claims of overpayment by health insurers and HMOs for service rendered by allopathic physicians, osteopathic physicians, chiropractic physicians, and dentists, must be submitted to the provider within 12 months after the health insurer's payment of the claim.[9]

Assignment of Benefits to Health Care Providers

Prior to the 2009 Legislative Session, s. 627.638(2), F.S., required direct payment by health insurers to certain health care providers if the patient authorized assignment of benefits, unless otherwise provided in the insurance contract.[10]

Statutory amendments by the 2009 Legislature in ch. 2009-124, L.O.F., to s. 627.638(2), F.S., require health insurers and HMOs to directly pay non-network hospitals, licensed ambulance providers, physicians, dentists, and other persons who provide services to an insured, in

[1] S. 490.003(4), F.S.
[2] S. 490.003(5), F.S.
[3] S. 627.6471(1)(b), F.S. defines preferred provider as, "any licensed health care provider with which the insurer has directly or indirectly contracted for an alternative or a reduced rate of payment…"
[4] S. 627.638(3), F.S.
[5] S. 627.638(2), F.S.
[6] SS. 627.6131(6)(a)(1), F.S. and 641.3155, F.S.
[7] S. 627.6131(6)(a)(1), F.S.
[8] S. 627.6131(6)(a)(2), F.S.
[9] SS. 627.6131(18), F.S. and 641.3155(14), F.S.
[10] An exception existed that the insurance contract could not prohibit the assignment of benefits and direct payment for emergency services and care.

accordance with the provisions of the policy between the insured and the insurer, if the insured specifically authorizes payment of benefits to the provider of services.

Due to concerns that this would lead to increased costs to the state's group health plan as a result of providers leaving the network, language was included in ch. 2009-124, L.O.F., providing for the amendments to be automatically repealed on July 1, 2012, and the language in s. 627.638(2), F.S., to revert to the language that existed on June 30, 2009, if the Office of Program Policy Analysis and Government Accountability (OPPAGA) made certain findings in a study to be published on or before March 1, 2012. The amendments would repeal if the OPPAGA found that: 1) the amendments have caused the third-party administrator of the state's group health plan to suffer a net loss of physicians from its preferred provider plan network and 2) as a direct result, the state's group health plan incurred an increase in costs.[11]

In January 2012, the OPPAGA issued Report No. 12-01 as required by s. 2 of ch. 2009-124, L.O.F.[12] The OPPAGA's report found that the statutory changes made in 2009: 1) did not result in a loss of network physicians in the state's group health plan and 2) that no cost increase in the state's group health plan could be directly attributed to the 2009 changes.

III. Effect of Proposed Changes:

Section 1 amends s. 627.6131, F.S., relating to overpayment or underpayment of claims by health insurers to a provider, to include psychologists and school psychologists in the list of providers:

- To whom an insurer must submit a claim for overpayment within 12 months after the health insurer's payment of the claim; and
- Who must submit a claim for underpayment to an insurer within 12 months after the health insurer's payment of the claim.

Section 2 amends s. 641.3155, F.S., relating to overpayment or underpayment of claims by an HMO to a provider, to include psychologists and school psychologists in the list of providers:

- To whom an insurer must submit a claim for overpayment within 12 months after the health insurer's payment of the claim; and
- Who must submit a claim for underpayment to an insurer within 12 months after the health insurer's payment of the claim.

Section 3 amends s. 627.638(2), F.S. to include non-network psychologists in the list of providers:

- To whom an insurer must make direct payment, if the insured specifically authorizes the payment of benefits directly to the psychologist;
- For which an insurance contract may not prohibit the direct payment of benefits; and
- For which an insurer must provide a claim form with an option for direct payment of benefits.

[11] Ch. 2009-124, L.O.F.
[12] *Negative Effects on the State's Third Party Provider Network from 2009 Law Not Apparent*, Report No. 12-01, January 2012, Office of Program Policy Analysis and Government Accountability. Available at: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1201rpt.pdf> (Last visited on Jan. 30, 2012).

This section is contingent upon the language in s. 627.638(2), F.S. *not* reverting to that in existence on June 30, 2009. Since the condition for reversion was not met, this section would take effect.

Section 4 amends s. 627.638(2), F.S. to include psychologists in the list of providers:

- To whom an insurer must make direct payment to, if the insured specifically authorizes payment of benefits directly to the psychologist, unless otherwise provided in the insurance contract;
- For which an insurance contract may not prohibit the direct payment of benefits for emergencies services and care; and
- For which an insurer must provide a claim form with an option for direct payment of benefits for emergency services and care.

This section is contingent upon the text of s. 627.638(2), F.S. reverting to that in existence on June 30, 2009. Since the text would not revert, this section has no effect.

Section 5 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Psychologists will have a shorter time frame for bringing insurance claims for services to conclusion.

Non-network psychologists will benefit by being entitled to direct payment of benefits from insurers, assuming that the insured executes an assignment of benefits.

The insured will be able to assign benefits to non-network psychologists, instead of paying the psychologist first and then seeking reimbursement from the insurer.

Health insurers and HMOs may have to update their claim forms to reflect psychologists as an option for assignment of benefits.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Sections 3 and 4 assume in conditional language that the OPPAGA report has not been released yet. As it has been released, and as it has shown that the test for automatic reversion has not been met, section 4 is not needed and the conditional provision in the directory clause in section 3 is unnecessary.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 249756 by Health Regulation on February 16, 2012:
Deletes section 4 from the bill and restates the directory clause of section 3 to eliminate the conditional language in the bill. This amendment addresses the comment under Related Issues above.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

249756

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/16/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Gaetz) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 60 - 102
4 and insert:
5 Section 3. Subsection (2) of section 627.638, Florida
6 Statutes, is amended to read:
7 627.638 Direct payment for hospital, medical services.—
8 (2) Whenever, in any health insurance claim form, an
9 insured specifically authorizes payment of benefits directly to
10 any recognized hospital, licensed ambulance provider, physician,
11 dentist, psychologist, or other person who provided the services
12 in accordance with the provisions of the policy, the insurer

249756

13 shall make such payment to the designated provider of such
14 services. The insurance contract may not prohibit, and claims
15 forms must provide an option for, the payment of benefits
16 directly to a licensed hospital, licensed ambulance provider,
17 physician, dentist, psychologist, or other person who provided
18 the services in accordance with the provisions of the policy for
19 care provided. The insurer may require written attestation of
20 assignment of benefits. Payment to the provider from the insurer
21 may not be more than the amount that the insurer would otherwise
22 have paid without the assignment.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/2012
Meeting Date

Topic: Payment for services provided by Licensed Psychologists

Bill Number: 1378 *(if applicable)*

Name: Connie Galietti

Amendment Barcode: 249756 *(if applicable)*

Job Title: Executive Director

Address: 408 Office Plaza Drive
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 850-656-2222

E-mail: Connie@flapsych.com

Speaking: [X] For [ ] Against [ ] Information

Representing: Florida Psychological Association

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/2012
Meeting Date

Topic: Payment for Services Provided by Licensed Psychologists

Bill Number: 1378 *(if applicable)*

Name: Carolyn Stimel

Amendment Barcode: 249756 *(if applicable)*

Job Title: Licensed Psychologist

Address: 2704 Apalachee Parkway
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850 386 8116

E-mail: stimel@aol.com

Speaking: [X] For [ ] Against [ ] Information

Representing: Florida Psychological Association

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1750

INTRODUCER: Senators Siplin and Montford

SUBJECT: Advanced Registered Nurse Practitioners

DATE: February 7, 2012 REVISED: 02/16/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	**Fav/1 amendment**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....		Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
	X	Significant amendments were recommended

I. Summary:

This bill authorizes Advanced Registered Nurse Practitioners (ARNPs) to execute a certificate for involuntary examination of a person for mental illness at a receiving facility designated by the Department of Children and Families. Current law provides that physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists, and clinical social workers may execute certificates for involuntary examination.

This bill substantially amends s. 394.463, F.S.

II. Present Situation:

Involuntary Examination

In 1971, the Legislature passed the Florida Mental Health Act (also known as The Baker Act) to address mental health needs in the state. 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. The Department of Children and Families (DCF) administers this law 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 for the involuntary examination and short-term treatment of persons who meet criteria under this act.[1] Subsequent to examination at a receiving 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.[2]

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, the person has refused a voluntary examination after explanation of the purpose of the exam or the person is unable to determine for themselves that an examination is needed and is likely to suffer from self-neglect, cause substantial harm to themselves, or be a danger to themselves or others.[3] An involuntary examination may be initiated by any of the following:[4]

- A court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. This order is based on the sworn testimony by the petitioner, either written or oral;
- A law enforcement officer may take a person into custody who appears to meet the criteria for involuntary examination and transport him or her to a receiving facility for examination; or
- Physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists or clinical social workers may issue a certificate stating that a person they examined within the preceding 48 hours meets the criteria for involuntary examination.

Current law provides that physicians, clinical psychologists, and psychiatric nurses who issue certificates for involuntary examinations must have additional experience or education requirements related to mental disorders.[5] Clinical social workers are required by law to have experience in providing psychotherapy and counseling.[6] Marriage and Family Therapist practice includes using psychological methods to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions.[7]

In 2009, there were 136,120 involuntary examinations initiated in the state. Law enforcement initiated almost half of the involuntary examinations (48.89 percent), followed by mental health professionals (48.74 percent), and then *ex parte* orders by judges (2.37 percent).[8]

[1] Section 394.455(26), F.S.
[2] Section 394.455(32), F.S.
[3] Section 394.463(1), F.S.
[4] Section 394.463, F.S.
[5] Sections 394.455(2)(21)(23), F.S.
[6] Section 491.003(3), F.S.
[7] Section 491.003(8), F.S.
[8] Report of Baker Act Data, Summary of Data from 2009. USF, de la Parte Florida Mental Health Institute. http://bakeract.fmhi.usf.edu. (last visited on January 12, 2012).

Advanced Registered Nurse Practitioners

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 (BON). Licensure requirements to practice professional nursing include completion of education requirements,[9] demonstration of passage of a department-approved examination, a clean criminal background screening, and payment of applicable fees.[10] Renewal is biennial and is contingent upon completion of certain continuing medical education requirements.

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

- 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, including boards for registered nurse anesthetists or nurse midwives; 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.[11] 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. ARNPs may carry out treatments as specified in statute, including:[12]

- 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.;[13] and
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above permitted acts, ARNPs may perform other acts as permitted in statute within the specialty.[14] If it is within an established protocol, an ARNP may also diagnose behavioral problems and make treatment recommendations.[15]

There are 13,519 active, licensed ARNPs in Florida.[16]

[9] 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.
[10] Section 464.009, F.S., provides an alternative to licensure by examination for nurses through licensure by endorsement.
[11] Section 464.012(2), F.S.
[12] Section 464.012(3), F.S.
[13] Section 464.003(2), F.S., defines "Advanced or Specialized Nursing Practice" to include additional activities that an ARNP may perform as approved by the Board of Nursing.
[14] Section 464.012(4), F.S.
[15] Section 464.012(4)(c)5., F.S.
[16] Florida Department of Health, Medical Quality Assurance Annual Report 2010-2011.

III. Effect of Proposed Changes:

Section 1 amends s. 394.463, F.S., to permit an ARNP to execute a certificate stating that a person, who the ARNP has examined within the preceding 48 hours, appears to meet criteria for involuntary examination for mental illness. Current law provides that physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists and clinical social workers may execute certificates for involuntary examination. These professions are required by statute to have experience and education in mental health treatment. ARNP training programs require students to have education in behavioral sciences.[17]

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

ARNPs will be able to initiate involuntary patient examinations under the Baker Act.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

[17] 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.

VII. Related Issues:

Although ARNPs practice within an established protocol, it is unclear in the bill whether the authority to execute a certificate for involuntary examination is restricted to a protocol that authorizes the diagnosis of behavioral problems and treatment recommendations or whether any licensed ARNP may execute a certificate for involuntary examination.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 913088 by Health Regulation on February 16, 2012:
Adds physician assistants to the list of practitioners permitted to involuntarily examine patients under the Baker Act.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

913088

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/16/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Jones) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete line 46
4 and insert:
5 3. A physician, physician assistant, clinical psychologist,
6 psychiatric nurse,
7
8 ========== T I T L E A M E N D M E N T ==========
9 And the title is amended as follows:
10 Delete lines 2 - 4
11 and insert:
12 An act relating to the Baker Act; amending s. 394.463,

913088

13 F.S.; authorizing advanced registered nurse
14 practitioners and physician assistants to initiate

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Baker Act

Bill Number: 1750 *(if applicable)*

Name: Michael Williams

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 120 S Monroe St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850-727-7087

E-mail: _____

Speaking: [x] For [ ] Against [ ] Information

Representing: Florida Nurse Practitioner Network

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16
Meeting Date

Topic: Baker Act

Bill Number: 1750 *(if applicable)*

Name: Alisa Snow

Amendment Barcode: *(if applicable)*

Job Title:

Address: 1030 E Lafayette
Street

TLH 32301
City *State* *Zip*

Phone:

E-mail:

Speaking: [X] For [ ] Against [ ] Information

Representing: Florida Nurses Assoc

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Advanced Registered Nurses

Bill Number: 1750 *(if applicable)*

Name: Corinne Mixon

Amendment Barcode: *(if applicable)*

Job Title: Consultant

Address: 119 E. Park Avenue
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850-222-2591

E-mail:

Speaking: [x] For [ ] Against [ ] Information

Representing: ~~Florida Association of Physic~~ Florida Academy of Physician Assistants

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Nurse Practitioners

Bill Number: 1750 *(if applicable)*

Name: Corinne Mixon

Amendment Barcode: 913088 *(if applicable)*

Job Title: Consultant

Address: 119 E. Park Avenue
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850-222-2591

E-mail:

Speaking: [x] For [ ] Against [ ] Information

Representing: Florida Academy of Physician Assistants

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/2012
Meeting Date

Topic: Nurse practice Baker Act

Bill Number: 1750 *(if applicable)*

Name: Stan Whittaker

Amendment Barcode: *(if applicable)*

Job Title: ARNP Nurse practitioner

Address: 6294 NW Torreya pk Rd
Street

Bristol, Fl 32321
City, State, Zip

Phone: 850-545-8301

E-mail: stanwhitt@Aol.com

Speaking: [x] For [ ] Against [ ] Information

Representing: Florida Council of Advance practice Nurses

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Nurse practitioner Baker Act

Bill Number: 1750 *(if applicable)*

Name: Timra Cloud

Amendment Barcode: *(if applicable)*

Job Title: Registered Nurse/Nurse practitioner Student

Address: 4432 Peanut Rd
Street

Cottondale, FL 32431
City *State* *Zip*

Phone:

E-mail:

Speaking: [X] For [ ] Against [ ] Information

Representing: Panhandle Nurse practitioner coalition

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/2012
Meeting Date

Topic: Nurse practitioner

Bill Number: PA 50 *(if applicable)*

Name: [redacted] Mai Kung

Amendment Barcode: *(if applicable)*

Job Title: Nurse practitioner

Address: *Street*

Tallahassee, FL
City *State* *Zip*

Phone:

E-mail:

Speaking: [x] For [ ] Against [ ] Information

Representing: Tallahassee Nurse Practitioner Association

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 1294

INTRODUCER: Health Regulation Committee and Senator Garcia

SUBJECT: Florida Kidcare Program

DATE: February 16, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	**Fav/CS**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill removes the exclusion from eligibility for the Florida Kidcare program of children who are aliens (not a citizen or national of the United States) and who are lawfully present in the United States. Currently, only children who are "qualified aliens" are eligible for Kidcare. Under the bill, any child who is an alien who is lawfully present in the United States would be eligible for Kidcare, if he or she meets the other eligibility requirements (primarily age, income, and residency) for the program.

The bill makes an immigrant or noncitizen child who is 18 years of age or younger and who is lawfully present in the United States eligible for Medicaid, if he or she meets the Medicaid eligibility requirements.

The bill adds one member to the Board of Directors of the Florida Healthy Kids Corporation. The additional member will be appointed by the Governor from among three nominees submitted by the Florida Dental Association.

This bill substantially amends the following sections of the Florida Statutes: 409.814, 409.903, and 624.91.

II. Present Situation:

Florida Kidcare Program

The Kidcare program was created by the Florida Legislature in 1998 in response to the federal enactment of the State Children's Health Insurance Program in 1997, later known more simply as the Children's Health Insurance Program (CHIP). The federal authority for the CHIP is located in Title XXI of the Social Security Act.[1] Initially authorized for 10 years and then recently re-authorized[2] through 2019 with federal funding through 2015, the CHIP provides subsidized health insurance coverage to uninsured children who do not qualify for Medicaid but who meet other eligibility requirements. Florida's statutory authority for Kidcare is found in part II of ch. 409, F.S.

Kidcare encompasses four programs: Medicaid for children, the Medikids program, the Children's Medical Services Network, and the Florida Healthy Kids program. Kidcare coverage is funded by state and federal funds through Title XIX (Medicaid) and Title XXI (CHIP) of the federal Social Security Act. Families also contribute to the cost of the coverage under the Title XXI-funded components of Kidcare based on their household size, income, and other eligibility factors. For families with incomes above the income limits for premium assistance or who do not otherwise qualify for assistance, Kidcare also offers an option under the Healthy Kids component and the Medikids component for the family to obtain coverage for their children by paying the full premium.

Eligibility for the Kidcare components that are funded by Title XXI is determined in part by age and household income as follows:[3]

- Medicaid for Children: Title XXI funding is available from birth until age 1 for family incomes between 185 percent and 200 percent of the Federal Poverty Level (FPL).
- Medikids: Title XXI funding is available from age 1 until age 5 for family incomes between 133 percent and 200 percent of the FPL.
- Healthy Kids: Title XXI funding is available from age 5 until age 6 for family incomes between 133 percent and 200 percent of the FPL. For age 6 until age 19, Title XXI funding is available for family incomes between 100 percent and 200 percent of the FPL.
- Children's Medical Services Network: Title XXI and Title XIX funds are available from birth until age 19 for family incomes up to 200 percent of the FPL for children with special health care needs. The Department of Health assesses whether children meet the program's clinical requirements.

Kidcare is administered jointly by the Agency for Health Care Administration, the Department of Children and Families, the Department of Health, and the Florida Healthy Kids Corporation. Each entity has specific duties and responsibilities under Kidcare as detailed in part II of ch. 409,

[1] Title XXI – State Children's Health Insurance Program. Found at: <http://www.ssa.gov/OP_Home/ssact/title21/2100.htm> (Last visited on February 3, 2012).
[2] Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111-3. Found at: <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ003.111.pdf%20> (Last visited on February 3, 2012).
[3] Florida Kidcare Eligibility. Found at: <http://www.doh.state.fl.us/alternatesites/kidcare/images/data/FKC-eligibilityflag-accessible.pdf> (Last visited on February 3, 2012).

F.S. The Department of Children and Families determines eligibility for Medicaid, and the Florida Healthy Kids Corporation processes all Kidcare applications and determines eligibility for the CHIP, which include a Medicaid screening and referral process to the Department of Children and Families, as appropriate.

To enroll in Kidcare, families utilize a form that is both a Medicaid and CHIP application. Families may apply using the paper application or an online application. Both formats are available in English, Spanish, and Creole. Income eligibility is determined through electronic data matches with available databases or, in cases where income cannot be verified electronically, through submission of current pay stubs, tax returns, or W-2 forms.

The 2011-2012 General Appropriations Act appropriated $520,962,322 for Kidcare, including $61,436,037 in General Revenue.[4] The Social Services Estimating Conference convened on December 12, 2011, to adopt a caseload and expenditure forecast for Kidcare through June 2015. For the current fiscal year the program is projected to end the year with a surplus of $39.4 million with $12.8 million of the surplus being General Revenue.[5] For FY 2012-2013, the projected expenditures for General Revenue are $6.2 million below the current year appropriation.

Eligibility of Alien Children for Medicaid and the CHIP

The Immigration and Nationality Act (INA) was created in 1952 to consolidate a variety of statutes governing immigration law. The INA has been amended numerous times since 1952. The INA defines the term "alien" as "any person not a citizen or national of the United States."[6] Nationals of the United States are citizens of the United States, or persons who, though not a citizen of the United States, owe permanent allegiance to the United States. Nationals who are not citizens include persons born in American Samoa or Swain's Island after December 24, 1952, and residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

Generally, under the INA, an alien is not eligible for any State or local public benefit, including health benefits, unless the alien is:[7]

- A qualified alien[8],
- A nonimmigrant alien[9] under the INA, or
- An alien who is paroled into the United States under the INA.[10]

There are limited exceptions to the ineligibility for public benefits for treatment of emergency medical conditions, emergency disaster relief, immunizations, and services such as soup kitchens, crisis counseling and intervention, and short-term shelter.[11]

[4] *See* ch. 2011-69, L.O.F., line item 151.
[5] Social Services Estimating Conference – Kidcare Program, December 12, 2011. Found at: <http://edr.state.fl.us/Content/conferences/kidcare/index.cfm> (Last visited on February 3, 2012).
[6] *See* 8 U.S.C. §1101(a)(3).
[7] *See* 8 U.S.C. §1621(a).
[8] *See* 8 U.S.C. §1641(b) There are nine classes of qualified aliens.
[9] *See* 8 U.S.C. §1101(a)(15) There are 22 classes of nonimmigrant aliens identified in this section.
[10] *See* 8 U.S.C. §1182(d)(5).
[11] *See* 8 U.S.C. §1621(b).

The INA gives states the authority to provide that an alien who is not lawfully present in the United States is eligible for any state or local public benefit for which the alien would otherwise be ineligible, but only through the enactment of a state law which affirmatively provides for such eligibility. The term "lawfully present" includes immigrants or noncitizens who have been inspected and admitted into the United States and not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigrant Services to stay or live in the U.S.

The enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) placed limitations on Federal funding for health coverage of immigrant families. The law imposed a 5-year waiting period on certain groups of qualified aliens, including most children and pregnant women who were otherwise eligible for Medicaid. Medicaid coverage for individuals subject to the 5-year waiting period and for those who do not meet the definition of qualified alien was limited to treatment of an emergency medical condition. The 5-year waiting period also applies to children and pregnant women under the CHIP.

When Florida enacted Kidcare in 1998, s. 409.814, F.S., excluded children who are aliens, except for children who are qualified aliens.

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3, permits states to cover certain children and pregnant women who are "lawfully residing in the United States" in both Medicaid and the CHIP, notwithstanding certain provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. States may elect to cover these groups under Medicaid only or under both Medicaid and the CHIP. The law does not permit states to cover these new groups only in the CHIP, without also extending the option to Medicaid.[12] According to the Centers for Medicare and Medicaid Services, 24 states provide Medicaid coverage for children and 14 states provide CHIP coverage for children under the CHIPRA option.[13]

On July 1, 2010, the Centers for Medicare and Medicaid Services sent a letter to state health officials regarding Medicaid and CHIP coverage for lawfully residing children and pregnant women.[14] The letter states that children and pregnant women who fall into one of the following categories will be considered lawfully present. These individuals are eligible for Medicaid and CHIP coverage, if the state elects the new option under CHIPRA, and the child or pregnant woman meets the state residency requirements and other Medicaid or CHIP eligibility requirements.

- A qualified alien as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. §1641).

[12] *See* 42 U.S.C. §1397gg(e).
[13] Email dated February 13, 2012 from the Centers for Medicaid, CHIP and Survey and Certification – on file with the Senate Health Regulation Committee.
[14] Letter to State Health Officials dated July 1, 2010, from the Center for Medicaid, CHIP and Survey and Certification, U.S. Department of Health and Human Services, regarding Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women, SHO #10-006, CHIPRA #17. Found at: <https://www.cms.gov/smdl/downloads/SHO10006.pdf> (Last visited on February 3, 2012).

- An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission.
- An alien who has been paroled into the U.S. pursuant to section 212(d)(5) of the INA (8 U.S.C. §1182(d)(5)) for less than 1 year, except for an alien paroled for prosecution, for deferred inspection or pending removal proceedings.
- An alien who belongs to one of the following classes:
  - Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA (8 U.S.C. §§1160 or 1255a, respectively);
  - Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 U.S.C. §1254a), and pending applicants for TPS who have been granted employment authorization;
  - Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);
  - Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649, as amended;
  - Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
  - Aliens currently in deferred action status; or
  - Aliens whose visa petition has been approved and who have a pending application for adjustment of status.
- A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. §1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. §1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days.
- An alien who has been granted withholding of removal under the Convention Against Torture.
- A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. §1101(a)(27)(J)).
- An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. §1806(e).
- An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

Because "children who are lawfully residing in the U.S." is a new eligibility group, claims paid on their behalf may be matched at the enhanced Title XXI match rate, regardless of whether the child is covered through Medicaid or a separate CHIIP program. Medicaid eligible children for whom a state receives the enhanced Title XXI match rate and who would be subject to the 5-year waiting period must be claimed at the regular Medicaid match rate once these children have met the 5-year waiting period. For children ages 19 to 21, who are not eligible for CHIP, the regular Medicaid match rate is available. There would be no federal match for services provided through Medicaid or CHIP for alien children who are not lawfully residing in the U.S.

Florida Healthy Kids Corporation

The Florida Healthy Kids Corporation is created in s. 624.91, F.S., to offer health insurance for children ages 5 through 18. The Corporation is one of four Florida KidCare partners. The Healthy Kids program is designed to provide quality, affordable health insurance for families not eligible for Medicaid. The program provides comprehensive health care services through

contracts with both managed care and dental pre-paid plans. Federal and state funding provides subsidies for children in families with incomes below 200 percent of the Federal Poverty Level. Most families pay just $15 or $20 per month. Full-pay options are also available, making every Florida child ages 5 through 18 eligible.

The Corporation operates under the supervision and approval of a 12-member Board of Directors chaired by the Chief Financial Officer or his or her designee. Subsection (6) of s. 624.91, F.S., specifies the membership of the Board of Directors and the appointing authorities.

The 2009 Legislature enacted two laws amending the membership of the Board of Directors for the Florida Healthy Kids Corporation, both by creating a subparagraph 11. Chapter 2009-41, Laws of Florida (L.O.F.) added one member, appointed by the Governor, from among three members nominated by the Florida Dental Association. Chapter 2009-113, L.O.F., added the Secretary of Children and Family Services, or his or her designee. According to the rules of statutory construction found in the preface to the Florida Statutes, when amendatory acts are irreconcilable, the "last passed" version is placed in the text, absent legislative intent to the contrary. As a result, the dental representative was not included in the statutory list of members of the Board of Directors of the Florida Healthy Kids Corporation. The 2010 and 2011 Legislatures failed to pass legislation resolving this issue.

Despite the lack of a clear statutory requirement for a representative of the Florida Dental Association to be on its Board of Directors, the Florida Healthy Kids Corporation has recognized the importance of having the expertise and experience of a representative of the Florida Dental Association on the board. The Florida Dental Association has appointed a pediatric dentist representative who has been an active member at both board and committee meetings.

III. Effect of Proposed Changes:

The bill removes the exclusion from eligibility for the Florida Kidcare program of children who are nonqualified aliens who are lawfully present in the United States. Children who are qualified aliens are currently eligible for Kidcare.

Aliens who are not currently eligible for Kidcare, but who would be made eligible by this bill, include:

- Immigrant children who are currently required to wait 5 years after entry into the United States before they can be eligible for Kidcare; and
- Nonqualified aliens (noncitizens who are lawfully present in the U.S. and are not included in the definition of qualified aliens).
  - Citizens of Marshall Islands, Micronesia or Palau.
  - Immigrants paroled into the U.S. for less than one year.
  - Immigrants granted temporary protected status.
  - Nonimmigrants who are allowed entry into the U.S. for a specific purpose and usually for a limited time.

The bill also makes immigrant or noncitizen children who are 18 years of age or younger and lawfully present in the United States eligible for Medicaid, if they meet the Medicaid eligibility requirements.

The bill amends s. 624.91(6), F.S., to add a member, appointed by the Governor from among three nominees submitted by the Florida Dental Association, to the Board of Directors of the Florida Healthy Kids Corporation. This corrects a technical problem in the statutes which resulted from the passage of two bills in the 2009 Session dealing with the membership of the Board of Directors of the Florida Healthy Kids Corporation.

The effective date of the bill is July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Families of children made eligible for Kidcare would benefit from the availability of subsidized health insurance for their children.

C. Government Sector Impact:

Agency for Health Care Administration
The Agency for Health Care Administration estimates that 5,430 additional children will be covered by Title XXI subsidized Kidcare coverage at a total additional cost of $10,874,555. Of that amount, $3,028,687 would be from State General Revenue funds.

The Agency for Health Care Administration estimates that 15,120 additional children will be covered by Medicaid at a total additional cost of $47,399,386. Of that amount, $20,035,720 would be from State General Revenue funds.

The total fiscal impact on the Agency for Health Care Administration for both Title XXI and Title XIX in state FY 2012-2013 will be $58,273,941, with $23,064,407 being the General Revenue impact.

Department of Children and Families
The Department of Children and Families estimates that the bill will have a $608,928 fiscal impact on the department during FY 2012-2013 for personnel to process new applications as well as conduct eligibility determinations for current assistance groups. Systems design will require that all “newly eligible” children be tracked for the State to claim enhanced Medicaid Federal Financial Participation for both Medicaid and CHIP-funded expansions.

Florida Healthy Kids Corporation
The Florida Healthy Kids Corporation will incur programming costs for its third party administrator to accommodate the changes in eligibility for premium subsidy. The estimated one-time programming costs for these changes would be $1.5 million. The state share of those costs would be $461,550 and the federal share would be $1,038,450.

Since the Florida Healthy Kids Corporation has already recognized the representative of the Florida Dental Association, there will be no fiscal impact from the bill. The addition of the representative of the Florida Dental Association as an *official* board member will make that member eligible for travel reimbursement and per diem. These expenses can be absorbed utilizing existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on February 16, 2012:
The CS makes immigrant or noncitizen children who are lawfully present in the United States and who meet other eligibility requirements eligible for the Florida Kidcare program. The CS also makes immigrant or noncitizen children who are 18 years of age or less and lawfully present in the United States eligible for Medicaid if they meet other eligibility requirements. The bill no longer makes illegal or undocumented aliens eligible for the Kidcare program.

The CS adds one member representing dentists to the Board of Directors of the Florida Healthy Kids Corporation.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

440118

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Garcia) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (4) of section 409.814, Florida
6 Statutes, is amended to read:
7 409.814 Eligibility.—A child who has not reached 19 years
8 of age whose family income is equal to or below 200 percent of
9 the federal poverty level is eligible for the Florida Kidcare
10 program as provided in this section. For enrollment in the
11 Children’s Medical Services Network, a complete application
12 includes the medical or behavioral health screening. If,

440118

13 subsequently, an individual is determined to be ineligible for
14 coverage, he or she must immediately be disenrolled from the
15 respective Florida Kidcare program component.
16 (4) The following children are not eligible to receive
17 Title XXI-funded premium assistance for health benefits coverage
18 under the Florida Kidcare program, except under Medicaid if the
19 child would have been eligible for Medicaid under s. 409.903 or
20 s. 409.904 as of June 1, 1997:
21 (a) A child who is eligible for coverage under a state
22 health benefit plan on the basis of a family member's employment
23 with a public agency in the state.
24 (b) A child who is covered under a family member's group
25 health benefit plan or under other private or employer health
26 insurance coverage, if the cost of the child's participation is
27 not greater than 5 percent of the family's income. If a child is
28 otherwise eligible for a subsidy under the Florida Kidcare
29 program and the cost of the child's participation in the family
30 member's health insurance benefit plan is greater than 5 percent
31 of the family's income, the child may enroll in the appropriate
32 subsidized Kidcare program.
33 (c) A child who is seeking premium assistance for the
34 Florida Kidcare program through employer-sponsored group
35 coverage, if the child has been covered by the same employer's
36 group coverage during the 60 days <u>before the family submitted</u>
37 ~~prior to the family's submitting~~ an application for
38 determination of eligibility under the program.
39 (d) A child who is an alien~~,~~ <u>and is not lawfully present</u>
40 ~~but who does not meet the definition of qualified alien,~~ in the
41 United States. <u>For purposes of eligibility for the Florida</u>

440118

42 Kidcare program, the term “lawfully present” means that the
43 child is an immigrant or noncitizen who has been inspected and
44 admitted into the United States and not overstayed the period
45 for which the child was admitted, or has current permission from
46 the United States Citizenship and Immigrant Services to stay or
47 live in the United States.
48 (e) A child who is an inmate of a public institution or a
49 patient in an institution for mental diseases.
50 (f) A child who is otherwise eligible for premium
51 assistance for the Florida Kidcare program and has had his or
52 her coverage in an employer-sponsored or private health benefit
53 plan voluntarily canceled in the last 60 days, except those
54 children whose coverage was voluntarily canceled for good cause,
55 including, but not limited to, the following circumstances:
56 1. The cost of participation in an employer-sponsored
57 health benefit plan is greater than 5 percent of the family’s
58 income;
59 2. The parent lost a job that provided an employer-
60 sponsored health benefit plan for children;
61 3. The parent who had health benefits coverage for the
62 child is deceased;
63 4. The child has a medical condition that, without medical
64 care, would cause serious disability, loss of function, or
65 death;
66 5. The employer of the parent canceled health benefits
67 coverage for children;
68 6. The child’s health benefits coverage ended because the
69 child reached the maximum lifetime coverage amount;
70 7. The child has exhausted coverage under a COBRA

440118

71 continuation provision;
72 8. The health benefits coverage does not cover the child's
73 health care needs; or
74 9. Domestic violence led to loss of coverage.
75 Section 2. Subsection (1) of section 409.903, Florida
76 Statutes, is amended to read:
77 409.903 Mandatory payments for eligible persons.—The agency
78 shall make payments for medical assistance and related services
79 on behalf of the following persons who the department, or the
80 Social Security Administration by contract with the Department
81 of Children and Family Services, determines to be eligible,
82 subject to the income, assets, and categorical eligibility tests
83 set forth in federal and state law. Payment on behalf of these
84 Medicaid eligible persons is subject to the availability of
85 moneys and any limitations established by the General
86 Appropriations Act or chapter 216.
87 (1) Low-income families with children are eligible for
88 Medicaid provided they meet the following requirements:
89 (a) The family includes a dependent child who is living
90 with a caretaker relative.
91 (b) The family's income does not exceed the gross income
92 test limit.
93 (c) The family's countable income and resources do not
94 exceed the applicable Aid to Families with Dependent Children
95 (AFDC) income and resource standards under the AFDC state plan
96 in effect in July 1996, except as amended in the Medicaid state
97 plan to conform as closely as possible to the requirements of
98 the welfare transition program, to the extent permitted by
99 federal law.

440118

100 (d) A child, 18 years of age or less, who is an immigrant
101 or noncitizen who has been inspected and admitted into the
102 United States and not overstayed the period for which the child
103 was admitted, or has current permission from the United States
104 Citizenship and Immigrant Services to stay or live in the United
105 States and who meets the Medicaid eligibility requirements, may
106 enroll in Medicaid, regardless of the child's date of entry.
107 Section 3. This act shall take effect July 1, 2012.
108
109 ========== T I T L E A M E N D M E N T ==========
110 And the title is amended as follows:
111 Delete everything before the enacting clause
112 and insert:
113 A bill to be entitled
114 An act relating to the Florida Kidcare program; amending s.
115 409.814, F.S.; making certain immigrant or noncitizen children
116 who are lawfully residing in the United States eligible for the
117 Florida Kidcare program; amending s. 409.903, F.S.; making
118 certain immigrant or noncitizen children who are lawfully
119 residing in the United States eligible for Medicaid; providing
120 an effective date.

743490

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Sobel) recommended the following:

Senate Amendment to Amendment (440118) (with title amendment)

Between lines 106 and 107
insert:
Section 3. Paragraph (a) of subsection (6) of section 624.91, Florida Statutes, is amended to read:
624.91 The Florida Healthy Kids Corporation Act.—
(6) BOARD OF DIRECTORS.—
(a) The Florida Healthy Kids Corporation shall operate subject to the supervision and approval of a board of directors chaired by the Chief Financial Officer or her or his designee,

743490

13 and composed of 12 ~~11~~ other members selected for 3-year terms of
14 office as follows:
15 1. The Secretary of Health Care Administration, or his or
16 her designee.
17 2. One member appointed by the Commissioner of Education
18 from the Office of School Health Programs of the Florida
19 Department of Education.
20 3. One member appointed by the Chief Financial Officer from
21 among three members nominated by the Florida Pediatric Society.
22 4. One member, appointed by the Governor, who represents
23 the Children's Medical Services Program.
24 5. One member appointed by the Chief Financial Officer from
25 among three members nominated by the Florida Hospital
26 Association.
27 6. One member, appointed by the Governor, who is an expert
28 on child health policy.
29 7. One member, appointed by the Chief Financial Officer,
30 from among three members nominated by the Florida Academy of
31 Family Physicians.
32 8. One member, appointed by the Governor, who represents
33 the state Medicaid program.
34 9. One member, appointed by the Chief Financial Officer,
35 from among three members nominated by the Florida Association of
36 Counties.
37 10. The State Health Officer or her or his designee.
38 11. The Secretary of Children and Family Services, or his
39 or her designee.
40 12. One member, appointed by the Governor, from among three
41 members nominated by the Florida Dental Association.

743490

42
43 ========== T I T L E A M E N D M E N T ==========
44 And the title is amended as follows:
45 Delete line 119
46 and insert:
47 residing in the United States eligible for Medicaid;
48 amending s. 624.91, F.S.; revising the membership of
49 the board of directors of the Florida Healthy Kids
50 Corporation to include a member nominated by the
51 Florida Dental Association and appointed by the
52 Governor; providing

1.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-16-12
Meeting Date

Topic: Florida Kidcare Program

Bill Number: 1294 *(if applicable)*

Name: Carolyn Davis

Amendment Barcode: *(if applicable)*

Job Title: —

Address: 643 Poinsettia Dr
Street

Largo, FL 33770
City, State, Zip

Phone:

E-mail:

Speaking: [X] For [ ] Against [ ] Information

Representing: self

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

2.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/15/12
Meeting Date

Topic: Fl. Kidcare Program

Bill Number: 1294 *(if applicable)*

Name: Ray Davis

Amendment Barcode: *(if applicable)*

Job Title:

Address: 643 Poinsettia Dr
Street

Largo, Fl. 33770
City *State* *Zip*

Phone:

E-mail:

Speaking: [✓] For [ ] Against [ ] Information

Representing: self

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [ ] Yes [✓] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-16-12
Meeting Date

Topic: Fl. KID CARE

Bill Number: 1294 (if applicable)

Name: Jennifer Kenny

Amendment Barcode: (if applicable)

Job Title:

Address: 2700 N. Highway A1A #10-204
Street

Indialantic, Fl 32903
City, State, Zip

Phone: 321-277-9385

E-mail:

Speaking: [X] For [ ] Against [ ] Information

Representing: SELF

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

4

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Florida Kidcare

Bill Number: SB 1294 *(if applicable)*

Name: Joe Anne Hart

Amendment Barcode: 743490 *(if applicable)*

Job Title: Director of Governmental Affairs

Address: 118 E. Jefferson Street
Street

Tallahassee, FL 32311
City *State* *Zip*

Phone: (850) 224-1089

E-mail: jahart@floridadental.org

Speaking: [X] For [ ] Against [ ] Information

Representing: Florida Dental Association

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/'12
Meeting Date

Topic: Kidcare

Bill Number: SB 1294 (if applicable)

Name: Mary-Lynn Cullen

Amendment Barcode: (if applicable)

Job Title: Legislative Liaison

Address: 1674 University Pkwy
Street

Sarasota, Fl. 34243
City, State, Zip

Phone: 941-928-0278

E-mail: AdChildren@AOL.Com

Speaking: [x] For [ ] Against [ ] Information

Representing: Advocacy Institute For Children

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

6.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16
Meeting Date

Topic: Kid Care

Bill Number: 1294 *(if applicable)*

Name: Alisa Snow

Amendment Barcode: *(if applicable)*

Job Title:

Address: E. LaFayette St.
Street

TLH 32301
City *State* *Zip*

Phone:

E-mail:

Speaking: [X] For [ ] Against [ ] Information

Representing: Florida CHAIN

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

7.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-16-12
Meeting Date

Topic: KidCare

Bill Number: SB 1294 *(if applicable)*

Name: Ted Granger

Amendment Barcode: *(if applicable)*

Job Title: President

Address: 307 E 7th Ave
Street

Tallahassee, FL 32303
City, State, Zip

Phone: 850-488-8276

E-mail: TGranger@uwof.org

Speaking: [x] For [ ] Against [ ] Information

Representing: United Way of Florida

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

8.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Spoke

2/16/12
Meeting Date

Topic: KidCare

Bill Number: 1294 (if applicable)

Name: Karen Woodall

Amendment Barcode: (if applicable)

Job Title:

Address: 545 E. Tennessee St.
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 850-321-9386

E-mail: fcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Representing: Florida Center for Fiscal + Economic Policy & Farmworker's Self-Help

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

9.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: KIDCARE

Bill Number: 1294 *(if applicable)*

Name: DIANA RAGBEER

Amendment Barcode: *(if applicable)*

Job Title: DIR, PUB POLICY

Address: 3150 SW 3RD AVE
Street

MIAMI FL 33129
City *State* *Zip*

Phone: 305 571 5718

E-mail: diana@thechildrenstrust.org

Speaking: [x] For [ ] Against [ ] Information

Representing: THE CHILDREN'S TRUST

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

10

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Adding legal immigrant children to Kidcare eligibility

Bill Number: 1294 (if applicable)

Name: John Ratliff

Amendment Barcode: (if applicable)

Job Title: Policy Coordinator, SEIU 1991

Address: 18441 NW 2d Ave, #502
Street

Miami Gardens, FL 33169
City, State, Zip

Phone: 305 620 6555

E-mail: john.j.seiu1991.org

Speaking: [x] For [ ] Against [ ] Information

Representing: SEIU Healthcare Florida Local 1991, RNs, physician Health pro, Jackson Health System

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

11

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

* wave in support of bill

Topic: Kidcare

Bill Number: 1294 (if applicable)

Name: Michael Sheedy

Amendment Barcode: (if applicable)

Job Title: Associate Director

Address: 201 W. Park Ave.
Street

Tall., FL 32301
City State Zip

Phone: 850-222-3803

E-mail:

Speaking: [✓] For [ ] Against [ ] Information

Representing: FL Catholic Conference

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [✓] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

12

THE FLORIDA SENATE

APPEARANCE RECORD

2-16-2012 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic: Florida Kidcare Program

Bill Number: SB 1294 *(if applicable)*

Name: Chavonna Murphy

Amendment Barcode: *(if applicable)*

Job Title: Student

Address: 640 Dr. Mary Mcleod Bethune Blvd *Street*

Daytona Beach FL 32114 *City State Zip*

Phone: 954 651 4558

E-mail:

Speaking: [X] For [ ] Against [ ] Information

Representing: myself

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [ ] Yes [✓] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

13

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-16-2012
Meeting Date

Topic: Florida Kidcare Program

Bill Number: SB 1294 (if applicable)

Name: Raven R. Drayton

Amendment Barcode: (if applicable)

Job Title: Student / campus coordinator

Address: 600 Jimmy Ann Dr. Apt. 1511
Street

Daytona Beach, FL 32114
City, State, Zip

Phone: (305) 409-5403

E-mail: raven.drayton@gmail.com

Speaking: [x] For [ ] Against [ ] Information

Representing: Myself

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

14

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-16-12
Meeting Date

Topic: Kid Care

Bill Number: 1294 *(if applicable)*

Name: Linda Merrell

Amendment Barcode: *(if applicable)*

Job Title: Health - Human Consultant

Address: 599 John Anderson Dr.
Street

Ormond Beach FL
City *State* *Zip*

Phone: 386-295-3651

E-mail: Lindakids1@aol.com

Speaking: [x] For [ ] Against [ ] Information

Representing: Florida Child Healthcare Coalition.

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

15

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Kid Care

Bill Number: SB 1294 (if applicable)

Name: Ana Luisa Treviño

Amendment Barcode: (if applicable)

Job Title: Organizer FARMWORKER ASSOCIATION OF FLORIDA

Address: 1264 APOPKA Blvd
Street

APOPKA FL 32703
City State Zip

Phone: 407 886 5151

E-mail: anatrevinoprof@hotmail.com

Speaking: [x] For [ ] Against [ ] Information

Representing: Farmworker Association of Florida - Apopka

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Kidcare

Bill Number: SB 1294 (if applicable)

Name: Marcus Cicero

Amendment Barcode: (if applicable)

Job Title:

Address: 111 Fountain Dr.
Street

Pierson Fl. Volusia 32180
City State Zip

Phone: 386 5474807

E-mail: fwaf@mdzero.com

Speaking: [x] For [ ] Against [ ] Information

Representing: Farmworker Association of Florida

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

17

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic _____ Bill Number 1294 (if applicable)

Name Emmanuel Saint-Fleur Amendment Barcode _____ (if applicable)

Job Title _____

Address 4455 Middleburg Ct
Street

Orlando FL 32818
City State Zip

Phone _____

E-mail _____

Speaking: ☑ For ☐ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Kidcare

Bill Number: 1294 *(if applicable)*

Name: Yesica Ramirez

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 1264 Apopka Blvd.
Street

Phone: _____

Apopka FL 32703
City *State* *Zip*

E-mail: _____

Speaking: [✓] For [ ] Against [ ] Information

Representing: Self

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [ ] Yes [✓] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

19

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Kidcare

Bill Number: 1294 *(if applicable)*

Name: Evens Vital

Amendment Barcode: *(if applicable)*

Job Title:

Address: 1264 Apopka Blvd.
Street

Apopka FL 32703
City *State* *Zip*

Phone:

E-mail:

Speaking: [✓] For [ ] Against [ ] Information

Representing: Self

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [ ] Yes [✓] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 654

INTRODUCER: Regulated Industries Committee; and Senator Hays and others

SUBJECT: Euthanasia of Domestic Animals

DATE: February 12, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	**Fav/CS**
2.	Davlantes	Stovall	HR	**Favorable**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Committee Substitute (CS) requires an animal control officer, a wildlife officer, or an animal disease diagnostic laboratory to report to the Department of Health (DOH) knowledge of any animal bite; any diagnosis of disease in an animal; or any suspicion of a grouping of animals having similar disease, symptoms, or syndromes that may indicate the presence of a threat to humans.

The CS expands the list of drugs that can be used to euthanize domestic animals and adds certain drugs that may be used to immobilize domestic animals. The CS allows the Board of Pharmacy (the board), at the request of the Board of Veterinary Medicine, to expand the list of drugs that may be used to euthanize or immobilize domestic animals in the future if findings support the addition of drugs to the list for humane and lawful treatment of animals. The CS limits the possession and use of these drugs to animal control officers and employees or agents of animal control agencies and humane societies while operating within the scope of their employment or official duties.

The CS clarifies that the DOH is responsible for issuing permits for possession and use of euthanasia and immobilization drugs.

The CS provides the DOH and the board with the authority to deny a permit or fine, place on probation, or otherwise discipline an applicant or permittee for failure to maintain certain standards or for violations of the statutes. The CS allows the DOH to immediately suspend a permit via emergency order upon a determination that a permittee poses a threat to public health, safety, or welfare.

Lastly, the CS eliminates food-based delivery of euthanasia drugs as an acceptable method of euthanasia. The CS permits euthanasia by intracardial injection only upon an unconscious dog or cat which exhibits no corneal reflex.

This CS substantially amends the following sections of the Florida Statutes: 381.0031, 828.055, and 828.058.

II. Present Situation:

Animal Control in Florida

Animal control agencies operated by humane societies or by cities, counties, or other local subdivisions are generally responsible for enforcing state, county, and local animal control laws and regulations in Florida. Animal control officers employed or appointed by a county or municipality are authorized to investigate violations of animal control laws or regulations.[1] The governing body of a county or municipality is authorized to enact animal control ordinances.[2]

Euthanasia of Domestic Animals in Florida

Euthanasia is the act or practice of killing or permitting the death of sick or injured animals in a relatively painless way for reasons of mercy.[3] National euthanasia statistics are difficult to calculate because there is not a mandatory requirement for states to keep records on the number of animals taken in, adopted, euthanized, or reclaimed.[4] It is estimated that 3.7 million animals were euthanized nationwide in 2008.[5]

In Florida, the only approved drugs for use in euthanasia of domestic animals are sodium pentobarbital or a sodium pentobarbital derivative. Euthanasia drugs are to be delivered by the following methods, in order of preference:[6]

- Intravenous injection by hypodermic needle;
- Intraperitoneal injection by hypodermic needle;
- Intracardial injection by hypodermic needle; or
- Solution or powder added to food.

[1] Section 828.27, F.S.
[2] Section 828.27(2), F.S.
[3] *See* Merriam-Webster Online Dictionary at: www.merriam-webster.com/dictionary/euthanasia (last viewed January 30, 2012).
[4] *See* American Humane Association at: http://www.americanhumane.org/animals/stop-animal-abuse/fact-sheets/animal-shelter-euthanasia.html (last viewed January 30, 2012).
[5] *Id*.
[6] Section 828.058(1), F.S.

In order for an animal control agency or humane society to provide euthanasia services, the agency or society must obtain a permit from the DOH to purchase, possess, and use the euthanasia drugs approved by statute. Current law states that the Department of Business and Professional Regulation (DBPR) is responsible for issuing the permit.[7] The law was enacted at a time when health care professional boards were administratively housed under DPBR. However, due to reorganization of DBPR and the DOH, DOH and the board have primary responsibility for evaluating applications for the permit and taking disciplinary actions against holders of the permit for violations of law and rule.

The board has adopted rules to govern the issuance of permits to county or municipal animal control agencies or humane societies registered with the Secretary of State to purchase, possess, and use sodium pentobarbital and sodium pentobarbital with lidocaine to euthanize sick, injured, or abandoned domestic animals.[8] Currently, there are 105 active animal control shelter permits with the board. The initial cost of the permit is $50 and is renewable biennially.[9] DBPR issues exemption letters to entities which authorize the entities to possess immobilizers without violating s. 499.03, F.S., which imposes criminal sanctions for the unauthorized possession of habit-forming, toxic, harmful, or new drugs.[10] DBPR does not charge a fee for issuing the exemption letter.

Euthanasia can only be performed by a licensed veterinarian or an employee or agent of an agency, animal shelter, or other facility operated for the collection and care of stray, neglected, abandoned, or unwanted animals if the employee or agent has completed an euthanasia technician certification course.[11] However, any law enforcement officer, veterinarian, officer or agent of a municipal or county animal control unit, or officer or agent of any society or association for the prevention of cruelty to animals may kill a sick or injured animal by shooting the animal or injecting it with a barbiturate drug if the officer or agent finds the animal so injured or sick as to appear useless and suffering, the officer or agent reasonably believes the animal is imminently near death or cannot be cured, and a reasonable attempt is made to locate the owner of the animal or a veterinarian for consultation regarding destruction of the animal.[12]

Disease Reporting

Section 381.0031, F.S., requires certain medical providers, any hospital licensed under ch. 395, F.S., and any laboratory licensed under ch. 483, F.S., to report to the DOH the diagnosis or suspicion of a disease of public health importance.[13] The DOH is required to periodically issue a list of infectious and noninfectious diseases which it determines to be a threat to public health and therefore of public health importance.[14] The current list of diseases or conditions to be reported includes, but is not limited to:[15]

[7] Section 828.055(2), F.S.
[8] Section 828.055(1), F.S.; *see also* Rule 64B16-29, F.A.C.
[9] Rule 64B16-29.002(1)(a) and (b), F.A.C.
[10] Section 499.03(1), F.S.
[11] Section 828.058(4)(a), F.S.
[12] Section 828.05(3), F.S.
[13] Section 381.0031(1), F.S.
[14] Section 381.0031(2), F.S.
[15] The complete list of diseases or conditions to be reported is codified at Rule 64D-3.029(3), F.A.C.

- Acquired Immune Deficiency Syndrome (AIDS);
- Amebic Encephalitis;
- Botulism;
- Chlamydia;
- Cholera;
- Diphtheria;
- Gonorrhea;
- Hepatitis A, B, C, D, E and G;
- Human Immunodeficiency Virus (HIV);
- Influenza;
- Lyme disease;
- Meningitis;
- Mumps;
- Plague;
- Rabies;
- Smallpox;
- Syphilis;
- Tuberculosis;
- Typhoid fever;
- Viral hemorrhagic fevers;
- West Nile virus; and
- Yellow fever.

The diseases or conditions listed in the rule must be reported by telephone, facsimile, electronic data transfer, or other confidential means of communication to the county health department having jurisdiction for the area in which the disease or condition is found and within the time period specified by rule.[16] Persons required to report the diseases are not prohibited from reporting other diseases not included on the list.[17] Additional rules provide for written reports to be issued by practitioners, laboratories, medical facilities, and other persons following the initial reporting of a disease or condition of public health significance.[18]

The following persons are required to report suspected rabies exposure to humans, as well as conditions that are diagnosed or suspected in animals, under Rule 64D-3.039(2), F.A.C.:[19]

- Animal control officers operating under s. 828.27, F.S.;
- Employees or agents of a public or private agency, animal shelter, or other facility that is operated for the collection and care of stray, neglected, abandoned, or unwanted animals;
- Animal disease laboratories licensed under s. 585.61, F.S.;
- Wildlife officers operating under s. 372.07, F.S.;
- Wildlife rehabilitators permitted by the Fish and Wildlife Conservation Commission; and

[16] Rule 64D-3.029(1), F.A.C.; the time period for reporting varies according to the severity of the threat to public health posed by the identified disease or condition.
[17] *Id*.
[18] Rules 64D-3.030, 64D-3.031, 64D-3.032, and 64D-3.033, F.A.C.
[19] The rule provides that "[a]ny grouping or clustering of animals having similar diseases, symptoms or syndromes that may indicate the presence of a threat to humans including those for biological agents associated with terrorism shall be reported."

- Florida state park personnel operating under s. 258.007, F.S.[20]

III. Effect of Proposed Changes:

The CS requires an animal control officer (operating under s. 828.27, F.S.), a wildlife officer (operating under s. 379.3311, F.S.), and an animal disease diagnostic laboratory (operating under s. 585.61, F.S.) to report knowledge of any animal bite, any diagnosis or suspicion of a grouping or clustering of animals having similar disease, or any symptom or syndrome that may indicate the presence of a threat to humans.[21]

The CS expands the list of controlled substances and legend drugs that can be used for the purpose of euthanasia or immobilization of animals to include:

- Tiletamine hydrochloride, alone or in combination with zolazepam (Telazol®);
- Xylazine (Rompun®);
- Ketamine;
- Acepromazine maleate (Atravet®);
- Acetylpromazine (Acezine 2);
- Etorphine (Imobilon®); and
- Yohimbine hydrochloride, alone or combined with Atipamezole (Antisedan®).

At the request and recommendation of the Board of Veterinary Medicine, the board may adopt a rule to increase the number of controlled substances and legend drugs available to euthanize injured, sick, or abandoned domestic animals or to chemically immobilize such animals upon a finding that such additions are necessary for the humane and lawful treatment of those animals.

Any county or municipal animal control agency or any humane society registered with the Secretary of State may apply to the DOH, not the DBPR, for a permit to purchase, possess, and use the drugs listed above. The CS provides that the possession and use of these drugs is limited to those employees or agents of the permittee certified in accordance with s. 828.058, F.S.,[22] or s. 828.27, F.S.,[23] while operating in the scope of their employment or official duties with the permittee. The board may revoke or suspend the permit upon a determination that the permittee is using any of these drugs for any purpose other than that set forth in s. 828.055, F.S., or if the permittee fails to follow the rules of the board regarding proper storage and handling.

[20] Chapter 64D-3.033(1), F.A.C.
[21] This provision is consistent with Rule 64D-3.033, F.A.C., which currently requires animal control officers, animal disease laboratories, and wildlife officers to report suspected rabies exposure to humans as well as conditions that they diagnose or suspect in any grouping or clustering of animals having similar diseases, symptoms, or syndromes that may indicate the presence of a threat to humans, including those for biological agents associated with terrorism.
[22] Section 828.058(4)(a), F.S., refers to licensed veterinarians or employees or agents of a private or public agency, animal shelter, or other facility that is operated for the collection and care of stray, neglected, abandoned, or unwanted animals, provided the employee or agent has successfully completed a 16-hour euthanasia technicians certification course.
[23] Section 828.27(1)(b), F.S., defines "animal control officer" as any person employed or appointed by a county or municipality who is authorized to investigate, on public or private property, civil infractions related to animal control or cruelty and to issue citations. Such officer may carry a device to chemically subdue and tranquilize an animal, provided that such officer has successfully completed a minimum of 16 hours of training in marksmanship, equipment handling, safety, and animal care and can demonstrate proficiency in chemical immobilization of animals in accordance with guidelines prescribed in the Chemical Immobilization Operational Guide of the American Humane Association.

The CS provides the DOH and the board with authority to deny a permit or suspend, fine, or otherwise discipline a permittee or an applicant for a permit for failure to maintain certain standards or violation of certain statutes.[24] For example, use of prescription drugs listed in the CS for a purpose other than the purposes allowed in the CS; failure to take reasonable precautions against theft, loss, or diversion of the drugs listed in the CS; and failure to notice or report to the DOH a significant loss, theft, or inventory shortage are grounds for denial of an application for a permit or suspension, revocation, or refusal to renew a permit. The board can only take disciplinary action for a substantial violation of this section and the adopted rules. The board is required to consider the severity of the violation, the actions taken to remedy the violation, the timeframe for the remedial actions, and any previous violations in deciding what disciplinary action to take.

The CS gives the DOH the power to immediately suspend a permit by emergency order upon a determination that a permittee poses a threat to the public health, safety, or welfare. Licensed pharmacists, veterinarians, or health care practitioners operating within the scope of the applicable professional act are exempt from the provisions of this section.

The CS provides that a lethal solution of an agent approved by the Board of Veterinary Medicine to euthanize an animal may only be administered by intracardial injection if the dog or cat is unconscious with no corneal reflex.[25] An animal may not be euthanized through a solution or powder added to the animal's food.

The CS becomes effective July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

[24] Chapters 465 and 499, F.S., and adopted rules.
[25] Corneal reflex is tested by touching the cornea with a sterile object (a drop of water or saline can be used) and noting whether the animal blinks and withdraws the eye into the orbit. *See* http://ruralareavet.org/PDF/Anesthesia-Patient_Monitoring.pdf (Last visited January 31, 2012).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS allows all animal control agencies to use the same permit used to obtain drugs for euthanasia to obtain drugs for chemical immobilization without paying additional fees. In addition, animal control agencies will not be required to contract with veterinarians to obtain certain controlled substances for chemical immobilization. As a result, the CS may result in savings to certain animal control agencies.

C. Government Sector Impact:

The DOH expects to incur non-recurring costs for rulemaking as required by the CS which can be absorbed with the current budget authority.[26]

VI. Technical Deficiencies:

The bill's title states that the DOH or the board may suspend or revoke a permit under certain conditions but does not describe the other types of discipline against a permittee or applicant which are specified in this bill. The bill's title also does not state that licensed pharmacists, veterinarians, or health care practitioners operating within the scope of the applicable professional act are exempt from certain provisions of the bill.

VII. Related Issues:

Lines 88-100 add certain medications to the list of substances which are permitted to be purchased by county or municipal animal control agencies for the purpose of euthanizing animals or for the chemical immobilization of animals. However, yohimbine and yohimbine combined with atipamezole are not used for euthanasia or chemical immobilization of animals; rather, these are stimulants used to reverse the effects of anesthesia.

It is unclear if etorphine alone is permitted to be purchased, as the bill only mentions it as permissible when combined with acepromazine maleate.

Lines 48-52 provides that information in reports submitted to the department concerning diseases of public health significance is held confidential and exempt from public records provisions in s. 119.07(1), F.S. This language is in current statute. Lines 34-40 add additional diseases which must be reported to the department which were not included in the original public records exemption. If information relating to reporting of these new diseases needs to be confidential and exempt, a separate public records exemption must be filed.

[26] Department of Health, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 654*. A copy is on file with the Senate Health Regulation Committee.

The bill gives authority to animal control agencies to use certain drugs for the euthanasia of domestic animals. There are no provisions in the bill authorizing the use of such drugs for euthanasia of wild animals.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on February 2, 2012:
The CS clarifies that the DOH, not DBPR, is responsible for issuing permits for euthanasia and immobilization drugs.

The CS provides the DOH and the board with the power and rulemaking authority to deny a permit or suspend, fine, or otherwise discipline a permittee or an applicant for a permit for failure to maintain certain standards or violation of certain statutes. For example, use of prescription drugs listed in the CS for a purpose other than the purposes allowed in the CS; failure to take reasonable precautions against theft, loss or diversion of the drugs listed in the CS; and failure to notice or report to the DOH a significant loss, theft, or inventory shortage are grounds upon which denial of an application for the permit, suspension, revocation, or refusal to renew a permit may be based. The CS gives the DOH the power to immediately suspend a permit by emergency order upon a determination that a permittee poses a threat to the public health, safety, or welfare.

The CS conforms the language to be identical to CS/HB 479.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget - Subcommittee on General Government Appropriations, *Chair*
Agriculture
Banking and Insurance
Budget
Budget - Subcommittee on Higher Education Appropriations
Criminal Justice
Reapportionment

JOINT COMMITTEE:
Administrative Procedures

SENATOR D. ALAN HAYS
20th District

February 6, 2012

Senator Rene Garcia, Chair
Health Regulation Committee
310 Senate Office Building
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: SB 654 Relating to Patient Animal Control

Dear Chair Garcia:

I respectfully request my above bill be heard before your committee. I feel this bill would be a benefit to the citizens of this state.

Thank you in advance for your consideration, and please contact me if you have any questions.

Sincerely,

D. Alan Hays, DMD

Senator D. Alan Hays
District 20

CC: **Sandra R. Stovall**, *Staff Director*
Celia Georgiades, *Committee Administrative Assistant*

ENTERED

REPLY TO:
☐ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: SB 654 Animal Control/Humane Euthanasia

Bill Number: 654 *(if applicable)*

Name: Kate MacFall

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: _____
Street

_____
City *State* *Zip*

Phone: 508-1001

E-mail: kmacfall@comcast.net

Speaking: [✓] For [ ] Against [ ] Information

Representing: ASPCA

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [✓] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic _____

Bill Number 654 *(if applicable)*

Name Diana Ferguson

Amendment Barcode _____ *(if applicable)*

Job Title Attorney

Address 119 S Monroe St Ste 202
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-681-6788

E-mail dferguson@regnlaw.com

Speaking: [✓] For [ ] Against [ ] Information

Representing FL Animal Control Association

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [✓] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 1286

INTRODUCER: Regulated Industries Committee and Senator Thrasher

SUBJECT: Treatment Programs for Impaired Professionals

DATE: February 13, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	**Fav/CS**
2.	Davlantes	Stovall	HR	**Favorable**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The Committee Substitute (CS) provides that the professions of emergency medical technicians, paramedics, and radiological personnel may be subject to the treatment program for impaired practitioners at the election of the impaired practitioner consultant.

In addition, the CS amends the requirements for the impaired practitioner consultant. It provides that the consultant may be an entity that employs a registered nurse as its executive director. It provides that the consultant may contract for services if requested by a school or program for students enrolled in a school for licensure as a health care practitioner under ch. 456, F.S., or as a veterinarian under ch. 474, F.S. The CS provides that whenever the department receives a legally sufficient complaint alleging that a licensee or applicant, not just licensee, is impaired and no other complaint exists, the appropriate board, the board's designee, or the Department of Health (DOH) shall forward all information in its possession regarding the impaired licensee or applicant to the consultant.

This CS substantially amends s. 456.076, F.S., and creates ss. 401.466 and 468.315, F.S.

II. Present Situation:

Health Care Practitioner Licensure Authority of the Department of Health

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

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

Not all professionals regulated by the DOH are issued licenses; some are issued registrations or certifications. However, s. 456.001, F.S., indicates that any provisions related to licensure or licensees in the chapter also apply to those who are certified or registered by the DOH.

Impaired Practitioner Treatment Programs

Health care practitioners are regulated under various practice acts and the general regulatory provisions of ch. 456, F.S. Under s. 456.072(1)(z), F.S., disciplinary action may be taken against a licensed health care professional who is unable to practice with reasonable skill and safety due to illness; use of alcohol, drugs, narcotics, chemicals or any other type of material; or as the result of any mental or physical condition. The impaired practitioner treatment program was created to help treat practitioners who are impaired due to alcohol or substance abuse. By entering and successfully completing the program, a practitioner may avoid formal disciplinary action by his or her board, if his or her only violation of the practice regulations is the impairment. Disciplinary action will not be taken if the practitioner acknowledges his or her

impairment, voluntarily enrolls in an approved treatment program, and voluntarily withdraws from his or her practice or limits the scope of his or her practice as determined by the probable cause panel of the appropriate board until such time as the panel is satisfied that the practitioner has successfully completed the treatment program.[1] To avoid discipline, the practitioner must also execute releases for medical records authorizing the release of all records of evaluation, diagnosis, and treatment to the impaired practitioner treatment program consultant.[2] Unless specifically made part of the program,[3] the impaired practitioner treatment program is only available to health care practitioners regulated by the DOH.

Section 456.076, F.S., requires the DOH to retain one or more impaired practitioner consultants to assist in determining whether a practitioner is impaired and to monitor the treatment of the impaired practitioner. The consultant must be a practitioner or recovered practitioner who is a Florida-licensed medical physician, osteopathic physician, physician assistant, anesthesiology assistant, or nurse. In the alternative, a consultant may be an entity employing a medical director who is so licensed. Consultants must refer impaired practitioners to department-approved treatment programs and providers.[4] Although consultants do not provide medical treatment, they are required to make recommendations to the DOH regarding a practitioner's ability to practice.

Veterinarians licensed under ch. 474, F.S., are also subject to the impaired practitioner provisions in this section as if they were under the jurisdiction of the Division of Medical Quality Assurance. Veterinarians are normally regulated by the Department of Business and Professional Regulation (DBPR). DBPR may exercise any of the powers granted to the DOH under s. 456.075, F.S., and "board" as used in this section is construed to mean the Board of Veterinary Medicine.[5]

The DOH currently contracts with the Intervention Project for Nurses (IPN) for licensed nurses and the Professional Resource Network (PRN) for all other licensed professions. The PRN currently has two separate contracts with DOH and DBPR.[6]

III. Effect of Proposed Changes:

Section 1 creates s. 401.466, F.S., pertaining to treatment programs for impaired emergency medical technicians and paramedics.[7] The CS provides that a certified emergency medical technician or paramedic or person who has applied to be certified may be subject to the provisions of s. 456.076, F.S., at the election of an impaired practitioner consultant. Costs may not be charged to the Medical Quality Assurance Trust Fund within the Department of Health.

[1] Section 456.076(3)(a), F.S.
[2] *Id*.
[3] Currently, both the Board of Veterinary Medicine and the Board of Pilot Commissioners under DBPR provide impaired practitioner treatment programs for licensees within those practice acts. *See ss*. 474.221 and 310.102, F.S.
[4] *See* s. 456.076, F.S.
[5] Section 474.221, F.S.
[6] Telephone conversation with PRN staff.
[7] Part III of ch. 401, F.S., includes all persons licensed in medical transportation services.

Section 2 amends the requirements for an impaired practitioner consultant under s. 456.076, F.S. The CS clarifies that the consultant may also be an entity employing a registered nurse as an executive director.

The CS provides that an entity that is retained as a consultant and employs a medical director or registered nurse as an executive director is not required to be licensed as a substance abuse provider or mental health treatment provider if the entity employs or contracts with licensed professionals to perform or appropriately supervise any specific treatment or evaluation that requires individual licensing or supervision.

The CS provides that the consultant may contract for services if requested by a school or program for students enrolled in a school for licensure as a health care practitioner under ch. 456, F.S., or as a veterinarian under ch. 474, F.S. The CS further provides that the school who refers such student to the consultant is not liable in any civil action against the student for the referral or for any resulting disciplinary action that affects the status of the student.

The CS provides that whenever the department receives a legally sufficient complaint alleging that a licensee or applicant, not just licensee, is impaired and no other complaint exists, the appropriate board, the board's designee, or the DOH shall forward all information in its possession regarding the impaired licensee or applicant to the consultant.

The CS clarifies that the Department of Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, the consultant's officers or employees, or those acting at the direction of the consultant.

The CS provides that the impaired practitioner consultant is the official custodian of records concerning any impaired licensee monitored by that consultant. The consultant may not disclose to the impaired licensee any information that is disclosed to or retained by the consultant and is confidential. Instead, the impaired licensee must obtain such information from the Department of Health if a disciplinary proceeding is pending.

Section 3 creates s. 468.315, F.S., pertaining to the creation of a treatment program for impaired radiological personnel.[8] The CS provides that a radiologic technologist who is certified or who has applied to be certified may be subject to s. 456.076, F.S., at the election of an impaired practitioner consultant. Radiological personnel are not included in the definition of "licensed practitioner" in s. 456.001, F.S., and are thus not subject to the provisions of the impaired practitioner program under current law.

Section 4 provides an effective date of July 1, 2012.

[8] Part IV of ch. 468, F.S., includes all persons licensed as radiological personnel.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS provides that the professions of emergency medical technicians, paramedics, and radiological personnel may be required to participate in the impaired practitioner program under the jurisdiction of the Division of Medical Quality Assurance. As a result, more licensed professionals may be eligible for assistance.

C. Government Sector Impact:

According to the DOH, this CS adds the professions of emergency medical technicians, paramedics, and radiological personnel to the professions covered by the impaired practitioner treatment programs, and will require additional contracts for services with PRN. The DOH estimates that it will cost approximately $81,620 per year beginning in fiscal year 2013-2014 to cover those other professions.[9]

VI. Technical Deficiencies:

None.

[9] Department of Health, *2012 Bill Analysis, Economic Statement, and Fiscal Note for SB 1286*. A copy is on file with the Senate Health Regulation Committee.

VII. Related Issues:

It might be more appropriate to include information relating to veterinary students and veterinary schools under s. 474.221, F.S., which states that licensed veterinarians are subject to s. 456.076, F.S., despite being regulated by DBPR.

It is unclear whether the DOH or DBPR will be responsible for costs related to impaired veterinarians or veterinary students. Currently, services for impaired veterinarians are paid for by DBPR, but no statutes specify this.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on February 2, 2012:
The CS removed the provisions relating to the Department of Business and Professional Regulation (DBPR) which required a person licensed by or applying for a license from DBPR to be governed by the provisions providing programs for impaired practitioners under the jurisdiction of the Medical Quality Assurance within the Department of Health.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic CS/SB 1286

Bill Number CS/SB 1286 (if applicable)

Name Judy Rivenbark

Amendment Barcode (if applicable)

Job Title PRN Medical Director

Address P.O. Box 1020
Street

Fernandina Beach FL 32035
City State Zip

Phone 1-800-888-8776

E-mail

Speaking: [x] For [ ] Against [ ] Information

Representing PRN of Florida

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/CS/SB 1502

INTRODUCER: Health Regulation Committee, Criminal Justice Committee, and Senator Evers

SUBJECT: Controlled Substances

DATE: February 16, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/CS**
2.	Davlantes	Stovall	HR	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill lists a number of synthetic cannabinoids and synthetic stimulants as Schedule I controlled substances. According to the Florida Department of Law Enforcement (FDLE), none of these substances has "an accepted medical use or a legitimate industrial or commercial purpose."[1]

This bill substantially amends section 893.03, Florida Statutes, and reenacts sections 893.12(1) - (6)and 921.0022(3)(b) – (e), Florida Statutes.

II. Present Situation:

Synthetic Cannabinoids

The FDLE has provided the following information on synthetic cannabinoids:

[1] Analysis of SB 1502, Florida Department of Law Enforcement, dated January 12, 2012 (on file with the Committee on Criminal Justice). Further cited as "FDLE Analysis."

> K2 or Spice, marketed as "synthetic marijuana," is an herbal substance being sold in the United States as incense labeled "not for human consumption." The products contain one or more synthetic compounds which interact with the body similarly to the primary psychoactive constituent of marijuana, delta-tetrahydrocannabinol, or THC. Therefore, the corrupt term of "synthetic marijuana" has been attached to these substances when in fact the correct term should be "synthetic cannabinoids." Synthetic cannabinoids are distinctly different from marijuana and create unknown long-term medical risks and immediate dangerous side effects when consumed. The synthetic cannabinoids do not mimic the chemical compound of THC, but cause pharmacological activity at the same receptors as THC in the brain, with the accompanying high potential for abuse.
>
> The JWH series of compounds found in synthetic cannabinoids was created for research purposes to determine the relationship of these compounds in the body and document physiological responses with the CB1 and CB2 receptors in the brain and spleen. These substances, in the hundreds, were never intended to be used on humans; however, the publishing of research studies resulted in the creation of synthetic cannabinoids that are marketed for commercial distribution. Once the white powder is created, it can be taken alone or applied to any type of material such as a plant or paper and ingested in a manner similar to marijuana use. Some of the negative side effects include hallucinations, increased heart rate, increased anxiety, convulsions, unresponsiveness and suicidal thoughts.[2]

Synthetic Stimulants

The Florida Department of Law Enforcement (FDLE) has provided the following information on synthetic stimulants:

> Psychoactive substances being marketed as "bath salts" are being produced as legal substitutes for ecstasy, cocaine, and amphetamines. The term 'bath salts' refer to commercially available products that have as part of their composition a legal stimulant called 3, 4-Methylenedioxypyrovalerone, or MDPV. These synthetic stimulants are in a class of drugs known as synthetic cathinones.[3] "Bath salts" can be comprised of different unregulated chemical substances and are being sold under a variety of names or brands. Both the law enforcement community and medical professionals indicate that "bath salts" are becoming increasingly popular due to the perception that they pose a seemingly safer alternative to illegal methods of getting "high." Synthetic cathinones produce a euphoric effect on the user comparable to more common illicit drugs, and therefore have the same potential for abuse.
>
> "Bath salt" products are known to produce certain side effects, some of which are quite severe. The following is the list of milder, short-term side effects associated with

[2] *Id.*

[3] Cathinone is a Schedule I controlled substance under s. 893.03(1)(c)8., F.S. It is an alkaloid found in the shrub *Catha edulis* (khat) and is chemically similar to amphetamines and other substances. "Consideration of the cathinones" (March 2010), Advisory Council on the Misuse of Drugs, United Kingdom, http://www.homeoffice.gov.uk/publications/drugs/acmd1/acmd-cathinodes-report-2010?view=Binary.The "molecular architecture" of cathinone "can be altered to produces a series of different compounds which are closely structurally related to cathinone." *Id*. (This footnote is not part of the quoted text.)

consumption of this drug as documented by medical personnel during treatment of abusers:

- Increased heart rate
- Increased alertness and awareness
- Agitation
- Anxiety
- Diminished requirement for sleep
- Fits and delusions
- Lack of appetite
- Nosebleeds

More serious side effects associated with these drugs reportedly include:

- Muscle spasms
- Hallucinations
- Blood circulation problems, including increased blood pressure
- Aggression
- Kidney failure
- Severe paranoia
- Seizures
- Panic attacks
- Risk of renal failure
- Sharp increase in body temperature

In most extreme cases, powdered "bath salt" products have been linked to self-mutilation and drug induced deaths to include an increased risk of suicide.[4]

Schedule I Controlled Substances

A substance is a "controlled substance" if it is listed in any of five schedules in s. 893.03, F.S. The particular scheduling determines penalties that may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. Relevant to the bill, a substance in Schedule I is considered to have a high potential for abuse and no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards.

Recent Legislation

In 2011, the Legislature listed a number of synthetic cannabinoids and synthetic stimulants in Schedule 1.[5] The following synthetic cannabinoids were listed in Schedule I:

[4] FDLE Analysis.
[5] Chapters 2011-73 and 2011-90, L.O.F.

- 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol, also known as CP 47,497 and its dimethyloctyl (C8) homologue[6]
- (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol, also known as HU-210
- 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018
- 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073
- 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, also known as JWH-200[7]

As a result of the 2011 legislation, penalties for unlawful acts involving synthetic cannabinoids are generally the same as penalties for unlawful acts involving other controlled substances listed in s. 893.03(1)(c), F.S. The exception is that simple possession of 3 grams or less of these 5 synthetic cannabinoids in a non-powdered form is a first degree misdemeanor.[8]

The 2011 legislation also listed the following synthetic stimulants in Schedule I:

- 3,4-methylenedioxymethcathinone
- 3,4-methylenedioxypyrovalerone (MDPV)
- Methylmethcathinone
- Methoxymethcathinone
- Methoxymethcathinone
- Fluoromethcathinone[9]

III. Effect of Proposed Changes:

Section 1 amends s. 893.03, F.S., to list the following synthetic cannabinoids and synthetic stimulants (none of which currently appear in any schedule) in Schedule I:

- BZP (Benzylpiperazine).
- Fluorophenylpiperazine.
- Methylphenylpiperazine.
- Chlorophenylpiperazine.
- Methoxyphenylpiperazine.
- DBZP (1,4-dibenzylpiperazine).
- TFMPP (3-Trifluoromethylphenylpiperazine).
- MBDB (Methylbenzodioxolylbutanamine).
- 5-Hydroxy-alpha-methyltryptamine.
- 5-Hydroxy-N-methyltryptamine.
- 5-Methoxy-N-methyl-N-isopropyltryptamine.
- 5-Methoxy-alpha-methyltryptamine.
- Methyltryptamine.

[6] A "homologue" is "a chemical compound in a series in which each compound differs by one or more alkyl functional groups on an alkyl side chain. s. 893.02(11), F.S.
[7] Section 893.03(1)(c)46.-50., F.S.
[8] Section 893.13(6)(b), F.S.
[9] Section 893.03(1)(c)40.-45., F.S.

- 5-Methoxy-N,N-dimethyltryptamine.
- 5-Methyl-N,N-dimethyltryptamine.
- Tyramine (4-Hydroxyphenethylamine).
- 5-Methoxy-N,N-Diisopropyltryptamine.
- DiPT (N,N-Diisopropyltryptamine).
- DPT (N,N-Dipropyltryptamine).
- 4-Hydroxy-N,N-diisopropyltryptamine.
- N,N-Diallyl-5-Methoxytryptamine.
- DOI (4-Iodo-2,5-dimethoxyamphetamine).
- DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
- 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
- 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
- 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).
- 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- Butylone (beta-keto-N-methylbenzodioxolylpropylamine).
- Ethcathinone.
- Ethylone (3,4-methylenedioxy-N-ethylcathinone).
- Naphyrone (naphthylpyrovalerone).
- N-N-Dimethyl-3,4-methylenedioxycathinone.
- N-N-Diethyl-3,4-methylenedioxycathinone.
- 3,4-methylenedioxy-propiophenone.
- 2-Bromo-3,4-Methylenedioxypropiophenone.
- 3,4-methylenedioxy-propiophenone-2-oxime.
- N-Acetyl-3,4-methylenedioxycathinone.
- N-Acetyl-N-Methyl-3,4-Methylenedioxycathinone.
- N-Acetyl-N-Ethyl-3,4-Methylenedioxycathinone.
- Bromomethcathinone.
- Buphedrone (alpha-methylamino-butyrophenone).
- Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
- Dimethylcathinone.
- Dimethylmethcathinone.
- Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
- (MDPPP) 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone.
- (MDPBP) 3,4-Methylenedioxy-alpha-pyrrolidinobutiophenone.
- Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).
- Methyl-alpha-pyrrolidinohexiophenone (MPHP).
- Benocyclidine (BCP) or benzothiophenylcyclohexylpiperidine (BTCP).
- Fluoromethylaminobutyrophenone (F-MABP).
- Methoxypyrrolidinobutyrophenone (MeO-PBP).
- Ethyl-pyrrolidinobutyrophenone (Et-PBP).
- 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).

- Methylethylaminobutyrophenone (Me-EABP).
- Methylamino-butyrophenone (MABP).
- Pyrrolidinopropiophenone. (PPP)
- Pyrrolidinobutiophenone (PBP).
- Pyrrolidinovalerophenone (PVP).
- Methyl-alpha-pyrrolidinopropiophenone (MPPP).
- JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
- JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone).
- JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-yl)methanone).
- JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
- JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-yl)methanone).
- JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone).
- JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
- JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
- JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-indole).
- JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
- JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-yl)ethanone).
- JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone).
- JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl)ethanone).
- JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-yl)ethanone).
- JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
- JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
- HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).
- HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol).
- HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1- methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione).
- CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone).
- CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide).
- CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide).
- CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).
- AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-iodophenyl)methanone).
- AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-yl)methanone).
- RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-yl)methanone).
- RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenylethanone).
- WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).
- WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

The FDLE states that the scheduling of these substances “would give state and local law enforcement the ability to affect a lawful arrest and seek criminal prosecution against an

individual engaged in the possession, distribution, and unlawful use of these chemical substances."

Sections 2 and 3 reenact, respectively, s. 893.12(1) - (6), F.S., and s. 921.0022(3)(b) – (e), F.S., to incorporate the amendments made to s. 893.03, F.S., in Section 1 of the bill. Section 893.13(6)(b), F.S. is also amended to add reference to the new synthetic cannabinoids scheduled by the bill.

Section 4 provides that the act take effect October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The FDLE states that the bill "should have little impact on the private sector and would only affect those retailers who are currently profiting on the sale of chemical substances known to be abused by those seeking an altered mental state or 'high.' Although synthetic stimulants have been sold to abusers labeled as 'bath salts' or 'plant food,' these labels were a subterfuge on the part of sellers to attempt to conceal their true nature as drugs of abuse. [The bill] … will have no impact on manufacturers, distributors or retailers of actual bath products or fertilizers. None of the new substances listed in [the bill] … have an accepted medical use or a legitimate industrial or commercial purpose."[10]

[10] FDLE Analysis.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any of legislation has reviewed SB 1502 and estimates the bill will have an insignificant prison bed impact.

The FDLE states that the bill "could potentially increase the number of evidence submissions into FDLE's Crime Laboratory System. The lab system will need to acquire all of the required standards necessary to test the proposed chemical substances."[11] The department also notes that "[l]ocal agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a similar rise in submissions associated with the additions of the proposed chemical substances."[12]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on February 16, 2012:
The CS/CS corrects misspellings of chemical nomenclature.

CS by Criminal Justice on January 31, 2012:
The CS corrects misspellings of chemical nomenclature and references in s. 893.13(6)(b), F.S., the new synthetic cannabinoids scheduled by the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[11] FDLE Analysis.
[12] *Id.*

370844

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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The Committee on Health Regulation (Fasano) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 137 - 237
4 and insert:
5 71. N,N-Diallyl-5-Methoxytryptamine.
6 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
7 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
8 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
9 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
10 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
11 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
12 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).

370844

13 79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).
14 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
15 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).
16 82. Ethcathinone.
17 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
18 84. Naphyrone (naphthylpyrovalerone).
19 85. N-N-Dimethyl-3,4-methylenedioxycathinone.
20 86. N-N-Diethyl-3,4-methylenedioxycathinone.
21 87. 3,4-methylenedioxy-propiophenone.
22 88. 2-Bromo-3,4-Methylenedioxypropiophenone.
23 89. 3,4-methylenedioxy-propiophenone-2-oxime.
24 90. N-Acetyl-3,4-methylenedioxycathinone.
25 91. N-Acetyl-N-Methyl-3,4-Methylenedioxycathinone.
26 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxycathinone.
27 93. Bromomethcathinone.
28 94. Buphedrone (alpha-methylamino-butyrophenone).
29 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
30 96. Dimethylcathinone.
31 97. Dimethylmethcathinone.
32 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
33 99. (MDPPP) 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone.
34 100. (MDPBP) 3,4-Methylenedioxy-alpha-pyrrolidinobutiophenone.
35 101. Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).
36 102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).
37 103. Benocyclidine (BCP) or benzothiophenylcyclohexylpiperidine
38 (BTCP).
39 104. Fluoromethylaminobutyrophenone (F-MABP).
40 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
41 106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).

370844

42 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
43 108. Methylethylaminobutyrophenone (Me-EABP).
44 109. Methylamino-butyrophenone (MABP).
45 110. Pyrrolidinopropiophenone. (PPP)
46 111. Pyrrolidinobutiophenone (PBP).
47 112. Pyrrolidinovalerophenone (PVP).
48 113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).
49 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
50 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
51 naphthalenylmethanone).
52 116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-yl)methanone).
53 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
54 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-
55 yl)methanone).
56 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
57 yl)methanone).
58 120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
59 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-
60 tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
61 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-indole).
62 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
63 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-
64 yl)ethanone).
65 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-
66 yl)methanone).
67 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-
68 yl)ethanone).
69 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-
70 yl)ethanone).

370844

71 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
72 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
73 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-
74 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).
75 131. HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-
76 yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol).
77 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1- methylethenyl)-
78 2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione).
79 133. CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-
80 yl)methanone).
81 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
82 undecanamide).
83 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
84 undecanamide).
85 136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-
86 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).
87 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(2-
88 iodophenyl)methanone).
89 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-(naphthalen-1-
90 yl)methanone).
91 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-
92 yl)methanone).
93 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-
94 methoxyphenylethanone).
95 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
96 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
97 naphthalenylmethanone).
98 142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-
99 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

370844

100 naphthalenylmethanone).

777524

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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The Committee on Health Regulation (Fasano) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 209 - 210
4 and insert:
5 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
6 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
7 ol)).

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Criminal Justice, *Chair*
Transportation, *Vice Chair*
Budget - Subcommittee on Criminal and Civil Justice Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Communications, Energy, and Public Utilities
Reapportionment
Rules - Subcommittee on Ethics and Elections

SENATOR GREG EVERS
2nd District

January 31, 2012

The Honorable Rene Garcia
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Chairman Garcia,

I respectfully request SB 1502, pertaining to Controlled Substances, be placed on your next available agenda for review by the Health Regulation Committee.

Thank you in advance for your favorable consideration on this request.

Sincerely,

Greg Evers

Greg Evers

Cc: Sandra Stovall, Staff Director

ENTERED

REPLY TO:
☐ 598 North Ferdon Boulevard, Crestview, Florida 32536 (850) 689-0556
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MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12 or 2/17/12
Meeting Date

Topic: Amendment to add anabolic drugs to Schedule III

Bill Number: SB1502 controlled substances *(if applicable)*

Name: DR. KENNETH WOLINER, MD

Amendment Barcode: _____ *(if applicable)*

Job Title: PHYSICIAN

Address: 9325 GLADES ROAD, #104
Street

BOCA RATON — *City* | FL — *State* | 33434 — *Zip*

Phone: 561-620-7779

E-mail: knw6@cornell.edu

Speaking: [✓] For [ ] Against [ ] Information

Representing: myself and my patients - ~~requesting an amendment to this bill~~ requesting to speak

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [ ] Yes [✓] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Substance Abuse

Bill Number: 1502 *(if applicable)*

Name: Tim Stanfield

Amendment Barcode: *(if applicable)*

Job Title:

Address: 215 N Monroe
Street

Tall 32308
City *State* *Zip*

Phone: 527 222-0385

E-mail:

Speaking: [X] For [ ] Against [ ] Information

Representing:

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Controlled Substances

Bill Number: SB 1502 *(if applicable)*

Name: Vickie Gardner

Amendment Barcode: *(if applicable)*

Job Title: Director of Forensic Services

Address: 2331 Phillips Road
Street

Tallahassee — *City*
FL — *State*
32308 — *Zip*

Phone: 850-410-7756

E-mail: vickiegardner@fdle.state.fl.us

Speaking: ☐ For ☐ Against ☑ Information

Representing: Florida Department of Law Enforcement

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Controlled Substances

Bill Number: SB 1502 *(if applicable)*

Name: David Gross

Amendment Barcode: _____ *(if applicable)*

Job Title: Inspector

Address: 2331 Phillips Road
Street

Tallahassee — *City*
FL — *State*
32308 — *Zip*

Phone: 850-410-8389

E-mail: davidgross@fdle.state.fl.us

Speaking: ☐ For ☐ Against ☑ Information

Representing: Florida Department of Law Enforcement

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Synthetic Drugs

Bill Number: 1502 *(if applicable)*

Name: Andrew Fay

Amendment Barcode: *(if applicable)*

Job Title: Legislative Coordinator

Address: PL02
Street

Tallahassee FL
City *State* *Zip*

Phone: 850-245-0155

E-mail:

Speaking: [x] For [ ] Against [ ] Information

Representing: Office of the Attorney General

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Controlled Substances

Bill Number: SB 1502 *(if applicable)*

Name: David Gross

Amendment Barcode: *(if applicable)*

Job Title: Inspector

Address: 2331 Phillips Road
Street

Tallahassee — FL — 32308
City — *State* — *Zip*

Phone: 850-410-8389

E-mail: davidgross@fdle.state.fl.us

Speaking: ☐ For ☐ Against ☑ Information

Representing: Florida Department of Law Enforcement

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Controlled Substances

Bill Number: SB 1502 *(if applicable)*

Name: Vickie Gardner

Amendment Barcode: *(if applicable)*

Job Title: Director of Forensic Services

Address: 2331 Phillips Road
Street

Tallahassee — *City*
FL — *State*
32308 — *Zip*

Phone: 850-410-7756

E-mail: vickiegardner@fdle.state.fl.us

Speaking: ☐ For ☐ Against ☑ Information

Representing: Florida Department of Law Enforcement

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/CS/SB 956

INTRODUCER: Health Regulation Committee, Regulated Industries Committee, and Senator Hays

SUBJECT: Disposition of Human Remains

DATE: February 17, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Davlantes	Stovall	HR	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill relates to the disposition of human remains. The disposition of human remains in Florida is regulated pursuant to part II, of ch. 406, F.S. The bill:

- Defines several terms to have the same meaning as provided in ch. 497, F.S., which relates to the regulation of funeral, cemetery, and consumer services by the Department of Financial Services (DFS);
- Directs any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at the public expense, to notify the Anatomical Board at the University of Florida Health Science Center (board);
- Authorizes the board to embalm the human remains that it receives;
- Specifies the situations in which notification of the board is not required, including when the unclaimed remains are decomposed or mutilated by wounds, an autopsy is performed on the remains, the remains contain a contagious disease, a legally authorized person objects to the use of the remains for medical education or research, or the deceased person was eligible for burial in a national cemetery;
- Permits funeral directors licensed under ch. 497, F.S., to act as a legally authorized person for the unclaimed remains when no family exists or is available, and it releases a funeral director from liability for damages when exercising that authority;

- Provides that, when the identity of the unclaimed remains cannot be ascertained, the remains may not be cremated, donated as an anatomical gift, buried at sea, or removed from the state;
- Authorizes counties to dispose of unclaimed remains by burial or cremation pursuant to an ordinance or resolution if the remains are not claimed by the board;
- Clarifies that competing claims for unclaimed remains are prioritized according to the priority of legally authorized persons provided in s. 497.005, F.S.;
- Permits the board to loan remains to accredited colleges of mortuary science for education or research purposes;
- Authorizes the board to pay or reimburse the reasonable expenses, as determined by the board, for the transportation, removal, or storage of unclaimed remains by licensed funeral establishments or removal services;
- Requires the anatomical board, not the DFS, to keep record of related financial transactions and authorizes the University of Florida to audit these records at least once every 3 years and provide a copy to DFS;
- Limits the conveyance of human remains in or out of the state for medical research purposes to nontransplant anatomical donation organizations that are accredited by the American Association of Tissue Banks (AATB) or are accredited medical or dental schools;
- Provides that nontransplant anatomical donation organizations do not need to be accredited by the AATB before July 1, 2013; and
- Redefines "final disposition" as it relates to vital statistics and the Florida Funeral, Cemetery, and Consumer Services Act, to include provisions relating to anatomical donation.

This bill substantially amends the following sections of the Florida Statutes: 406.50, 406.51, 406.52, 406.53, 406.55, 406.56, 406.57, 406.58, 406.59, 406.60, 406.61, 765.513, 382.002, and 497.005. The bill creates s. 406.49, Florida Statutes, and repeals section 406.54, Florida Statutes.

II. Present Situation:

Regulation of the Conveyance of Anatomical Remains

Part II of ch. 406, F.S., regulates the disposition of dead human bodies in the state of Florida. This chapter provides for the transfer of unclaimed bodies to the board,[1] and from the board to Florida medical and dental schools, teaching hospitals, medical institutions and health-related teaching programs that require the use of anatomical material for study.[2] The board is authorized to collect fees to defray expenses, can receive additional public or private moneys for expenses, and can reimburse any person who delivers anatomical remains to the board.[3] Additionally, the board is permitted to contract, and is annually audited by DFS.[4]

The board is located at the University of Florida College of Medicine Health Science Center,[5] and comprised of representatives from the medical schools in the state.[6] The board's purpose is

[1] Section 406.50, F.S.
[2] The board is also given the discretionary authority to provide cadavers to recognized associations of licensed embalmers or funeral directors, or the examining boards of medical and dental schools. Section 406.57, F.S.
[3] Section 406.58, F.S.
[4] *Id.*
[5] Section 406.50, F.S. The anatomical board was created by the Legislature at the University of Florida in 1996, by ch. 96-251, L.O.F. Prior to 1996, the Division of Universities of the Department of Education was responsible for these functions.

to provide cadavers, and parts thereof, to teaching and research programs in Florida. The board must hold a body for at least 48 hours before it can be used for medical science.[7]

Section 406.56, F.S., provides the board with the authority to accept a body that has been donated through a will, to be given to a Florida medical or dental school. Such an anatomical gift is provided for in part V, of ch. 765, F.S. These provisions of law outline the specific process for donation, and require that persons who wish to donate their body for transplant or anatomical study memorialize their intent by signing an organ donor card, registering with the online donor database, or completing an advance directive or other document.[8]

The bartering, selling and trading of human remains is prohibited in the state of Florida, punishable by a misdemeanor of the first degree.[9] Additionally, the transmission or conveyance of such anatomical remains outside the state is a first degree misdemeanor.[10] However, a statutory exception exists for recognized Florida medical or dental schools, which allows these institutions to transfer or convey human remains outside the state for research or other specific purposes.

Human remains may be conveyed into and out of the state, for medical education or research purposes, by a person, institution, or organization that has received prior approval from the board.[11] There is an exception for an entity accredited by the American Association of Museums (AAM) to convey, in specific circumstances, plastinated anatomical remains into and out of the state for exhibition purposes.[12] This exception sunsets on January 1, 2012.[13]

Nontransplant Anatomical Donation Organizations

An organization that stores human remains for the purposes of research, rather than transplant, is known in the industry as a nontransplant anatomical donation organization. In medical research and education, the donation of human remains is critical to the advancement of new techniques, and nontransplant anatomical donation organizations are a key component of this market.[14]

The American Association of Tissue Banks

The American Association of Tissue Banks (AATB) is an organization that promulgates industry standards and accredits tissue banks in both the United States and Canada.[15] Membership is

[6] www.med.ufl.edu/anatbd/, site last visited December 12, 2011.
[7] Section 406.52, F.S.
[8] Section 765.514, F.S.
[9] Section 406.61(1), F.S,
[10] *Id.*
[11] *Id.*
[12] Section 406.61(2), F.S.
[13] Section 406.61(3), F.S.
[14] *See e.g.*, www.nih.gov/news/health/oct2010/nhgri-07.htm, site last accessed December 20, 2011, regarding a federal grant awarded to understand how genetic variation interacts with disease; www.iiam.org/researcherArticles.php, site last accessed December 20, 2011, the published research page for the International Institute for the Advancement of Medicine, using donated tissue for research.
[15] Founded in 1976, the AATB has produced best practice standards for the operation of tissue banks since 1984. The association also provides an educational network for member organizations to encourage the dissemination of new practices. www.aatb.org/About-AATB, site last visited December 12, 2011.

voluntary, and the initial accreditation fee is $3,000, with an annual fee that is determined by revenue the bank receives and ranges from $1,500— $75,000.[16] Reaccreditation takes place every three years, and onsite inspections are a required component of the process; announced or unannounced inspections may also be conducted more frequently, however.[17] The AATB also has accreditation standards for nontransplant anatomical donation organizations which were developed in January 2012.[18]

III. Effect of Proposed Changes:

Section 1 creates s. 406.49, F.S., to define the terms "cremated remains," "final disposition," "human remains," and "legally authorized person" to have the same meaning as provided in ch. 497, F.S., which relates to the regulation of funeral, cemetery, and consumer services by the DFS. The bill transfers the definition of the "anatomical board" from s. 406.50, F.S., to this section. It also transfers the definition of "indigent person" from s. 406.53, F.S., to this section. It defines the term "unclaimed remains" to mean human remains that are not claimed by a legally authorized person, other than a medical examiner or the board of county commissioners, for final disposition at the person's expense.

Throughout part II of ch. 406, F.S., the bill changes the term "disposition" to "final disposition."

Section 2 amends s. 406.50, F.S., to direct any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at the public expense, to notify the board. The bill replaces the more specific terms "all public officers, agents, or employees of every county, city, village, town or municipality and every person in charge of any prison, morgue, hospital, funeral parlor, or mortuary and all other persons" with the general reference to "a person or entity" in relation to the duty imposed by this section. The bill provides that notification of the board is not required when:

- The unclaimed remains are decomposed or mutilated by wounds;
- An autopsy is performed on the remains;
- The remains contain a contagious disease, as provided in current law;
- A legally authorized person objects to the use of the remains for medical education or research; or
- The deceased person was a veteran, or the spouse or dependent child of a veteran of the Uniformed Services of the United States or National Guard, and eligible for burial in a national cemetery.

The bill has removed the notification exception for death by crushing.

In current law, s. 406.50(2), F.S., requires the person or entity in charge of the remains to make reasonable efforts to identify the person, contact his or her relatives, and determine if the deceased person is eligible for burial in a national cemetery. The bill defines the term

[16] AATB currently accredits 119 tissue banks in the U.S. and Canada. Email from AATB, on file with Senate Health Regulation Committee. There are currently 13 organizations in Florida that are accredited by the AATB. www.aatb.org/index.asp?bid=15 , site last visited December 12, 2011.
[17] Email from AATB, on file with the Senate Health Regulation Committee.
[18] *Id.* Currently, four nontransplant anatomical donation organizations have been certified by the AATB, none of which are in Florida.

"reasonable effort" to included contacting the National Cemetery Scheduling Office in addition to contacting the county veterans' service office, or the regional office of the United States Department of Veterans Affairs.

The bill clarifies s. 406.50(2)(b), F.S., which requires that the person in control or charge of the remains determine a veteran's eligibility for delivery of the remains or cremated remains to national cemetery, by referencing 38 C.F.R. s. 38.620, which relates to the eligibility for burial in national cemeteries. Current law only references 38 C.F.R.

Section 406.50(3), F.S., provides that a funeral director licensed under ch. 497, F.S., may assume the responsibility of a legally authorized person for unclaimed remains when no family exists or is available. After 24 hours from the time of death, the funeral director may authorize arterial embalming for the purpose of storage and delivery of the unclaimed remains to the board. The bill releases a funeral director from liability for damages when acting in accordance with this subsection.

Section 406.50(4), F.S. provides that, if the identity of the unclaimed remains cannot be ascertained, the person or entity in control of them may not:
- Cremate the remains;
- Donate the remains as an anatomical gift;
- Have the remains buried at sea; or
- Remove the remains from the state.

Section 406.50(5), F.S., provides that, if the board does not accept unclaimed remains, the county commission, or its designated department, for the county in which the remains are discovered or where the death occurred, is authorized to dispose of the entire remains.

The bill also authorizes county boards of commissioners to, by ordinance or resolution, develop policies and procedures for the final disposition of unclaimed remains.

The bill repeals the current s. 406.50(4), F.S., which provides that competing claims for unclaimed remains by legally authorized persons for the direct disposition of remains shall be prioritized in accordance with s. 497.005, F.S. However, s. 406.61(2), F.S., provides for the disposition of such competing claims pursuant to s. 765.512, F.S.[19]

Section 3 amends s. 406.51, F.S., to replace the term "disposal" with the term "final disposition." It also cross references 38 C.F.R., s. 38.620 instead of 38 C.F.R.

Section 4 substantially rewords s. 406.52, F.S., which relates to the retention of human remains and the process for reclaiming remains from the board. The bill provides the following changes to current law:
- Subsection (1) authorizes the board to embalm human remains that are received and to reject indigent remains; and

[19] Section 765.512, F.S., provides the priority of persons who are legally authorized to make an anatomical gift; the deceased spouse is first in priority, and a court-appointed representative ad litem is ninth in priority for authorizing such a donation.

- Subsection (2) provides that, at any point prior to the transfer to a medical education or research facility, a legally authorized person may reclaim the remains from the board, after payment of the board's expenses incurred for transporting, embalming and storing the remains.

The bill deletes the provisions in s. 406.52, F.S., which:
- Deem county commissioners to be legally authorized persons for the purpose of retention of human remains of indigent persons; and
- Requires the county to take reasonable efforts to accommodate the requests of relatives.

Section 5 substantially rewords s. 406.53, F.S., which specifies the circumstances in which a county is not required to notify the anatomical board. The bill amends the requirement that counties must notify the board upon the death of an indigent to remove the following exceptions:
- The death was caused by crushing injuries;
- The deceased had a contagious disease; and
- The remains were claimed for final disposition at the expense of a friend or representative of a charitable organization or religious entity that the indigent person was a member.

The bill provides a notification exemption for remains that are mutilated by wounds and for notifications of the board already made and certified by funeral directors. The bill also deletes the provision that directs the Department of Health (DOH) to assess burial fees when the DOH collects the remains of a client.[20]

Section 6 amends s. 406.55, F.S., to replace the term "body" with "human remains" and "person's remains."

Section 7 amends s. 406.56, F.S., to replace the term "bodies" with the term "human remains" and "person's remains." It also replaces the term "medical science" with the term "medical education and research."

Section 8 amends s. 406.57, F.S., to permit the board to loan remains to accredited colleges of mortuary science for education or research purposes. The bill deletes the board's authority to loan remains to recognized associations of licensed embalmers or funeral directors. It also deletes the board's discretion to make such loans and requires that such loans must be made.

Section 9 amends s. 406.58, F.S., to delete the reference to associations in regards to sources from which fees may be collected by the board. It retains the authority of the board to collect fees from institutions. The bill also specifies that the board may pay or reimburse the reasonable expenses, as determined by the board, for the removal, storage, or transportation of unclaimed remains by licensed funeral establishments or removal services. The bill requires the anatomical board, not DFS, to keep records of related financial transactions and authorizes the University of Florida to audit these records at least once every three years and provide a copy to DFS.

Section 10 amends s. 406.59, F.S., to delete the reference to associations as one of the types of entities which may receive human remains from the board.

[20] The Department of Health retains the capacity to assess fees for services pursuant s. 402.33, F.S.

Section 11 amends s. 406.60, F.S., to provide that the board or a cinerator facility licensed under ch. 497, F.S., may dispose of human remains when such remains are deemed no longer of value to medical or dental education or research.

Section 12 amends s. 406.61(1), F.S., to limit the conveyance of human remains in or out of the state for medical research purposes to nontransplant anatomical donation organizations that are accredited by the American Association of Tissue Banks or accredited medical or dental schools. These organizations need not be accredited until July 1, 2013. The bill also expands the type of medical education or research for which the remains are intended to include dental education or research.

The bill also deletes s. 406.61(3), F.S., which exempted from specified documentation requirements plastinated remains that were displayed before July 1, 2009 by entities accredited by the American Association of Museums. As provided in this subsection, this provision expired on January 1, 2012.

Section 13 repeals s. 406.54, F.S., which permits human remains to be claimed from the board by members of fraternal or religious entities of which the deceased was a member.

Section 14 amends s. 765.513, F.S., which specifies the persons and entities that can make anatomical gifts, to include the board for the purpose of medical or dental education or research.

Section 15 amends s. 382.002, F.S., to redefine "final disposition" as it relates to vital statistics to include provisions relating to anatomical donation. In the case of anatomical donation, such donation is considered final deposition.

Section 16 amends s. 497.005, F.S. to redefine "final disposition" as it relates to Florida Funeral, Cemetery, and Consumer Services Act to include provisions relating to anatomical donation. Any medical institution or entity receiving an anatomical donation assumes responsibility for its disposition after use.

Section 17 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Nontransplant anatomical donation organizations will be required to be accredited by the American Association of Tissue Banks to convey human remains outside and into the state. This will cost each facility required to be accredited. The estimated cost of accreditation is $3,000 initially, and then between $1,500 and $75,000 annually.[21]

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on February 16, 2012:
The CS/CS redefines "final disposition" as it relates to vital statistics and the Florida Funeral, Cemetery, and Consumer Services Act, to include provisions relating to anatomical donation. It allows the anatomical board to pay or reimburse the reasonable expenses, as determined by the board, incurred by a licensed funeral establishment or removal service for the removal, storage, and transportation of unclaimed human remains. It also requires the anatomical board, not DFS, to keep record of related financial transactions and authorizes the University of Florida to audit these records at least once every 3 years and provide a copy to DFS. The CS/CS removes the provision that bartering bodies or conveying bodies within the state are misdemeanors of the first degree and the requirement to submit certain information to the anatomical board before remains may be transferred.

[21] Email from AATB, on file with Senate Health Regulation Committee.

CS by Regulated Industries on February 7, 2012:
The CS amends s. 406.52(1), F.S., to authorize the board to embalm the human remains that it receives.

The CS amends s. 406.61(2), F.S., to provide that nontransplant anatomical donation organizations need not be accredited by the American Association of Tissue Banks until July 1, 2013. It requires that the anatomical board must be notified at least three days before conveying any human remains instead of at least 72 hours. It provides that, if the third day falls on a weekend or legal holiday, the next business day will be deemed the third business day.

The CS does not create s. 406.61(2)(a), F.S., to authorize the board to establish criteria for granting requests to convey remains. Instead, the CS creates ss. 406.61(2)(a)-(f), F.S., to specify the information that must be provided to the board before a nontransplant anatomical donation organization may convey remains or specimens within the state. Although the required documentation from the legally authorized person was in the bill, s. 406.61(2)(d), F.S., of the CS provides an exception for the required documentation. The exception applies to specimens shipped into the state if an affidavit is submitted by an accredited nontransplant anatomical donation organization stating that the donation organization had donation and consent forms on file for the remains that that specifically authorize segmentation or disarticulation of the remains. The affidavit must also state that no specimen that is being shipped into the state was received from a third party.

The CS provides that the board must approve or deny the request to convey the remains within three days of its receipt of the request. If the request is not approved or denied within three days of receipt, it is deemed approved. The CS provides that, if the third day falls on a weekend or legal holiday, the next business day will be deemed the third business day. If the board denies a request, it must provide a written statement of the reasons for the denial.

B. Amendments:

None.

370528

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete lines 277 - 289
and insert:
(c) Pay or reimburse the reasonable expenses, as determined by the anatomical board, incurred by a funeral establishment or removal service licensed under chapter 497, for the removal, storage, and transportation of unclaimed human remains ~~any person delivering the bodies as described in this chapter~~ to the anatomical board. ~~and is further empowered to~~
(d) Enter into contracts and perform such other acts ~~as are~~ necessary for ~~to~~ the proper performance of its duties.~~;~~

370528

13 (2) The anatomical board shall keep a complete record of
14 all fees and other financial transactions ~~of said anatomical~~
15 ~~board shall be kept and audited annually by the Department of~~
16 ~~Financial Services, and a report of such audit shall be made~~
17 ~~annually to the University of Florida~~. The University of Florida
18 shall conduct an audit of the financial records of the
19 anatomical board at least once every 3 years, or more frequently
20 if the university deems it necessary. Within 90 days after
21 completing the audit, the university shall provide a copy of the
22 audit to the Department of Financial Services. The university
23 may contract with a certified public accounting firm to provide
24 for the audit, which may be paid from the fees collected by the
25 anatomical board.
26
27 ========== T I T L E A M E N D M E N T ==========
28 And the title is amended as follows:
29 Delete lines 26 - 28
30 and insert:
31 certain bodies; amending s. 406.58, F.S.; conforming
32 provisions to changes made by the act; requiring that
33 the anatomical board keep a complete record of all
34 fees and other financial transactions; requiring that
35 the University of Florida audit the anatomical board
36 and provide a copy of the audit to the Department of
37 Financial Services within a specified time;
38 authorizing the university to contract with a
39 certified public accounting firm for the audit;
40 authorizing the anatomical board to pay for the audit
41 with the fees that the board collects; amending ss.

370528

42 406.55, 406.56, 406.57, and 406.59, F.S.; conforming
43 provisions to changes made by the act; amending s.
44 406.60, F.S.;

717008

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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	.	
	.	

The Committee on Health Regulation (Fasano) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 313 - 393
4 and insert:
5 Section 12. Section 406.61, Florida Statutes, is amended to
6 read:
7 406.61 Selling, buying, or conveying bodies outside state
8 prohibited; exceptions, penalty.—
9 (1) Any person who sells or buys any body or parts of
10 bodies as described in this chapter or any person except a
11 recognized Florida medical or dental school who transmits or
12 conveys or causes to be transmitted or conveyed such body or

717008

13 parts of bodies to any place outside this state commits a
14 misdemeanor of the first degree, punishable as provided in ss.
15 775.082 and 775.083. However, this chapter does not prohibit the
16 anatomical board from transporting human specimens outside the
17 state for educational or scientific purposes or prohibit the
18 transport of bodies, parts of bodies, or tissue specimens in
19 furtherance of lawful examination, investigation, or autopsy
20 conducted pursuant to s. 406.11.
21 (2) Any nontransplant anatomical donation organization
22 accredited by the American Association of Tissue Banks or an
23 accredited medical or dental college or university may convey
24 human remains ~~person, institution, or organization that conveys~~
25 ~~bodies~~ or any part thereof within, ~~parts of bodies~~ into, or out
26 of the state for medical or dental education or research
27 purposes. A nontransplant anatomical donation organization need
28 not be accredited as required by this section until July 1, 2013
29 ~~shall notify the anatomical board of such intent and receive~~
30 ~~approval from the board~~.
31
32 ========== T I T L E A M E N D M E N T ==========
33 And the title is amended as follows:
34 Delete lines 31 - 42
35 and insert:
36 authorizing certain accredited schools and
37 organizations to convey human remains in or out of the
38 state for medical or research purposes; deleting
39 provisions relating to

968764

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/16/2012	.	
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	.	

The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 315 - 394
and insert:
406.61 Selling, buying, or conveying human remains ~~bodies~~ outside or within state prohibited; exceptions;~~,~~ penalty.—
(1) Any person who sells or buys human remains ~~any body~~ or any part thereof, ~~parts of bodies as described in this chapter~~ or any person except a recognized Florida medical or dental school who transmits or conveys or causes to be transmitted or conveyed such remains ~~body~~ or part thereof ~~parts of bodies~~ to any place outside or within this state, commits a misdemeanor of

968764

13 the first degree, punishable as provided in s. ~~ss.~~ 775.082 or s.
14 ~~and~~ 775.083. However, this chapter does not prohibit the
15 anatomical board from transporting human remains ~~specimens~~
16 outside or within the state for educational or scientific
17 purposes or prohibit the transport of human remains, any part of
18 such remains ~~bodies, parts of bodies~~, or tissue specimens for
19 purposes ~~in furtherance~~ of lawful examination, investigation, or
20 autopsy conducted pursuant to s. 406.11. Any person,
21 institution, or organization that conveys human remains ~~bodies~~
22 or any part thereof within, ~~parts of bodies~~ into, or out of the
23 state for medical education or research purposes shall notify
24 the anatomical board of such intent and receive approval from
25 the anatomical board.
26 (2) Any entity accredited by the American Association of
27
28 ========== T I T L E A M E N D M E N T ==========
29 And the title is amended as follows:
30 Delete lines 31 - 42
31 and insert:
32 deleting provisions relating to

748440

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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	.	
	.	

The Committee on Health Regulation (Jones) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 331 - 394
4 and insert:
5 investigation, or autopsy conducted pursuant to s. 406.11. This
6 chapter does not prohibit institutions that are authorized to
7 receive human remains or the anatomical board from transporting
8 human remains after use in accordance with s. 406.60.
9 (2) Any nontransplant anatomical donation organization
10 accredited by the American Association of Tissue Banks or any
11 accredited medical or dental college or university may convey
12 human remains ~~person, institution, or organization that conveys~~

748440

13 ~~bodies~~ or any part thereof within, ~~parts of bodies~~ into, or out
14 of the state for medical or dental education or research
15 purposes. A nontransplant anatomical donation organization need
16 not be accredited as required by this section until July 1,
17 2013. The organization or accredited medical or dental college
18 or university must ~~shall~~ notify the anatomical board at least 2
19 business days before the entity intends to convey ~~of~~ such
20 remains ~~intent~~ and must receive approval from the anatomical
21 board before conveyance. If the 2nd business day falls on a
22 weekend or legal holiday, the next business day is deemed to be
23 the 2nd business day. The requesting entity may submit a request
24 for approval electronically.
25 (a) The anatomical board shall require the following
26 information to be submitted by the entity before approval:
27 1. The name, physical location, and date of the course,
28 conference, or seminar and the organization or facility
29 receiving the remains or specimens, including the physical
30 address and telephone number.
31 2. A description and intended use of the remains or
32 specimens.
33 3. The name, physical address, and telephone number of the
34 organization or facility supplying specimens and handling the
35 transfer of the remains or specimens.
36 4. Documentation from a legally authorized person who may
37 make an anatomical gift pursuant to s. 765.512 authorizing its
38 use in medical or dental education or research. If the remains
39 or any part thereof is to be segmented or disarticulated, such
40 documentation must include the legally authorized person's
41 specific consent and must describe any part of the remains which

748440

42 may be dissected, segmented, or disarticulated. In lieu of the
43 documentation required by this subparagraph, an accredited
44 nontransplant anatomical organization as described in this
45 section may submit an affidavit stating that the organization
46 has donation and consent forms on file for the remains from
47 which each specimen has been provided specifically authorizing
48 dissection, segmentation, or disarticulation of the remains. The
49 affidavit must also state that the specimen being shipped into
50 the state has not been received from a second party.
51 5. An outline of the security measures in place for
52 maintaining control of and safeguarding the remains or specimens
53 at the organization or facility before, during, and after the
54 course, conference, or seminar.
55 6. The procedures for disposal of the remains or specimens
56 after the course, conference, or seminar is concluded or after
57 the organization or facility receiving the remains or specimens
58 has completed its use, including the name, address, and
59 telephone number of the cinerator facility licensed under
60 chapter 497 which is responsible for performing cremation
61 pursuant to s. 406.60.
62
63 The anatomical board shall grant or deny requests for approval
64 within 2 business days after receipt of the required
65 information. Failure to provide such information is grounds for
66 denial of the request. If the request is not approved or denied
67 within 2 business days after receipt, it is deemed approved. If
68 the 2nd business day falls on a weekend or legal holiday, the
69 next business day is deemed to be the 2nd business day. If the
70 anatomical board denies a request, it must provide a written

748440

71 statement of the reasons for denial. Such approval or denial may
72 be transmitted electronically to the requesting entity.
73 (b) The requirements of paragraph (a) do not apply to
74 specimens being shipped into, within, or outside the state by an
75 accredited medical or dental school if such specimens are
76 required to have a postmortem ischemic time of 24 hours or less.
77 This paragraph does not apply to large body parts, such as the
78 torso or major extremities.
79 (c) Human remains received in this state by a nontransplant
80 anatomical donation organization must be accompanied by the
81 original burial-transit permit issued pursuant to s. 382.007.
82 The remains may not be dissected, segmented, or disarticulated
83 until the district medical examiner of the county in which the
84 death occurred has granted approval pursuant to s. 406.11.
85 (3) Monetary inducement or other valuable consideration,
86 including goods or services, may not be offered to a donor,
87 legally authorized person, the donor's estate, or other third
88 party. As used in this subsection, the term "valuable
89 consideration" does not include, and this section does not
90 prohibit, the payment or reimbursement of the reasonable cost
91 associated with the removal, storage, and transportation of
92 human remains by a funeral establishment or removal service
93 licensed under chapter 497, or the reasonable costs after use,
94 including the disposition of human remains pursuant to s.
95 406.60.
96 (4) This section does not apply to organ procurement
97 organizations, tissue banks, and eye banks certified by the
98 Agency for Health Care Administration pursuant to s. 765.541,
99 approved by the federal Department of Health and Human Services,

748440

100 and accredited by the American Association of Tissue Banks as a
101 nontransplant anatomical donation organization to the extent
102 these organizations and banks engage in procurement of organs,
103 tissues, and eyes for transplantation.
104 (5) ~~(2)~~ Any entity accredited by the American Association of
105
106 ========== T I T L E A M E N D M E N T ==========
107 And the title is amended as follows:
108 Delete lines 35 - 42
109 and insert:
110 the state; providing penalties; providing that ch.
111 406, F.S., relating to the disposition of dead bodies,
112 does not prohibit institutions that are authorized to
113 receive human remains or the anatomical board from
114 transporting human remains after use; authorizing
115 certain and organizations or accredited medical or
116 dental colleges or universities to convey human
117 remains in or out of state for medical or dental
118 education or research purposes; establishing criteria
119 for the anatomical board to approve the conveyance of
120 human remains; providing an exception for certain
121 specimens; providing additional requirements for human
122 remains received in this state by a nontransplant
123 anatomical donation organization; prohibiting a donor,
124 a legally authorized person, a donor's estate, or
125 other third party from being offered monetary
126 inducement for human remains; providing a definition;
127 providing that the act does not apply to certain organ
128 procurement organizations, tissue banks, and eye

748440

129 banks; deleting provisions relating to

120494

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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	.	

The Committee on Health Regulation (Jones) recommended the following:

1 **Senate Amendment to Amendment (748440)**
2
3 Delete line 101
4 and insert:
5 transplant anatomical donation organization to the extent

364868

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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The Committee on Health Regulation (Jones) recommended the following:

Senate Amendment (with title amendment)

Between lines 437 and 438
insert:
Section 15. Subsection (7) of section 382.002, Florida Statutes, is amended to read:
382.002 Definitions.—As used in this chapter, the term:
(7) "Final disposition" means the burial, interment, cremation, removal from the state, donation, or other authorized disposition of a dead body or a fetus as described in subsection (6). In the case of cremation, dispersion of ashes or cremation residue is considered to occur after final disposition; the

364868

13 cremation itself is considered final disposition. In the case of
14 anatomical donation of a dead body, the donation itself is
15 considered final disposition.
16 Section 16. Subsection (32) of section 497.005, Florida
17 Statutes, is amended to read:
18 497.005 Definitions.—As used in this chapter, the term:
19 (32) "Final disposition" means the final disposal of a dead
20 human body by earth interment, aboveground interment, cremation,
21 burial at sea, anatomical donation, or delivery to a medical
22 institution for lawful dissection if the medical institution or
23 entity receiving the anatomical donation assumes responsibility
24 for disposition after use pursuant to s. 406.60 ~~disposal~~. "Final
25 disposition" does not include the disposal or distribution of
26 cremated remains and residue of cremated remains.
27
28 ========== T I T L E A M E N D M E N T ==========
29 And the title is amended as follows:
30 Delete line 50
31 and insert:
32 which such a gift may be used; amending ss. 382.002
33 and 497.005, F.S.; redefining the term "final
34 disposition" as it relates to vital statistics and the
35 Florida Funeral, Cemetery, and Consumer Services Act;
36 providing an effective

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget - Subcommittee on General Government Appropriations, *Chair*
Agriculture
Banking and Insurance
Budget
Budget - Subcommittee on Higher Education Appropriations
Criminal Justice
Reapportionment

JOINT COMMITTEE:
Administrative Procedures

SENATOR D. ALAN HAYS
20th District

February 7, 2012

Senator Rene Garcia, Chair
Health Regulation Committee
310 Senate Office Building
530 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: SB 956 Relating to Disposition of Human Remains

Dear Chair Garcia:

I respectfully request my above bill be heard before your committee. I feel this bill will benefit the citizens of our state.

Thank you in advance for your consideration, and please contact me if you have any questions.

Sincerely,

D. Alan Hays, DMD

Senator D. Alan Hays, DMD
District 20

CC: **Sandra R. Stovall**, *Staff Director*
Celia Georgiades, *Committee Administrative Assistant*

ENTERED

REPLY TO:
☐ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 1824

INTRODUCER: Health Regulation Committee and Senator Garcia

SUBJECT: Department of Health

DATE: February 17, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HR	**Fav/CS**
2.			GO	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill creates, repeals and amends a number of sections which affect the Department of Health (DOH or department), some of the significant changes include:

- Revising the legislative purpose of the DOH;
- Renaming and revising many of the divisions within the DOH;
- Eliminating two of the DOH trust funds
  - The Florida Drug, Device, and Cosmetic Trust Fund
  - The Nursing Student Loan Forgiveness Trust Fund;
- Revising the legislative intent behind the public health system;
- Revising the powers and duties of the DOH;
- Granting counties the authority to pass health regulations, with certain restrictions;
- Repealing the Hepatitis A Awareness Program;
- Amending sections relating to HIV and AIDS;
- Amending the DOH's authority to accredit laboratories under the National Environmental Laboratory Accreditation Program (NELAP);
- Significantly amending portions of law relating to onsite sewage treatment and disposal;
- Fixing fee rates for tattoo establishments;

- Repealing obsolete provisions of the DOH's pharmacy services program;
- Assigning responsibility to the DOH to publish the Florida Patient's Bill of Rights and Responsibilities online;
- Revising the Community Hospital Education Act;
- Repealing community health pilot projects;
- Revising requirements for persons selling compressed air for recreational sport diving;
- Amending the statewide tuberculosis control program and requiring a transition plan for the closure of the A.G. Holley State Hospital;
- Transferring the Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program from the DOH to the Florida Department of Education;
- Requiring Division of Medical Quality Assurance (MQA) to develop a plan to improve the efficiency of its functions;
- And significantly cleaning up the Florida Statutes related to the DOH by repealing outdated language and obsolete programs, deleting language related to legislative intent, deleting language which establishes unused rulemaking authority, and making conforming changes and amending cross-references.

This bill amends ss. 20.43, 20.435, 215.5602, 381.0016, 381.004, 381.0041, 381.0046, 381.005, 381.0051, 381.0052, 381.0053, 381.0056, 381.0057, 381.00591, 381.00593, 381.0062, 381.0065, 381.0066, 381.0068, 381.00781, 381.0098, 381.0101, 381.0203, 381.0261, 381.0303, 381.0403, 381.0405, 381.0406, 381.06015, 381.4018, 381.7352, 381.7353, 381.7356, 381.765, 381.853, 381.91, 84.25, 392.51, 392.56, 392.61, 392.62, 395.1027, 401.243, 401.245, 401.271, 400.914, 409.256, 456.032, 462.19, 464.208, 633.115, 768.28, 775.0877, 1009.66, and 1009.67, F.S.; repeals ss. 381.0013, 381.0015, 381.0017, 381.00325, 381.0037, 381.00656, 381.0301, 381.0302, 381.04015, 381.045, 381.0605, 381.102, 381.60225, 381.77, 381.795, 381.855, 381.87, 381.895, 381.90, 402.45, 458.346, and 464.0197, F.S.; and creates s. 381.00651, F.S., and three unnumbered sections of law.

II. Present Situation:

Department of Health

Prior to 1991, most of Florida's health and human services programs were administered by a single state agency, the Department of Health and Rehabilitative Services (HRS). From 1991 through 1997, the Legislature subdivided the programmatic functions of HRS, now the Department of Children and Family Services, and created four new agencies to achieve more effective program management.

By 1997, the Department of Children and Family Services, and the four new agencies—the Department of Elder Affairs, AHCA, the Department of Juvenile Justice, and the Department of Health[1]—were responsible for administering the majority of Florida's health and human services programs.

[1] Chapter 96-403, L.O.F.

The DOH is established pursuant to section 20.43, Florida Statutes. Since being established in 1996, the DOH's mission has persistently grown and diversified. Currently, the DOH's 13 statutory mission statements comprise the following:[2]

- Prevent the occurrence and progression of communicable and non-communicable diseases and disabilities.
- Maintain a constant surveillance of disease occurrence and accumulate health statistics to establish disease trends and design health programs.
- Conduct special studies of the causes of diseases and formulate preventive strategies.
- Promote the maintenance and improvement of the environment as it affects public health.
- Promote the maintenance and improvement of health in the residents of the state.
- Provide leadership, in cooperation with the public and private sectors, to establish statewide and community public health delivery systems.
- Provide health care and early intervention services to infants, toddlers, children, adolescents, and high-risk perinatal patients who are at risk for disabling conditions or have chronic illnesses.
- Provide services to abused and neglected children through child protection teams and sexual abuse treatment programs.
- Develop working associations with all agencies and organizations involved and interested in health and health care delivery.
- Analyze trends in the evolution of health systems, and identify and promote the use of innovative, cost-effective health delivery systems.
- Serve as the statewide repository of all aggregate data accumulated by state agencies related to health care; analyze that data and issue periodic reports and policy statements, as appropriate; require that all aggregated data be kept in a manner that promotes easy utilization by the public, state agencies, and all other interested parties; provide technical assistance as required; and work cooperatively with the state's higher education programs to promote further study and analysis of health care systems and health care outcomes.
- Include in the department's strategic plan developed under section 186.021, Florida Statutes, an assessment of current health programs, systems, and costs; projections of future problems and opportunities; and recommended changes that are needed in the health care system to improve the public health.
- Regulate health practitioners, to the extent authorized by the Legislature, as necessary for the preservation of the health, safety, and welfare of the public.

Generally, the State Surgeon General has statutory authority to be the leading voice on wellness and disease prevention efforts through specified means; advocate on health lifestyles; develop public health policy; and build collaborative partnerships with other entities to promote health literacy.[3]

The DOH has 11 statutory divisions: Administration, Environmental Health, Disease Control, Family Health Services, Children's Medical Services Network, Emergency Medical Operations, Medical Quality Assurance, Children's Medical Services Prevention and Intervention, Information Technology, Health Access and Tobacco, and Disability Determinations.[4] The DOH

[2] Section 20.43(1), F.S.
[3] Section 20.43(2),F.S.
[4] Section 20.43(3), F.S.

operates numerous programs, provides administrative support for 29 statutory health care boards and commissions, contracts with thousands of vendors, oversees 67 county health departments, and performs a variety of regulatory functions.

The DOH is authorized to use state and federal funds to protect and improve the public health by administering health education campaigns; providing health promotional items such as shirts, hats, sports items, and calendars; planning and conducting promotional campaigns to recruit health professionals to work for the DOH or participants for the DOH programs; or providing incentives to encourage health lifestyles and disease prevention behaviors.[5]

When the DOH was created in 1996, it received a total appropriation of $1.4 billion, including $384 million in general revenue funds, and had approximately 14,000 full-time equivalents (FTE) positions. "In Fiscal Year 2011-2012, the DOH received more than $377 million in general revenue fund and is authorized to spend a total of $2.8 billion." Fiscal Year 2011-2012, the General Appropriations Act funded 17,107.5 FTE.[6]

In 2010[7], the Legislature transferred the drug, device, and cosmetic (DDC) program to the Department of Business and Professional Regulation.[8] DDC regulates oversight of the manufacture and distribution of drugs, devices, cosmetics, either within or into Florida, pursuant to part I of chapter 499, Florida Statutes.

In 2010[9], the Legislature directed the DOH to conduct a comprehensive evaluation and justification review of each division and submit a report to the Legislature by March 1, 2011. The review was to be comprehensive in scope and, at a minimum, be conducted in a manner that:

- Identified the costs of each division and programs within the division;
- Specified the purpose of each division and programs;
- Specified the public health benefit derived from each program;
- Identified the progress toward achieving the outputs and outcomes associated with each division and program;
- Explained the circumstances for the ability to achieve, not achieve, or exceed projected outputs and outcomes for each program;
- Provided alternate course of action to administer the same program in a more efficient or effective manner. The course of action must include:
  - A determination on whether the DOH could be organized in a more efficient and effective manner to include a recommendation for reductions and restructuring;

[5] Section 20.43(7), F.S.
[6] This number includes County Health Department staff.
[7] Chapter 2010-161, L.O.F.
[8] Among many other provisions, chapter 499 provides for: criminal prohibitions against the distribution of contraband and adulterated prescription drugs; regulation of the advertising and labeling of drugs, devices, and cosmetics; establishment of permits for manufacturing and distributing drugs, devices, and cosmetics; regulation of the wholesale distribution of prescription drugs, which includes pedigree papers; regulation of the provision of drug samples; establishment of the Cancer Drug Donation Program; establishment of numerous enforcement avenues for DOH, including seizure and condemnation of drugs, devices, and cosmetics.
[9] Chapter 2010-161, L.O.F.

- Whether the goals, mission, or objectives of the DOH, divisions, or programs be redefined to avoid duplication, maximize the return on investment, or performed more efficiently or more effectively by another unit of government or private entity;
- A determination of whether the cost to administer exceeds the revenues collected.

Starting Fiscal Year 2010-2011, the DOH was precluded from initiating or commencing any new programs without express authorization from the Legislative Budget Commission. Also, before applying for any continuation or new federal or private grant in an amount of $50,000 or greater, the DOH is required to provide written notification to the Governor and Legislature.[10] The notification must include detailed information about the purpose of the grant, the intended use of the funds, and the number of full-time permanent or temporary employees needed to administer the program funded by the grant.

On March 1, 2011, the DOH submitted the report titled, "Florida Department of Health Evaluation and Justification Review: Report on Findings & Recommendations." The report contained recommendations in the following areas:

- Transfer programs or activities to another state government agency,
- Outsource the program or activity and maintain contractual oversight ;
- Privatize the program or activity with no contractual oversight; and
- Eliminate the program or activity.

EMTs and Paramedics

Section 20.43, F.S., provides a detailed list of all the boards and professions that are established under and the responsibility of MQA. Currently, EMTs and Paramedics are not included in the list of professions governed by MQA under s. 20.43, F.S.

James and Esther King Biomedical Research Program, Annual Progress Report

The Biomedical Research Advisory Council currently provides this annual report on the state of biomedical research in the state to FLCURED, the Governor, the State Surgeon General, the President of the Senate, and the Speaker of the House of Representatives by February 1. Per statute, FLCURED currently receives up to $250,000 for operating costs from funds appropriated to accomplish the goals of this section.

Eminent Domain

"Eminent domain" may be described as the fundamental power of the sovereign to take private property for a public use without the owner's consent. The power of eminent domain is absolute, except as limited by the Federal and State Constitutions, and all private property is subject to the superior power of the government to take private property by eminent domain.

The U.S. Constitution places two general constraints on the use of eminent domain: The taking must be for a "public use" and government must pay the owner "just compensation" for the taken

[10] Chapter 2010-161, L.O.F.

property.[11] Even though the U.S. Constitution requires private property to be taken for a "public use", the U.S. Supreme Court long ago rejected any requirement that condemned property be put into use for the general public. Instead, the Court embraced what the Court characterizes as a broader and more natural interpretation of public use as "public purpose".

The Florida Constitution prohibits takings of private property unless the taking is for a "public purpose" and the property owner is paid "full compensation." The Florida Supreme Court recognized long ago that the taking of private property is one of the most harsh proceedings known to the law, that "private ownership and possession of property was one of the great rights preserved in our constitution and for which our forefathers fought and died; it must be jealously preserved within the reasonable limits prescribed pursuant to ch. 73, F.S."[12] Currently, the DOH does not exercise the power of eminent domain.

Presumptions

Section 381.0015, F.S., provides that the rules adopted concerning public health by the DOH supersede all rules enacted by other state departments, boards or commissions, or ordinances and regulations enacted by municipalities, except that this chapter does not alter or supersede any of the provisions set forth in chapter 502, F.S. Chapter 502, F.S., regulates milk, milk products, and frozen desserts. According to the DOH, it is unknown how this section of law is used.[13]

Ordinances and regulations

In 1955,[14] the Legislature enacted a provision permitting any municipality to enact, in a manner prescribed by law, health regulations and ordinances not inconsistent with state public health laws and rules adopted by the department.

Real Property

Section 381.0017, F.S., provides the DOH the authority to purchase, lease, or otherwise acquire land and buildings and take a deed thereto in the name of the state, for the use and benefit of the DOH when the acquisition is necessary to the efficient accomplishment of public health. According to the DOH, this section is obsolete: the DOH does not take deeds to buildings, and all lands reside with the Department of Environmental Protection.

Hepatitis A Awareness Program

Currently, the DOH has a hepatitis A (infectious hepatitis) awareness program to educate the public regarding the availability of hepatitis A vaccine and testing under the DOH's Hepatitis Prevention Program (HPP), which provides hepatitis A, hepatitis B, and hepatitis C services.

[11] U.S. Const. amend. V.
[12] *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (Fla. 1947).
Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale, 315 So.2d 451 (Fla. 1975).
[13] Email correspondence with DOH staff January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.
[14] Chapter 29834, L.O.F.

Currently, there are two separate statutory provisions that grant the DOH similar authority. Section 381.00325, F.S., requires the DOH to develop a Hepatitis A Awareness Program. The purpose of the program is to provide education and information to the public regarding the availability of the Hepatitis A vaccine. Section 381.0011(7), F.S., requires the DOH to provide information to the public regarding the prevention, control, and cure of diseases and illnesses. Under this authority, the Division of Disease Control, within the DOH, currently maintains a Hepatitis Awareness Program web page that provides necessary information regarding vaccines and educational tools for Hepatitis A, B and C.

HIV and AIDS Prevention

Currently, the DOH operates a comprehensive program for prevention and control of HIV/AIDS which includes education programs.

Currently, the statewide AIDS minority coordinator reports directly to the Bureau Chief of HIV/AIDS, within the Division of Disease Control. These coordinators facilitate statewide efforts to implement and coordinate HIV and AIDS prevention and treatment programs.

Primary and Preventive Health Services

Section 381.005(2), F.S., was enacted in 1991.[15] It directs hospitals licensed by AHCA pursuant to ch 395, F.S., to implement a program to offer an immunization program against influenza and pneumococcal bacteria to patients over 65.[16] According to AHCA, they have no authority to enforce this requirement.[17]

Family Planning

The DOH currently makes available to citizens of the state of childbearing age comprehensive medical knowledge, assistance, and services relating to the planning of families and maternal health care.

Dental Health and Comprehensive Nutrition Program, Rulemaking

The DOH has not established any rules under either section of law. Eligibility for dental services and comprehensive nutrition program services is established under primary care rules in ch. 64F-10, F.A.C., and ch. 64F-16, F.A.C.

School Health Services Program

Section 381.0056, F.S., authorizes the School Health Services Act. The act, in s. 381.0056(11), F.S., specifies that school health programs that are funded by health care districts or health care entity must be supplementary and consistent with the requirements of the act.

[15] Chapter. 91-297, s. 18, L.O.F.
[16] Section 381.005(2), F.S.
[17] Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

Currently, each county health department, in cooperation with its local school district, develops a school health plan, submitted every 2 years to the DOH for review and approval.

Environmental Health Laboratories

Section 381.00591, F.S., states that the DOH may apply for and become a National Environmental Laboratory Accreditation Program accrediting authority. The DOH, as an accrediting entity, may adopt rules to implement standards of the National Environmental Laboratory Accreditation Program, including requirements for proficiency testing providers to include rules pertaining to fees, application procedures, standards applicable to environmental or public water supply laboratories, and compliance.

Public School Volunteer Health Care Practitioner Program

The DOH has not established any rules under this subsection. County health departments currently have the ability, pursuant to ch. 110, F.S., to utilize volunteers to support the provision of county health department services, such as developmental, vision and hearing screenings, in local schools. Chapter 110, F.S., provides all the benefits of state employees, including sovereign immunity, travel reimbursement, etc., to county health department volunteers.

The Department of Health's Regulation of Septic Tanks

The DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is administration of septic systems.[18]

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.[19]

The DOH estimates there are approximately 2.67 million septic tanks in use statewide.[20] The DOH's Bureau of Onsite Sewage (bureau) develops statewide rules and provides training and standardization for county health department employees responsible for permitting the installation and repair of septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic system contractors, funds a hands-on training center, and mediates septic system contracting complaints.

[18] *See* s. 381.006, F.S.
[19] Section 381.0065(2)(j), F.S.
[20] Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, http://www.myfloridaeh.com/ostds/index.html (last visited January 29, 2012).

The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.[21]

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years pursuant to the DOH's procedure for voluntary inspection, including use of fees to offset costs.[22] This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (report).[23] According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of $83.93 to $215 per inspection.

The report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and may be under-designed by today's standards. The DOH's statistics indicate that approximately 2 million septic systems are 20 years or older, which is the average lifespan of a septic system in Florida.[24] Because repairs of septic systems were not regulated or permitted by the DOH until March 1992, some septic systems may have been unlawfully repaired, modified or replaced. Furthermore, 1.3 million septic systems were installed prior to 1983. Pre-1983 septic systems were required to have a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The standard since 1983 for drainfield separation is 24 inches and is based on the 1982 Water Quality Assurance Act and on research findings compiled by the DOH that indicate for septic tank effluent, the presence of at least 24 inches of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for pathogens and most other septic system effluent constituents.[25] Therefore, Florida's pre-1983 septic systems and any illegally repaired, modified or installed septic systems may not provide the same level of protection expected from systems permitted and installed under current construction standards.[26]

Flow and Septic System Design Determinations

For residences, domestic sewage flows are calculated using the number of bedrooms and the building area as criteria for consideration, including existing structures and any proposed

[21] Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, http://www.myfloridaeh.com/ostds/OSTDSdescription.html (last visited January 29, 2012).
[22] *See* ch. 2008-152, Laws of Fla.
[23] Florida Dep't of Health, Bureau of Onsite Sewage, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf (last visited January 29, 2012).
[24] Florida Dep't of Health, Bureau of Onsite Sewage, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf (last visited January 29, 2012). *See also* Florida Dep't of Health, Bureau of Onsite Sewage, *What's New?*, available at http://www.doh.state.fl.us/environment/ostds/New.htm (last visited on January 29, 2012).
[25] Florida Dep't of Heath, Bureau of Onsite Sewage, *Bureau of Onsite Sewage Programs Introduction*, available at http://www.doh.state.fl.us/Environment/learning/hses-intro-transcript.htm (last visited January 29, 2012).
[26] *Id.*

additions.[27] Depending on the estimated sewage flow, the septic system may or may not be approved by the DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.[28]

Minimum required treatment capacities for septic systems serving any structure, building or group of buildings are based on estimated daily sewage flows as determined below.[29]

TABLE OF AEROBIC SYSTEMS PLANT SIZING RESIDENTIAL

Number of Bedrooms	Building Area (ft^2)	Minimum Required Treatment Capacity (gallons per day)
1 or 2	Up to 1200	400
3	1201-2250	500
4	2251-3300	600

Minimum design flows for septic systems serving any structure, building or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single- or multiple-family dwelling unit, the estimated sewage flows are: for 1 bedroom with 750 square feet or less building area, 100 gallons; for two bedrooms with 751-1,200 square feet, 200 gallons; for three bedrooms with 1,201-2,250 square feet, 300 gallons; and for four bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing is to be increased by 100 gallons.[30]

Current Status of Evaluation Program

In 2010, SB 550 was signed into law, which became ch. 2010-205, Laws of Florida. This law provides for additional legislative intent on the importance of properly managing septic tanks and creates a septic system evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.[31] The evaluation program:

- Requires all septic tanks to be evaluated for functionality at least once every 5 years;
- Directs the DOH to provide proper notice to septic owners that their evaluations are due;
- Ensures proper separations from the wettest-season water table; and
- Specifies the professional qualifications necessary to carry out an evaluation.

The law also establishes a grant program under s. 381.00656, F.S., for owners of septic systems earning less than or equal to 133 percent of the federal poverty level. The grant program is to

[27] Rule 64E-6.001, F.A.C.
[28] *Id.*
[29] Table adapted from Rule 64E-6.012, F.A.C.
[30] Rule 64E-6.008, F.A.C.
[31] However, implementation was delayed until July 1, 2011, by the Legislature's enactment of SB 2-A (2010). *See also* ch. 2010-283, L.O.F.

provide funding for inspections, pump-outs, repairs, or replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grants.

Finally, ch. 2010-205, Laws of Florida, amends s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that the DOH may collect. No more than $5 of each evaluation fee may be used to fund the grant program. The State Surgeon General, in consultation with the Revenue Estimating Conference, must determine a revenue neutral evaluation fee.

Several bills were introduced during the 2011 Regular Session aimed at either eliminating the inspection program or scaling it back. Although none passed, language was inserted into a budget implementing bill that prohibited the DOH from expending funds to implement the inspection program until it submitted a plan to the Legislative Budget Commission (LBC).[32] If approved, the DOH would then be able to expend funds to begin implementation. Currently, the DOH has not submitted a plan to the LBC for approval.

Springs in Florida

Florida has more than 700 recognized springs. It also has 33 historical first magnitude springs in 19 counties that discharge more than 64 million gallons of water per day.[33] First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on the spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry. Springs are historically low nitrogen systems. The DEP recently submitted numeric nutrient standards to the Legislature for ratification that include a nitrate-nitrite (variants of nitrogen) limit of 0.35 milligrams per liter for springs. For comparison, the U.S. Environmental Protection Agency's drinking water standard for nitrite is 1.0 milligrams per liter; for nitrate, 10 milligrams per liter.[34]

Local Government Powers and Legislative Preemption

The Florida Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[35] Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.[36] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise

[32] *See* ch. 2011-047, s. 13, Laws of Fla.
[33] Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm (last visited Dec. 19, 2011).
[34] U.S. Environmental Protection Agency, *National Primary Drinking Water Regulations*, available at http://water.epa.gov/drink/contaminants/upload/mcl-2.pdf (last visited January 29, 2012).
[35] FLA. CONST. art. VIII, s. 1(f).
[36] FLA. CONST. art. VIII, s. 1(g).

provided by law.[37] Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State.[38] Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication or by inference.[39] A county or municipality cannot forbid what legislature has expressly licensed, authorized or required, nor may it authorize what legislature has expressly forbidden.[40] The Legislature can preempt a county's broad authority to enact ordinances and may do so either expressly or by implication.[41]

Fees for Tattoo Profession

In 2010[42], the Legislature began regulation of the tattoo artists and tattoo establishments. As part of the created regulatory scheme, fees were authorized to support the cost of regulation. In s. 381.00781(2), F.S., allowed the DOH to annually adjust the maximum fees authorized according to the rate of inflation or deflation indicated by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, as reported by the United States Department of Labor.

Environmental Health Professionals

Section 381.0101, F.S., provides for the regulation for environmental health professions to include definitions of certified and environmental health profession. The definition of "certified" is a person who has displayed competency to perform evaluations of environmental or sanitary conditions through examination. The definition of "environmental health professional" is a person who is employed or assigned the responsibility for assessing the environmental health or sanitary conditions, as defined by the department, within a building, on an individual's property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these tasks. Environmental health professionals may be either field, supervisory, or administrative staff members.[43]

Section 381.0101(3), F.S. provides that no person shall perform environmental health or sanitary evaluations in any primary program area of environmental health without being certified by the department as competent to perform such evaluations.

[37] FLA. CONST. art. VIII, s. 2(b); *see also* s. 166.021, F.S.
[38] *See, e.g.*, *City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[39] *Id.*
[40] *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[41] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[42] Chapter 2010-220, L.O.F.
[43] Section 381.0101(2)(d), F.S.

Statewide Pharmacy

Section 381.0203, F.S, authorizes the DOH to contract on a statewide basis for the purchase of drugs, to be used by state agencies and CHDs. The DOH is directed to establish and maintain:[44]

- A central pharmacy to support pharmaceutical services provided by the CHDs, including pharmaceutical repackaging, dispensing, and the purchase and distribution of immunizations and other pharmaceuticals.
- Regulation of drugs, cosmetics, and household products pursuant to ch. 499.[45]
- Consultation to CHDs.

Moreover, this section also establishes eligibility for a contraception distribution program to be operated through the licensed pharmacies of CHDs. According to the DOH, the contraception distribution program has never been implemented because funding has never been appropriated.

Section 381.0051, F.S., creates the comprehensive family planning act that requires the DOH to provide women medically recognized methods of contraception. Under s. 154.01(2)(c), F.S., the CHDs are required to provide primary care services, which includes family planning. As noted above, the statewide pharmacy is required to support pharmaceutical services provided by the CHDs, which would include contraceptives.

Patient's Bill of Rights

Section 381.0261, F.S., creates the Patient's Bill of Rights. Currently, AHCA is directed to print and made continuously available to health care facilities licensed under chapter 395, physicians licensed under chapter 458, osteopathic physicians licensed under chapter 459, and podiatric physicians licensed under chapter 461 a summary of the Florida Patient's Bill of Rights and Responsibilities. In adopting and making available to patients the summary of the Florida Patient's Bill of Rights and Responsibilities, health care providers and health care facilities are not limited to the format in which AHCA prints and distributes the summary.

According to AHCA, the Patient's Bill of Rights may be accessed on their website. AHCA does not print or distribute this document.[46]

The Florida Health Services Corps

This section of law was enacted in 1992,[47] and is modeled on the National Health Services Corps,[48] offering loan repayment and scholarships for health professionals in return for service in public health care programs or underserved areas. This program has not been funded since 1996.[49]

[44] Section 381.0203(2), F.S.
[45] Effective October 1, 2011, the regulatory authority over, ch. 499, F.S., The Florida Drug and Cosmetic Act, was transferred to the Department of Business and Professional Regulation from the DOH. *See* s. 27, ch. 2010-161, L.O.F..
[46] Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.
[47] Chapter 92-33, s. 111, L.O.F.
[48] *See,* http://nhsc.hrsa.gov/ (site last visited February 2, 2012).
[49] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

Office of Women's Health Strategy

In 2004[50], the Legislature created the Office of Women's Health Strategy.[51] The strategy is administered by a Women's Health Officer and is intended to focus on the unique health care needs of women. The Officer of Women's Health Strategy is tasked with:[52]

- Ensuring state policies and programs are responsive to sex and gender differences and women's health needs;
- Organizing an interagency Committee for Women's Health with the DOH, the AHCA, the Department of Education, the Department of Elderly Affairs, the Department of Corrections, the Office of Insurance Regulation and the Department of Juvenile Justice in order to integrate women's health into current state programs;
- Collecting and reviewing health data and trends to assess the health status of women;
- Reviewing the state's insurance code as it relates to women's health issues;
- Working with medical school curriculum committees to integrate women's health issues into course requirements and promote clinical practice guidelines;
- Organizing statewide Women's Health Month activities;
- Coordinating a Governor's statewide conference on women's health;
- Promoting research, treatment, and collaboration on women's health issues at universities and medical centers in the state;
- Promoting employer incentives for wellness programs targeting women's health programs.
- Serving as the primary state resource for women's health information;
- Developing a statewide women's health plan emphasizing collaborative approaches to meeting the health needs of women;
- Promoting clinical practice guidelines specific to women;
- Serving as the state's liaison with other states and federal agencies and programs to develop best practices in women's health;
- Developing a statewide, web-based clearinghouse on women's health issues and resources; and
- Promoting public awareness campaigns and education on the health needs of women.

The Women's Health Officer provides an annual report to the Governor and presiding officers of the Legislature that includes recommended policy changes for implementing the strategy.[53] According to the National Conference on State Legislatures, at least 18 states have created either offices or commissions dedicated to women's health, while three states—Florida, Illinois and Maine—have designated a women's health officer or coordinator.[54]

Hepatitis B or HIV Carriers

Section 381.045, F.S., authorizes the DOH to establish procedures to handle, counsel, and provide other services to health care professionals licensed or certified under chapter 401,

[50] Chapter 2004-350, L.O.F.
[51] Section 381.04015, F.S.
[52] Section 381.04015(4), F.S.
[53] Section 381.04015(2)(p), F.S.
[54] "Laws and Initiatives on Women's Health," National Conference of State Legislatures, *available at*: http://www.ncsl.org/default.aspx?tabid=14377 (last viewed on March 17, 2010).

chapter 467, part IV of chapter 468, and chapter 483 who are infected with hepatitis B or the human immunodeficiency virus.

AHCA Survey of State Hospital Facilities

Section 381.0605, F.S., designates AHCA as the sole agency of the state to carry out the purposes and administration of the Federal Hospital and Medical Facilities Amendments (Hill-Burton Act) of 1964.[55] Section 381.0605, F.S., also authorizes the Governor to provide for carrying out such purposes in accordance with the standards prescribed by the Surgeon General of the United States. According to AHCA, the current certificate of need program meets this requirement, although the federal funds to support this program have long since stopped.[56]

Community Health Pilot

This section of law was enacted in 1999[57] to develop community health pilot projects in rural and urban low-income areas. Specifically, this section of law created pilot projects in:

- Pinellas County, for the Greenwood Health Center in Clearwater;
- Escambia County, for the low income communities in the Palafox Redevelopment Area;
- In Hillsborough, Pasco, Pinellas and Manatee Counties, for the Urban League of Pinellas County;
- In Palm Beach County, for the low income communities within the City of Riveria;
- In the City of St. Petersburg, for the low-income communities within the Challenge 2001 Area; and
- Broward County, for the communities surrounding Miles Health Center in Ft. Lauderdale.

The department is authorized, to the extent that is possible, to assist pilot projects to enhance synergies and reduce duplication of efforts.[58] The pilot programs do not exist: the DOH states that they were unable to find any information on these two provisions, and the Division of Family Health Services did not implement the pilot programs.[59]

AHCA Background Screening

Section 381.60225, F.S., was created by chapter 98-171, L.O.F., to provide the following background screening requirements for licensure by AHCA:

- AHCA must require background screening, of the managing employee, agency, or entity;
- The applicant must comply with the procedures for level 2 background screening;
- AHCA may require background screening of any individual who is an applicant if they have probable cause to believe the applicant has been convicted of a crime and/or committed any other crime prohibited under the level 2 standards for screening;

[55] 42 U.S.C. 29 – Sec. 291
[56] Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.
[57] Chapter. 99-356, ss. 11-12, L.O.F.
[58] Section 381.103, F.S.
[59] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

- Each applicant must submit with its application to AHCA a description of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs;
- Each applicant must submit with its application to AHCA a description of any conviction of an offense prohibited under the level 2 standards by a member of the boards of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant; and
- Any organization, agency, or entity that has been found guilty of any offense prohibited under the level 2 standards for screening may not be certified by AHCA.

Nursing Home Residents, 55 and Younger, Survey

The Brain and Spinal Cord Injury Program administers a statewide coordinated system of care to serve persons who have sustained moderate-to-severe traumatic brain and/or spinal cord injuries.[60]

In 1976[61], the Legislature required the DOH to conduct annual surveys of nursing homes in the state to determine the number of persons 55 years of age and under who reside in such homes due to brain or spinal cord injuries and were evaluated to determine if they would benefit from rehabilitation program.[62] At that time, persons who had sustained a brain or spinal cord injury were sent to nursing homes from acute care settings.

Today, individuals who are injured are referred to the Brain and Spinal Cord Injury Program Central Registry. If a person is placed in a nursing home they are provided services for 1 year to determine if they will improve and are a candidate for community reintegration and may receive services through the Nursing Home Transition Imitative and the TBI/SCI Home and Community-Based Medicaid Waiver. The DOH states there is no funding allocated to conduct the survey and recommends repealing the program.

Long-term Community-based Supports

Section 381.795, F.S., authorizes the DOH to establish, contingent upon specific appropriations, a program of long-term community-based supports and services for individuals who have sustained traumatic brain or spinal cord injuries and who may be subject to inappropriate residential and institutional placement as a direct result of such injuries. Currently, eligible individuals who have sustained a brain or spinal cord injury receive services through the Home and Community-based Medicaid Waiver.

According to the DOH, no specific appropriation has ever been appropriated to implement this program. The DOH recommends repeal.[63]

[60] Section 381.76, F.S.
[61] Chapter 76-201, L.O.F.
[62] Section 381.77, F.S.
[63] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

Florida Center to Eradicate Disease

The Florida Center for Universal Research to Eradicate Disease (FLCURED) was created by the 2004 Legislature. The legislation followed a Senate Interim Report that found a need for improved coordination, information sharing and reduced duplication within Florida's medical research enterprise. To accomplish these goals, FLCURED holds an annual biomedical research summit, hosts this website and produces an annual report. FLCURED is operated within the Florida State University College of Medicine and is sponsored by the department. FLCURED has a 16 member Advisory Council that guides FLCURED's activities and recommends policies regarding biomedical research to the legislature.

Osteoporosis Prevention and Education Program

This section of law was enacted in 1996,[64] and directs the department to establish, promote and maintain an osteoporosis education and prevention program in the state. The program has not been funded since Fiscal Year 2008-2009. The DOH recommends repeal.[65]

Standards for Compressed Air

In 1999, section 381.895, F.S., was enacted and requires the DOH to establish by rule the maximum allowable levels for contaminants in compressed air used for recreational sport diving.[66] These standards must take into consideration the levels of contaminants allowed by the Grade "E" Recreational Diving Standards of the Compressed Gas Association.[67]

Moreover, section 381.895(3), F.S., requires any compressed air provider receiving compensation for providing compressed air for recreational sport diving to have the air tested quarterly by specified accredited laboratories.[68] In addition, the compressed air provider must provide the DOH a copy of the quarterly test result and the DOH is required to maintain a record of all results.[69] The compressed air provider must post a certificate certifying that the compressed air meets the standards for contaminate levels.[70] The certificate must be posted in a conspicuous location where it can readily be seen by any person purchasing air.[71] It is a second degree misdemeanor[72] if:

- A compressed air provider does not receive a valid certificate that certifies that the compressed air meets the standards for contaminate levels established by the DOH; and
- The certificate is not posted in a conspicuous location.[73]

[64] Chapter 96-282, s. 1, L.O.F.
[65] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.
[66] This includes any compressed air that may be provided as part of a dive package of equipment rental, or dive boat charter.
[67] Section 381.895(1), F.S.
[68] The laboratory must be accredited by either the American Industrial Hygiene Association or the American Association for Laboratory Accreditation
[69] Section 381.895(3),(4), F.S.
[70] Section 381.895(3), F.S.
[71] *Id.*
[72] A person who has been convicted of a second degree misdemeanor may be sentenced for a definite term of imprisonment not exceeding 60 days and a fine of up to $500. *See* ss. 775.082(4) and 775.083(1), F.S.
[73] Section 381.895(5), F.S.

The following entities are exempt from these requirements:

- Individuals who provide compressed air for their own use;
- Any governmental entity that owns its own compressed air source, which is used for work related to the governmental entity; or
- Any foreign registered vessel that uses a compressor to compress air for its own work-related purposes.[74]

Since enactment, the provision has been amended once to delete the January 1, 2000, implementation date.[75] Florida is the only state that has a law governing the regulation of compressed air standards in recreational diving.[76]

Currently, the DOH maintains a database that contains 13 years of test results from approximately 250 compressed air providers located throughout the state.[77] According to the DOH, since 1999 none of the submitted reports[78] show any evidence of contamination.[79] Additionally, there have been no reports of injury, illness, or death associated with contaminated compressed air.[80]

The DOH recommended repeal of section 381.895, F.S., in its 2008 legislative package. When the provision was enacted, the DOH did not receive an appropriation to support the database, enforcement, or rule promulgation.

The dive industry considers it a self-regulating body[81] and has mechanisms in place to ensure customers have quality compressed air.[82] According to professional organizations in the field, repealing this provision in Florida will not have an impact on current business practices. Currently, dive shops are required to monitor air quality to maintain certification or membership in worldwide recreational dive associations. Consumers will still be required to have their tanks inspected by dive shops or instructors, as this is an industry-mandated requirement.[83]

There are three major organizations that engage in recreational diving training and certification: Professional Association of Diving Instructors (PADI), National Association of Underwater Instructors (NAUI), and Scuba Schools International (SSI).[84] According to NAUI, these three

[74] Section 381.895(2), F.S.
[75] Chapter 2002-1, L.O.F.
[76] Westlaw search for state statutory provisions requiring compressed air standards for recreational diving.
[77] Per email correspondence with DOH staff on file with the Health & Human Services Access Subcommittee staff (October 21, 2011).
[78] As of November 3, 2011, the DOH has received approximately a total of 3,395 reports.
[79] Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4037 (October 10, 2011).
[80] *Id.*
[81] "PADI has worked very hard over the years to keep the scuba diving industry as free from legislation as possible." *See* Professional Association of Diving Instructors, History of PADI, available at: http://www.padi.com/scuba/about-padi/PADI-history/default.aspx (last viewed October 21, 2011).
[82] Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4037 (October 10, 2011); telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (October 21, 2011).
[83] Per telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (October 21, 2011).
[84] *Id.*

organizations represent 90 percent of the recreational diving market for training certification and professional association memberships worldwide. Many recreational dive operations hold certifications and/or memberships with all three organizations. This practice tends to make them more marketable to consumers who are seeking certain types of dive certifications.[85]

According to the Professional Association of Diving Instructors (PADI)[86], members of their organization are required to constantly maintain Compressed Gas Association, Grade "E" Recreational Diving Compressed Air Standards. If a member does not meet these standards their membership is revoked. PADI posts a list of all expelled members online.[87] According to PADI, many dive operations are starting to utilize constant air quality monitoring devices, which self-monitor compressed air quality and just need to be calibrated every 90 days.[88]

The National Association of Underwater Instructors (NAUI)[89], requires certified businesses to provide medical grade compressed air, which NAUI considers a community standard. Dive operations that receive certification from NAUI are required to have their air checked and tested by an accredited nationally recognized lab every 2 years and the test results must be posted and available for consumers to view. According to NAUI, they have sales representatives that interact with dive shop owners multiple times a year. When NAUI salesmen are on site they are required to check compliance with NAUI policies. If a dive operator is not in compliance it will lose their NAUI certification. NAUI posts a list of all suspended and revoked certifications online.[90]

Health Information Systems Council

The Florida Health Information Systems Council (Council) was created in the Department of Health by the Information Resource Management Reform Act of 1997.[91] The purpose of the Council is to coordinate, and provide for, the identification, collection, standardization, and sharing of health-related data among federal, state, local, and private entities.[92] Members of the Council include:

- The State Surgeon General;
- The Executive Director of the Department of Veterans' Affairs;
- The Secretary of Children and Family Services;
- The Secretary of Health Care Administration;
- The Secretary of Corrections;
- The Attorney General;
- The Executive Director of the Corrections Medical Authority;

[85] *Id.*
[86] PADI represents approximately 125 dive operations located throughout Florida.
[87] Professional Association of Diving Instructors, Quality Management: Consumer Alerts, *available* at: http://www.padi.com/scuba/about-padi/quality-management/consumer-alerts/default.aspx (last viewed October 21, 2011).
[88] Per email correspondence with Professional Association of Diving Instructors staff on file with Health & Human Services Access Subcommittee staff (October 21, 2011).
[89] NAUI represents approximately 120 dive operations located throughout Florida.
[90] National Association of Underwater Instructors Worldwide, Quality and Ethics: Revoked and Suspended Memberships, *available* at: http://www.naui.org/quality_assurance.aspx (last viewed October 21, 2011).
[91] Chapter 97-286, L.O.F.
[92] Section 381.90(2), F.S.

- One member representing a small CHD and one member representing a large CHD, both appointed by the Governor;
- A representative from the Florida Association of Counties;
- The Chief Financial Officer;
- A representative from the Florida Health Kids Corporation;
- A representative from a school of public health chosen by the Commissioner of Education;
- The Commissioner of Education;
- The Secretary of Elder Affairs; and
- The Secretary of Juvenile Justice.

Representatives from the federal government may also serve on the Council, but do not have voting rights.[93] The Council is required to meet at least quarterly, but may also meet at the call of its chair, at the request of a majority of the membership, or at the request of a department.[94]

According to the DOH, the Council has continued to meet as required, but takes no official action.[95] The last meeting of the Council at which any official action was taken occurred on October 22, 2003.[96] At that meeting, the Council adopted revisions to its Strategic Plan for FY 2004-05 through 2008-09.[97] However, none of the recommendations contained in the Plan have been implemented over the last 8 years. Lastly, the Council has not received any recent funding, nor have any appointments to the Council been made in the last 2 years.[98]

Arthritis Prevention and Education

The department has a cooperative agreement with the Centers for Disease Control and Prevention (CDC) for a project titled Implementation of Arthritis Evidence-Based Self-Management and Physical Activity, commonly referred to as the "Arthritis Program".

The program serves the purpose outlined in s. 385.210, including creating a statewide program to evaluate surveillance data, increase public and provider awareness about the impact of arthritis on the state, and facilitate evidence-based programs to prevent, reduce and manage the impact of arthritis on an individual. The cooperative agreement ends June 29, 2012. The program has worked with several large partners, including the Department of Elderly Affairs, Health Foundation of South Florida, the Veterans Administration, and Florida Hospital to establish self-sustaining chronic disease self management programs, at the community level, which help prevent the onset of or complications due to chronic diseases.

[93] Section 381.90(3), F.S.
[94] Section 381.90(5), F.S.
[95] Telephone conference between Department of Health legislative affairs staff and Health and Human Services Quality Subcommittee staff.
[96] Florida Department of Health, Florida Health Information Systems Council, *Meeting Minutes, October 22, 2003*, available at http://www.doh.state.fl.us/floridahisc/Meetings/102203mts.html (last viewed on January 21, 2012).
[97] Department of Health, Florida Health Information Systems Council, *Strategic Plan-Fiscal Years 2004-05 through 2008-09*, May 15, 2003 (revised October 22, 2003), available at http://www.doh.state.fl.us/floridahisc/Plan/FHISCSP_2003_approved_revision_10_22_2003.pdf (last viewed January 22, 2012).
[98] Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

Effective July 1, 2012, this program would no longer be authorized and the DOH will not apply for CDC funding for this program in 2012. According to the DOH, these programs have been structured to be sustainable after the grant funding ends.[99]

A.G. Holley State Hospital

According to the United States Census Bureau, there are approximately four active tuberculosis hospitals in the United States.[100] Florida operates one of these tuberculosis hospitals, known as the A.G. Holley State Hospital. A.G. Holley was opened in 1950 as the Southeast Tuberculosis Hospital, the second of four state tuberculosis hospitals built in Florida between 1938 and 1952.[101] Today, however, A.G. Holley is the only state-operated tuberculosis (TB) hospital in the state and is the last of the original American sanatoriums dedicated to treating tuberculosis patients.[102] A.G. Holley operates a complete X-ray department, bronchoscopy suite, dental office, optometric clinic, and pharmacy.

A.G. Holley is located in the City of Lantana on a 134 acre plot. In May 2007, the land was appraised at $34.1 million. The hospital is four stories and encompasses 194,000 square feet. It was originally built to serve 500 patients, with living accommodations for the physicians, nurses and administrative staff. However, by 1971 the daily census at the hospital dropped to less than half of the original 500. By 1976, the beds and staff at A.G. Holley were reduced to serve a maximum of 150 patients. Currently, the hospital does not operate at full capacity and receives state funding for 50 beds, of which, sixteen are isolation (negative air pressure) rooms.

Today, the hospital receives funding for approximately 160 FTE positions for an average daily census of 37 patients, some of whom are involuntarily committed to the hospital. It costs approximately $10 million a year to manage the hospital, and the hospital consistently runs an annual deficit. Moreover, the hospital will require significant outlay for capital improvements in the near future.

In addition to the main hospital, the campus includes a lab that is part of the state laboratory service (16,700 sq. ft.), a county health department (35,000 sq. ft.), a warehouse (26,500 sq. ft.), a boiler room (4,552 sq ft), a water treatment plant (880 sq. ft.), an additional building (26,500 sq. ft.), and ten small residential cottages.

According to a recent research memorandum issued by the Office of Program Policy Analysis and Government Accountability (OPPAGA), only one other large state, Texas, operates a state-run infectious disease hospital that treats TB patients. In other large states, such as California, Illinois, Michigan, New York, North Carolina, and Ohio, local health departments use local or regional hospitals to treat such medically complex TB patients.[103]

[99] Florida Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 1263, February 2, 2012.
[100] United States Census Bureau, Hospitals-Summary Characteristics, *available at*: http://www.census.gov/compendia/statab/2007/tables/07s0162.xls (last viewed March 30, 2010).
[101] Bureau of TB and Refugee Health, Florida Department of Health, A.G. Holley Hospital History, *available at*: http://www.doh.state.fl.us/AGHolley/history.htm (last viewed March 30, 210).
[102] *Id.*
[103] "*Tuberculosis Hospitalization in Other States*," OPPAGA Research Memorandum (March 11, 2010).

In 2006, the department proposed developing the A.G. Holley hospital and campus into a Florida Institute for Public Health at a cost of approximately $10 million. In 2008, the Legislature directed the DOH to procure a new TB hospital more suited to modern treatment and caseloads, and to outsource the management functions to a private vendor. The procurement was not successful. In 2009, the Legislature gave new, more specific direction to the DOH to initiate a second procurement. The DOH received one proposal, but the bidder did not meet the requirements of the procurement. In 2010[104], the Legislature, directed the DOH to develop a plan that exclusively uses private and nonstate public hospitals to provide treatment to cure, hospitalization, and isolation.

Public Sector Physician Advisory Committee

Section 458.346, F.S., creates a Public Sector Physician Advisory Committee which shall review and make recommendations to the Board of Medicine on all matters relating to public sector physicians that come before the board.

Nursing Student Loan Forgiveness Program

The bill amends ss. 1009.66, and 1009.67, F.S., the Nursing Student Loan Forgiveness Program and Nursing scholarship program, to transfer the programs and the associated trust fund from the DOH to the Department of Education.

The Nursing Student Loan Forgiveness Program, the Nursing Scholarship Program, the Nursing Student Loan Forgiveness Trust Funds and 1 FTE will be transferred to the Department of Education effective July 1, 2012. This is a DOH recommendation and part of their 2012 legislative package.

Division of Medical Quality Assurance (MQA)

The MQA regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils.

Legislative Findings and Intent

The bill deletes or amends legislative findings or intent language for the following areas:

- Section 381.0037, F.S., relating to findings and intent for the AIDS program.
- Section 381.004(1), F.S., relating to HIV testing.
- Section 381.0051(2), F.S., relating to Family planning.
- Section 381.0056(2), F.S., relating to the School health services program.
- Section 381.0057(1), F.S., relating to Funding for school health services.
- Section 381.0062(1), F.S., relating to Supervision, private and certain public water systems.
- Section 381.0098(1), F.S., relating to Biomedical waste.
- Section 381.0101(1), F.S., relating to Environmental health professionals.
- Section 381.0301(1)-(2), F.S., relating to Education and Resource Development.

[104] Chapter 2010-161, L.O.F.

- Section 381.0403(2), F.S., relating to the Community Hospital Education Act.
- Section 381.4018(2), F.S., relating to Physician workforce assessment and development.
- Section 381.7352(1), F.S., relating to Legislative intent and findings for the Closing the Gap Act.
- Section 381.853(1), F.S., relating to the Florida Center for Brain Tumor Research.
- Section 381.91(1)(a), F.S., relating to the Jessie Trice Cancer Prevention Program.

The amendments to legislative intent language have no substantive policy impact on the programs.

Unused Rulemaking Authority

The bill amends several section of law to remove unused rulemaking authority. The bill repeals the following provisions:
- Section 381.0052(5), F.S., related to dental health;
- Section 381.0053(4), F.S., related to the comprehensive nutrition program;
- Section 381.00593(8), F.S., related to the public school volunteer healthcare practitioner program;
- Section 381.765(3), F.S., related to retention of title and disposal of equipment;
- Section 401.243(4), F.S., related to the injury prevention program;
- Section 401.245(5), F.S., related to the Emergency Medical Services Advisory Council;
- Section 401.271(2), F.S., related to certification of emergency medical technicians and paramedics who are on active duty with the Armed Forces, and their spouses;
- Section 402.45(9), F.S., related to the community resource mother or father program;
- Section 462.19(2), F.S., related to renewal of licenses and inactive status for naturopaths; and
- Section 464.208(4), F.S., related to background screening information for nurse licensure.

According to the DOH, no rules have been adopted which use these specific sections of authority.[105] The repeal of rulemaking authority has no substantive impact on these programs.

III. Effect of Proposed Changes:

Section 1 amends s. 20.43, F.S., to significantly alter the purpose of the DOH, to remove several of the Surgeon General's powers and duties, to eliminate the Officer of Women's Health Strategy, to rename several divisions of the DOH, and to place emergency medical technicians and paramedics under the oversight of MQA.

Section 2 amends s. 20.435, F.S., to eliminate two trust funds: the Drugs, Devices, and Cosmetics Trust Fund, and the Nursing Student Loan Forgiveness Trust Fund.

Section 3 amends s. 215.5602, F.S., the James and Esther King Biomedical Research Program, to eliminate references to the Florida Center for Universal Research to Eradicate Disease (FLCURED) and language authorizing up to $250,000 to be made available to this entity. It eliminates the requirement for the Biomedical Research Advisory Council to submit an annual

[105] Department of Health Memorandum, "Unused Rulemaking Authority", February 1, 2012, on file with Health & Human Services Quality Subcommittee staff.

progress report on biomedical research in the state to FLCURED. The FLCURED is repealed in this bill.

Section 4 amends s. 381.001, F.S., pertaining to the legislative intent behind the public health system, so that the DOH is responsible for the state's public health system, which shall be designed to promote, protect and improve the health of all people in the state; provide leadership for an active partnership, working toward shared public health goals and involving federal, state, and local governments, and the private sector.

This section deletes language setting forth that the mission of the state's public health system is to foster the conditions in which people can be healthy; language setting forth legislative intent that the DOH, in carrying out the mission of public health, focuses on identifying, assessing, and controlling the presence and spread of communicable diseases and other activities; and legislative intent language regarding comprehensive planning, data collection, technical support, and health resource development.

Section 5 amends 381.0011, F.S., by:

- Removing the specific means by which the DOH is to assess public health status and needs of the state;
- Changing the duty of DOH from "cooperate with and accept assistance from" to "coordinate with" federal, state, and local officials for the prevention and suppression of communicable and other diseases, illnesses, injuries, and hazards to human health;
- Deleting the requirement that the DOH conduct a workshop before issuing any health alert or advisory related to any food-borne illness or communicable disease in public lodging or food service establishments in order to inform persons, trade associations, and businesses of the risk to public health and to seek input of affected persons, trade associations, and businesses on the best methods of informing and protecting the public, except in an emergency, in which case the workshop must be held within 14 days after the issuance of the emergency alert or advisory.
- Deleting the powers and duties of the DOH to cooperate with and assist federal health officials in enforcing public health laws and regulations and to cooperate with other departments, local officials, and private boards and organizations for the improvement and preservation of the public health; and
- Deleting language giving the DOH authority to perform any other duties prescribed by law.

Section 6 repeals s. 381.0013, F.S., which grants the power of eminent domain.

Section 7 repeals s. 381.0015, F.S., which states that the DOH's actions in furtherance of public health should be presumed just and legal.

Section 8 amends s. 381.0016, F.S., so that counties, as well as municipalities, may enact health regulations and ordinances which are not inconsistent with state public health laws and rules adopted by the DOH.

Section 9 repeals s. 381.0017, F.S., which provides the DOH the authority to purchase, lease, or otherwise acquire land and buildings and take a deed thereto in the name of the state for the use

and benefit of the DOH when the acquisition is necessary to the efficient accomplishment of public health.

Section 10 repeals s. 381.00325, F.S., which mandates that the DOH develop a Hepatitis A awareness program.

Section 11 amends s. 381.0034, F.S., which is related to the requirement for instruction on HIV and AIDS, to remove an obsolete date.

Section 12 repeals s. 381.0037, F.S., which establishes legislative findings and intent regarding HIV/AIDS education.

Section 13 amends s. 381.004, F.S., on HIV testing, to strike language establishing legislative intent.

Section 14 amends s. 381.0046, F.S., the statewide HIV and AIDS prevention campaign, to change the required number of AIDS regional minority coordinators from four to an unspecified number of dedicated positions and to remove the provision that the statewide AIDS minority coordinator must report directly to the Bureau Chief of HIV/AIDS within the DOH.

Section 15 amends s. 381.005, F.S., which is related to primary preventive health services, to remove the requirement that hospitals licensed pursuant to chapter 395, F.S., under the Agency for Health Care Administration, implement a program to offer immunizations against the influenza virus and pneumococcal bacteria to all patients age 65 or older.

Section 16 amends s. 381.0051, F.S., so that subsection (2), related to legislative intent, is deleted.

Section 17 amends s. 381.0052, F.S., related to dental health, to delete subsection (5), which grants the DOH rulemaking authority.

Section 18 amends s. 381.0053, F.S., related to the comprehensive nutrition program, by deleting subsection (4), which grants the DOH rulemaking authority.

Section 19 amends s. 381.0056, related to school health services programs, by deleting subsection (2), which establishes legislative intent, and subsection (11), which requires that school health programs funded by health care districts or entities must be supplementary to and consistent with the requirements of this section and ss. 381.0057 and 381.0059, F.S.

Section 20 amends s. 381.0057, F.S., by deleting subsection (1) pertaining to legislative intent.

Section 21 amends s. 381.00591, F.S., related to national environmental laboratory accreditation, by granting authority to the DOH to apply for and become a NELAP accrediting body, rather than an accrediting authority. The bill also deletes the DOH's authority to adopt rules to implement NELAP standards, including requirements for proficiency testing of providers and other rules pertaining to fees, application procedures, standards that are applicable to environmental or public water supply laboratories, and compliance.

Section 22 amends s. 381.00593, F.S., relating to the public school volunteer health care practitioner program, by removing the rulemaking authority the DOH has with the Florida Department of Education to implement the public school volunteer health care practitioner program.

Section 23 amends s. 381.0062, F.S., regarding the supervision of private and certain public waters systems, by deleting subsection (1) which provides legislative intent.

Section 24 amends s. 381.0065, F.S., relating to onsite sewage treatment and disposal systems. The bill repeals the state-wide septic system evaluation program, including program requirements, and the DOH's rulemaking authority to implement the program. It repeals legislative intent regarding the DOH's administration of a state-wide septic system evaluation program and an obsolete reporting requirement regarding the land application of septage.

The bill defines "bedroom" as a room that can be used for sleeping that, for site-built dwellings, has a minimum 70 square feet of conditioned space; or for manufactured homes, constructed to HUD standards having a minimum of 50 square feet of floor area. The room must be located along an exterior wall, have a closet and a door or an entrance where a door could be reasonably installed. It also must have an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet. The term does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. It also fixes two cross-references. One is related to research fees collected to fund hands-on training centers for septic systems. The other relates to determining the mean annual flood line.

The bill provides that a permit issued and approved by the DOH for the installation, modification, or repair of a septic system transfers with the title to the property. A title is not encumbered when transferred by new permit requirements that differ from the original permit requirements in effect when the septic system was permitted, modified or repaired. It also prohibits a government entity from requiring a septic system inspection at the point of sale in a real estate transaction.

The bill specifies that a septic system serving a foreclosed property is not considered abandoned. It also specifies that a septic system is not considered "abandoned" if it was properly functioning when disconnected from a structure made unusable or destroyed following a disaster, and the septic system was not adversely affected by the disaster. The septic system may be reconnected to a rebuilt structure if:

- Reconnection of the septic system is to the same type of structure that existed prior to the disaster;
- The rebuilt structure has the same number of bedrooms or less than the structure that existed prior to the disaster;
- The rebuilt structure is within 110 percent of the size of the structure that existed prior to the disaster;
- The septic system is not a sanitary nuisance; and
- The septic system has not been altered without prior authorization.

The bill provides that if a rule change occurs within 5 years after approval for construction, the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the septic system, but only if fundamental site conditions have not changed between the time of construction approval and final approval.

The bill provides that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added.

Section 25 creates s. 381.00651, F.S.

A county or municipality containing a first magnitude spring within its boundary must develop and adopt by ordinance a local septic system evaluation and assessment program meeting the requirements of this section within all or part of its geographic area by January 1, 2013, unless it opts out. All other counties and municipalities may opt in but otherwise are not required to take any affirmative action. Evaluation programs adopted before July 1, 2011, which do not contain a mandatory septic system inspection at the point of sale in a real estate transaction are not affected by this bill. Existing evaluation programs that require point of sale inspections are preempted by the bill regardless of when the program was adopted.

A county or municipality may opt out by majority plus one vote of the local elected body before January 1, 2013, by adopting a separate resolution. The resolution must be filed with the Secretary of State. Absent an interlocal agreement or county charter provision to the contrary, a municipality may elect to opt out of the requirements of this section notwithstanding the decision of the county in which it is located. A county or municipality may subsequently adopt an ordinance imposing a septic system evaluation and assessment program if the program meets the requirements of this section. The bill preempts counties' and municipalities' authority to adopt more stringent requirements for a septic system evaluation program than those contained in the bill.

Local ordinances must provide for the following:

- An evaluation of a septic system, including drainfield, every 5 years to assess the fundamental operational condition of the system and to identify system failures. The ordinance may not mandate an evaluation at the point of sale in a real estate transaction or a soil examination. The location of the system shall be identified;
- May not require a septic system inspection at the point of sale in a real estate transaction;
- May not require a soil examination;
- Each evaluation must be performed by:
  - A septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.,
  - A professional engineer having wastewater treatment system experience and licensed pursuant to ch. 471, F.S.,
  - An environmental health professional certified under ch. 381, F.S., in the area of septic system evaluation, or
  - An authorized employee working under the supervision of any of the above four listed individuals. Soil samples may only be conducted by certified individuals.

Evaluation forms must be written or electronically signed by a qualified contractor.

The local ordinance may not require a repair, modification, or replacement of a septic system as a result of an evaluation unless the evaluation identifies a failure. The term "system failure" is defined as:

- A condition existing within a septic system that results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water; or
- A condition which results in a sanitary nuisance caused by the failure of building plumbing to discharge properly.

A system is not a failure if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. The bill specifies that a drainfield not achieving the minimum separation distance from the bottom of the drainfield to the wettest season water table contained in current law is not a system failure.

The local ordinance may not require more than the least costly remedial measure to resolve the system failure. The homeowner may choose the remedial measure to fix the system. There may be instances in which a pump out is sufficient to resolve a system failure. Remedial measures to resolve a system failure must meet, to the extent possible, the requirements in effect at the time the repair is made, subject to the exceptions specified in s. 381.0065(4)(g), F.S. This allows certain older septic systems to be repaired instead of replaced if they cannot be repaired to operate to current code. An ordinance may not require an engineer-designed performance-based system as an alternative septic system to remediate a failure of a conventional septic system.

The bill specifies that the following systems are exempt from inclusion in a septic system evaluation program:

- A septic system that is required to obtain an operating permit or that is inspected by the department on an annual basis pursuant to ch. 513, F.S., related to mobile home and recreational vehicle parks;. and
- A septic system serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater. For example, if a person has a four-bedroom house served by a septic system on a four-acre or larger lot, that septic system is exempt.

An ordinance may also exempt or grant an extension of time for a septic system serving a structure that will soon be connected to a sewer system if the connection is available, imminent and written arrangements have been made for payment of connection fees or assessments by the septic system owner.

The bill requires the owner of a septic system subject to an evaluation program to have it pumped out and evaluated at least once every 5 years. A pump out is not required if the owner can provide documentation to show a pump out has been performed or there has been a permitted new installation, repair or modification of the septic system within the previous 5 years. The documentation must show both the capacity and that the condition of the tank is structurally sound and watertight.

If a tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank must be refilled before concluding the inspection. Replacing broken or damaged lids or manholes does not require a repair permit.

In addition to a pump out, the evaluation procedures require an assessment of the apparent structural condition and watertightness of the tank and an estimation of its size. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks or other defects. The baffles or tees must be checked to ensure that they are intact and secure.[106] The evaluation must note the presence and condition of:

- Outlet devices;
- Effluent filters;
- Compartment walls;
- Any structural defect in the tank; and
- The condition and fit of the tank lid, including manholes.

The bill also requires a drainfield evaluation and requires certain assessments to be performed when a system contains pumps, siphons or alarms. The drainfield evaluation must include a determination of the approximate size and location of the drainfield. The evaluation must contain a statement noting whether there is any visible effluent on the ground or discharging to a ditch or water body and identifying the location of any downspout or other source of water near the drainfield.

If the septic system contains pumps, siphons or alarms, the following information may be provided:

- An assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;
- Whether the pump is elevated off of the bottom of the chamber and its operational status;
- Whether the septic system has a check valve and purge hole; and
- Whether there is a high-water alarm, including whether the type of alarm is audio, visual or both, the location of the alarm, its operational condition and whether the electrical connections appears satisfactory.

The bill provides that if a homeowner does not request information about the system's pumps, siphons, or alarms, the qualified contractor and its employee are not liable for any damages directly relating from a failure of the system's pumps, siphons, or alarms. The evaluation report completed by the contractor must include a statement on the front cover that provides notice of the exclusion of such liability.

The reporting procedures provided for in the bill require:

- The qualified contractor to document all the evaluation procedures used;

[106] The septic tank baffle or tee is a device on the inlet or outlet of a septic tank which prevents sewage back-flow into the inlet or outlet pipe. The device may be made of concrete, steel, plastic, or other materials, but in all cases the septic tank tee or baffle forms a barrier between the septic tank and the inlet or outlet pipes to or from the septic tank. InspectAPedia, *Encyclopedia of Building & Environmental Inspection, Testing, Diagnosis, Repair*, available at http://www.inspectapedia.com/septic/tanktees.htm (last visited January 29, 2012).

- The qualified contractor to provide a copy of a written, signed evaluation report to the property owner and the county health department within 30 days after the evaluation;
- The name and license number of the company providing the report;
- The local county health department to retain a copy of the evaluation report for a minimum of 5 years and until a subsequent report is filed;
- The front cover of the report to identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation performed by a contractor other than the contractor performing the evaluation;
- The report to identify tank defects, improper fit or other defects in the tank, manhole or lid, and any other missing component of the septic system;
- Noting if any sewage or effluent is present on the ground or discharging to a ditch or surface water body;
- Stating if any downspout, stormwater or other source of water is directed onto or towards the septic system;
- Identification of any maintenance need or condition that has the potential to interfere with or restrict any future repair or modification to the existing septic system; and
- Conclude with an overall assessment of the fundamental operational condition of the septic system.

The county health department will be responsible for administering the program on behalf of a county or municipality. A county or municipality may develop a reasonable fee schedule in consultation with a county health department. The fee must only be used to pay for the costs of administering the program and must be revenue neutral. The fee schedule must be included in the adopted ordinance for a septic system evaluation program. The fee shall be assessed to the septic system owner, collected by the qualified contractor and remitted to the county health department.

The county health department in a jurisdiction where a septic system evaluation program is adopted must:

- Provide a notice to a septic system owner at least 60 days before the septic system is due for an evaluation;
- In consultation with the DOH, provide for uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance; and
- Be the sole entity to assess penalties against a septic tank owner who fails to comply with the requirements of an adopted ordinance.

The bill requires the DOH to allow county health departments and qualified contractors to access the environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite sewage treatment and disposal systems. The database must be used by qualified contractors to report service evaluations and by county health departments to notify septic system owners that their evaluations are due.

The bill requires a county or municipality that adopts a septic system evaluation and assessment program to notify the Secretary of Environmental Protection, the DOH and the requisite county health department. Once the DEP receives notice a county or municipality has adopted an evaluation program, it must, within existing resources, notify the county or municipality of the

potential availability of Clean Water Act or Clean Water State Revolving Fund funds. If a county or municipality requests, the DEP must, within existing resources, provide guidance in the application process to access the abovementioned funding sources and provide advice and technical assistance on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. The DEP is not required to provide any money to fund such programs. The bill specifically prohibits the DOH from adopting any rule that alters the provisions contained in the bill.

The bill specifies that it does not derogate or limit county and municipal home rule authority to act outside the scope of the evaluation program created in this bill. The bill clarifies it does not repeal or affect any other law relating to the subject matter of this section. It does not prohibit a county or municipality that has adopted an evaluation program pursuant to this section from:

- Enforcing existing ordinances or adopting new ordinances if such ordinances do not repeal, suspend or alter the requirements or limitations of this section; or
- Exercising its independent and existing authority to use and meet the requirements of s. 381.00655, F.S. (relating to connection to central sewer systems).

Section 26 repeals s. 381.00656, F.S., related to a low-income grant program to assist residents with costs associated from a septic system evaluation program and any necessary repairs or replacements.

Section 27 amends s. 381.0066, F.S., related to septic system fees. The bill deletes the existing fees for the 5-year evaluation report. The bill also reduces the annual operating permit fee for waterless, incinerating or organic waste composting toilets from not less than $50 to not less than $15 and from not more than $150 to not more than $30.

The bill repeals an obsolete provision related to setting a revenue neutral fee schedule for a state-wide septic system inspection program.

Section 28 amends s. 381.0068, F.S., and s. 381.0068(2), F.S., related to technical review and advisory panel, by deleting an obsolete date and redundant language.

Section 29 amends s. 381.00781, F.S., by deleting subsection (2), removing language that gives the DOH the authority to annually adjust the maximum fees authorized for tattoo establishments according to the rate of inflation or deflation as indicated by the Consumer Price Index.

Section 30 amends s. 381.0098, F.S., to remove legislative intent related to the biomedical waste program.

Section 31 amends s. 381.0101, F.S., related to environmental health professionals. It deletes legislative intent in subsection (1) and changes the Division Director of Environmental Health to the Division Director of Emergency Preparedness and Community Support.

Section 32 amends s. 381.0203, F.S., related to pharmacy services. It deletes the program that regulates drugs, cosmetics, and household products, pursuant to ch. 499, F.S., as this program was transferred to the Department of Business and Professional Regulation. It also deletes a

contraception distribution program to be implemented through the licensed pharmacies of county health departments as the program was never funded or implemented.

Section 33 amends s. 381.0261(1), F.S., to transfer responsibility to the DOH from AHCA to publish, on its internet web site, a summary of the Florida Patients' Bill of Rights and Responsibilities.

Section 34 repeals s. 381.0301, F.S., related to education and resource development.

Section 35 repeals s. 381.0302, F.S., Florida Health Services Corps, a long dormant and unfunded program.

Section 36 amends s. 381.0303(5), F.S., related to the Special Needs Shelter Interagency Committee, to delete the requirement for the committee to submit recommendations to the legislature as necessary.

Section 37 repeals s. 381.04015, F.S., related to the designation of an Officer of Women's Health Strategy.

Section 38 amends s. 381.0403, F.S., related to the Community Hospital Education Act.

Subsection (2)(a) has been amended to delete legislative intent language stipulating that health care services for the citizens of this state be upgraded, and that a program for continuing these services be maintained for community medical education. It amends the remaining legislative intent language to require a program be established for community medical education, increase the supply of highly trained physicians, and expand graduate medical education.

The bill also deletes subsection (2)(b), which established that the legislature acknowledges the critical need for increased numbers of primary care physicians, supports an expansion in the number of family practice residency positions, and intends that the funding for graduate education in family practice be maintained and that funding for all primary care specialties be provided at a minimum of $10,000 per resident per year.

This section also amends subsection (3)(a), (3)(b), and (3)(c) to make technical changes deleting obsolete language, as well as removing the authority of the Community Hospital Education Council to approve new program participants.

Section 39 amends s. 381.0405, F.S., related to the Office of Rural Health, to delete subsection (7), requiring the legislature to appropriate funds as are necessary to support the Office of Rural Health.

Section 40 amends s. 381.0406, F.S., related to rural health networks, to remove unnecessary language.

Section 41 repeals s. 381.045, F.S., related to hepatitis B or HIV carriers, which authorize the DOH to establish procedures to handle, counsel, and provide other services to health care professionals infected with hepatitis B or HIV.

Section 42 amends s. 381.06015, F.S., related to Public Cord Blood Tissue Bank, to repeal subsection (7), which required AHCA and the DOH to seek private or federal funds to initiate program actions for fiscal year 2000-2001.

Section 43 repeals s. 381.0605, F.S., relating to an AHCA survey of state hospital facilities that does not pertain to the DOH.

Section 44 repeals s. 381.102, F.S., related to community health pilot projects, which establishes community health pilot projects in order to promote disease prevention and health promotion among low-income persons living in urban and rural communities.

Section 45 repeals s. 381.103, F.S., related to community health pilot projects, which establishes the duties of the DOH, to the extent feasible, for the purpose of supporting community health pilot projects established in s. 381.102, F.S.

Section 46 amends s. 381.4018, F.S., to delete legislative intent language related to Physician Workforce Assessment and Development.

Section 47 repeals s. 381.60225, F.S., related to background screening, which does not pertain to the DOH.

Section 48 deletes s. 381.7352(1), F.S., to remove legislative findings regarding the Office of Minority Health.

Section 49 deletes s. 381.7353(3), F.S., which authorizes the State Surgeon General to appoint an ad hoc advisory committee to examine areas where public awareness, public education, research, and coordination regarding racial and ethnic health outcome disparities are lacking; consider access and transportation issues which contribute to health access disparities; and make recommendations for closing gaps in health outcomes and increasing the public's awareness of health outcome disparities that exist between racial and ethnic populations.

Section 50 deletes s. 381.7356(4), F.S., relating to dissemination of grant awards that begin no later than January 1, 2001.

Section 51 deletes s. 381.765(3), F.S., which grants the DOH the authority to adopt rules relating to records and recordkeeping for the DOH-owned property.

Section 52 repeals s. 381.77, F.S., relating to an annual survey of nursing home residents 55 and under who would benefit from rehabilitation programs. Other procedures are used to identify residents who should be targeted for rehabilitation.

Section 53 repeals s. 381.795, F.S., related to long-term community-based supports for individuals who have sustained traumatic brain or spinal cord injuries, and who may be subject to inappropriate residential and institutional placement as a direct result of such injuries. Other community-based services and support are available.

Section 54 deletes s. 381.853(1), F.S., legislative findings related to Florida Center for Brain Tumor Research.

Section 55 repeals s. 381.855, F.S., related to the Florida Center for Universal Research to Eradicate Disease (FLCURED). This repeal eliminates the center, the center's goal, purpose, responsibilities and advisory council.

Section 56 repeals s. 381.87, F.S., related to the Osteoporosis Prevention and Education Program. This section directs the DOH to establish, promote, and maintain an osteoporosis prevention and education program to promote public awareness of the causes of osteoporosis, options for prevention, value of early detection, and possible treatments, including the benefits and risks of those treatments. According to the DOH, this program has not been funded since June 30, 2009, and no longer operates.

Section 57 amends s. 381.895, F.S., to delete provisions requiring the DOH to regulate compressed air for recreational diving and substitutes a community-based approach requiring standards for certification, posting, and quality. Violating these standards is a misdemeanor of the first degree.

Section 58 repeals s. 381.90, F.S., related to the Health Information Systems Council, established in 1997 to facilitate the identification, collection, standardization, sharing, and coordination of health-related data. According to the DOH, this council is not active.

Section 59 deletes s. 381.91(1)(a), F.S., related to the Jessie Trice Cancer Prevention Program, to remove legislative intent language to reduce the rates of illness and death from lung cancer and other cancers, and improve the quality of life among low-income African-American and Hispanic populations through increased access to early effective screening and diagnosis, education, and treatment programs.

Section 60 amends s. 381.922(5), F.S., related to the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program, eliminating funding of $250,000 to be provided for the operating costs of FLCURED.

Sections 61 – 64 address tuberculosis control. The bill removes the authority for the DOH to operate a TB hospital, effective January 1, 2013. The bill authorizes the DOH to contract for the operation of a treatment program for persons with active TB. The contractor must use existing licensed community hospitals and other facilities for the care and treatment to cure persons with active TB and a history of non-compliance with prescribed drug regimens.

The bill requires the DOH to develop and implement a transition plan for the closure of AG Holley. The plan must include specific steps to end voluntary admissions, transfer patient to alternate facilities, communicate with families, providers, other affected parities, and the general public, enter into necessary contracts with providers, and coordinate with the Department of Management Services regarding the disposition of equipment and supplies and closure of the facility. The plan must be submitted to the Legislature by May 31, 2012 and be fully implanted by January 1, 2013. The bill makes conforming changes to ss. 392.51, 392.61, and 392.62, F.S., to reflect the closure of AG Holley State Hospital.

Section 61 amends s. 392.51, F.S., related to tuberculosis control, effective January 1, 2013. It deletes legislative intent language and creates language to establish a statewide system to control tuberculosis infection, and mitigate its effects. Further, it amends this section to direct that tuberculosis control services shall be provided by the coordinated efforts of the respective county health departments and contracted or other private health care providers, rather than the A.G. Holley State Hospital (AGH) and the private health care delivery system.

Section 62 amends s. 392.61, F.S., related to community tuberculosis control programs, and eliminates the requirement for the DOH to develop, by rule, a methodology for distributing funds appropriated for TB control programs that considers the basic infrastructure available for TB control, caseload requirements, laboratory support services needed, and epidemiologic factors, effective January 1, 2013.

Section 63 amends s. 392.62, F.S., related to hospitalization and placement programs for persons who have active TB.

Subsection (1) is amended to require the DOH contract for operation of a program for the treatment of persons who have active TB in hospitals licensed under ch. 395, F.S. Also, it requires the DOH to require the contractor to use existing, licensed community hospitals and other facilities for the care and treatment of persons who have active TB, a history of non-compliance with prescribed drug regimens, and require inpatient or other residential services.

Subsection (2), which authorized the DOH to operate a licensed hospital for the care and treatment, to cure, for persons with active TB, is deleted.

Subsection (3) is amended to delete language referencing a licensed hospital operated by the DOH, and inserts new language specifying that the program for control of TB shall provide funding for participating facilities and requiring the facilities to meet specific conditions.

Subsection (3)(c) is amended to change the requirement that TB facilities provide for a method of paying for the care of patients who cannot afford to do so, requiring the facility to provide for the care of patients in the program regardless of ability to pay.

Subsection (3)(g) is amended to delete the word “all” with regard to patients discharged from the hospital.

Section 64 directs the DOH to develop and implement a transition plan for closure of A.G. Holley State Hospital. The plan shall include specific steps to end voluntary admissions, transfer patients to alternate facilities, communicate with families, providers, other affected parties, and the general public, enter into any necessary contracts with providers, and coordinate with the Department of Management Services regarding the disposition of equipment and supplies and the closure of the facility. The plan shall be submitted to the Governor, the Speaker of the House of Representatives and the President of the Senate by May 31, 2012. This section requires that the DOH fully implement the plan by January 1, 2013.

Section 65 amends s. 395.1027, F.S., to correct cross references.

Section 66 deletes s. 401.243(4), F.S., related to injury prevention and rule adoption by the DOH.

Section 67 deletes s. 401.245(5), F.S., related to emergency medical services advisory council and rule adoption by the DOH.

Section 68 deletes s. 401.271(2), F.S., related to certification of emergency medical technicians and paramedics who are on active duty with the Armed Forces of the United States, and rule adoption by the DOH.

Section 69 repeals s. 402.45, F.S., related to the community resource mother or father program and rule adoption by the DOH.

Section 70 amends 400.914, F.S., to correct cross references.

Section 71 makes a technical amendment to s. 409.256(11)(d), F.S., related to administrative proceedings to establish paternity or paternity and child support; to change the name of the Division of Vital Statistics to the Bureau of Vital Statistics.

Section 72 repeals s. 458.346, F.S., related to the Public Sector Physicians Advisory Committee as the committee is dormant.

Section 73 deletes s. 462.19(2), F.S., related to naturopathic physicians, to repeal rulemaking authority for the DOH for biennial renewal of licenses.

Section 74 repeals s. 464.0197, F.S., legislative findings related to the Florida Center for Nursing, as well as the direction that the center be given state budget support for its operations so that it has adequate resources for the tasks assigned by the legislature in s. 464.0195, F.S.

Section 75 deletes s. 464.208(4), F.S., related to rulemaking authority for background screening as no rules have been adopted under this section of law.

Section 76 amends s. 633.115, F.S., related to Fire and Emergency Incident Information Reporting Program, within the Division of the State Fire Marshall. Subsections (1)(b) and (2)(c) are amended to change the name of Emergency Medical Services to the Bureau of Emergency Preparedness and Response.

Section 77 amends s. 768.28, F.S., to correct cross references.

Sections 78-80 provide for a Type Two transfer of the Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program, and the Nursing Student Loan Forgiveness Trust Fund from the DOH to the Florida Department of Education.

Section 81 requires that the DOH’s MQA develop a plan to improve the efficiency of its functions (reduce the average length of time for a qualified applicant to receive license). Specifically, the plan is required to delineate methods to: reduce the average length of time for a

qualified applicant to receive initial and renewal licensure, certification, or registration, by one-third; improve the agenda process for board meetings to increase transparency, timeliness, and usefulness for board decision-making; and improve the cost-effectiveness and efficiency of the joint functions of MQA and the regulatory boards. MQA is required to identify and analyze best practices found within MQA and other state agencies with similar functions, options for information technology improvements, options for contracting with outside entities, and any other option MQA deems useful. MQA is required to consult with and solicit recommendations from the regulatory boards in developing the plan. MQA is required to prepare and submit the plan to the Governor, Speaker of the House of Representatives, and President of the Senate by November 1, 2012.

Sections 82-86 amend ss. 381.0041, 384.25, 392.56, 456.032, and 775.0877, F.S., to correct cross references.

Section 87 provides an effective date.

Other Potential Implications:

The bill prohibits local ordinances from requiring repairs, modifications or system replacements unless a septic system is found to be failing. Septic system problems that do not rise to the level of a system failure cannot be required to be remedied under an ordinance. The septic system owner will have the option to repair or modify a septic system found to have problems. A county or municipality is preempted from requiring more stringent repair guidelines in its ordinance.

The bill prohibits counties and municipalities from acting outside the requirements and limitations of the bill to address public health and safety or provide for pollution abatement measures for water quality improvements. This prohibition may directly conflict with existing laws to address these issues. In addition, a local county or municipality may be required to take future action to comply with a future determination that an area within its jurisdiction is contributing to violations of water quality standards but may be prohibited from doing so by the provisions in this bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A full fiscal analysis has not been conducted on this bill; however, these are some possible fiscal results which could occur from implementation of the provisions of this bill:

A. Tax/Fee Issues:

The bill reduces the fees for annual operating permits for waterless, incinerating, or organic waste composting toilets from not less than $50 to not less than $15, and from not more than $150 to not more than $30.

B. Private Sector Impact:

Owners of septic systems subject to the evaluation program will have to pay for septic system evaluations, including pump outs, every 5 years. The owners will also be responsible for the cost of required repairs, modifications or replacements of the septic system if it is found to be "failing." Although owners are responsible under current law for repairing failing septic systems, they may be unaware of the failing condition or unwilling or unable to pay for repairs or replacements.

A survey of septic contractors has not been completed to determine costs for inspections; however, anecdotal evidence has demonstrated a cost between $75 and $200, depending on the area of the state.

Current costs for pump outs range as low as $75 to over $300 depending on the size of the tank and local disposal options. Evaluation costs would be set by private contractors. Septic system owners would pay for any necessary remediation, including permit fees. Repair costs will vary from minor repairs to full system replacements and will only be available on a case-by-case basis. Whether or not demand for septic system contractor service increases is dependent on how many counties or municipalities implement inspection programs. Therefore, the impact of supply and demand on pricing trends cannot be determined at this time.

Therefore, adding in all potential costs not including repairs or replacements required under current law or the local administrative fee, a septic system owner can expect to pay between $150 and $500 every 5 years. It should be noted that in June 2010, the DOH and the Revenue Estimating Conference settled on a $50 fee per inspection report to cover programmatic costs of implementing a state-wide program.

The DOH estimates a cost savings to the public of $2,500 to $7,500 per system through preventive maintenance, thus eliminating the need for costly repairs associated with neglected, failing or improperly functioning systems.

C. Government Sector Impact:

The cost to counties or municipalities adopting evaluation programs is indeterminate as it depends on how large an area is covered by the evaluation program and how many septic

systems are included.[107] Counties or municipalities with first magnitude springs will be required to expend funds to implement the provisions of this bill unless they opt out.

The DOH may incur costs associated with reprogramming the environmental health database to support the information reported by contractors and to be used by county health departments to notify owners when system evaluations are due. The DOH is in the process of determining whether there is a fiscal impact associated with reprogramming the database.

The DEP is required to take certain actions if and when it is notified of an ordinance that implements a local septic system evaluation program but only within existing resources.

Eventual closure of the A.G. Holley State Hospital will make possible the sale of public land upon which it is sited.

Additional savings in operating, maintenance, and repair costs will occur from the closure of the A.G. Holley State Hospital.

There may be some savings as a result of repealing duplicative and unnecessary programs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on February 16, 2012:
The committee substitute is substantially different from the bill as filed. It

- Maintains the Division of Medical Quality Assurance without changing its name;
- Revises the powers and duties of the DOH;
  - Eliminates the need to conduct a workshop before issuing any health alert or advisory relating to food-borne illness or communicable disease in public lodging or food service establishments.

[107] There are 19 counties with first magnitude springs: Alachua, Bay, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Madison, Marion, Suwannee, Volusia and Wakulla.

  - Eliminates the duty to cooperate with federal health officials in enforcing public health laws and other departments, local officials and private entities for the improvement and preservation of public health.
- Reinstates the CMS Network Advisory Council;
- Grants counties the authority to pass health regulations, with certain restrictions;
- Amends sections relating to HIV and AIDS awareness and prevention;
- Amends the DOH's authority to accredit laboratories under the National Environmental Laboratory Accreditation Program;
- Significantly amends portions of law relating to onsite sewage treatment and disposal;
- Deletes provisions which allow fee rates for tattoo establishments to be adjusted for inflation;
- Repeals obsolete provisions of the DOH's pharmacy services program;
- Assigns responsibility to the DOH to publish the Florida Patient's Bill of Rights and Responsibilities online;
- Revises the Community Hospital Education Act;
- Repeals community health pilot projects;
- Revises requirements for persons selling compressed air for recreational sport diving;
- Requires that the Division of Medical Quality Assurance develop a plan to improve the efficiency of its functions;
- Removes unused and obsolete provisions from several sections of law pertaining to the DOH's rulemaking authority;
- Deletes obsolete language pertaining to legislative intent from several sections of law;
- Eliminates obsolete and unfunded statutory programs.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: PCS/SB 1824 (661060)

INTRODUCER: Health Regulation Committee

SUBJECT: Department of Health

DATE: February 15, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HR	**Pre-meeting**
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill creates, repeals and amends a number of sections which affect the Department of Health (DOH or department), some of the significant changes include:

- Significantly revising the legislative purpose of the DOH;
- Renaming and revising many of the divisions within the DOH;
- Eliminating two of the DOH trust funds
  - The Florida Drug, Device, and Cosmetic Trust Fund
  - The Nursing Student Loan Forgiveness Trust Fund;
- Revising the legislative intent behind the public health system;
- Revising the powers and duties of the DOH;
- Granting counties the authority to pass health regulations, with certain restrictions;
- Repealing the Hepatitis A Awareness Program;
- Amending sections relating to HIV and AIDS;
- Amending the DOH's authority to accredit laboratories under the National Environmental Laboratory Accreditation Program (NELAP);
- Significantly amending portions of law relating to onsite sewage treatment and disposal;
- Fixing fee rates for tattoo establishments;
- Repealing obsolete provisions of the DOH's pharmacy services program;
- Assigning responsibility to the DOH to publish the Florida Patient's Bill of Rights and Responsibilities online;
- Revising the Community Hospital Education Act;
- Repealing community health pilot projects;
- Revising requirements for persons selling compressed air for recreational sport diving;

- Amending the statewide tuberculosis control program and requiring a transition plan for the closure of the A.G. Holley State Hospital;
- Transferring the Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program from the DOH to the Florida Department of Education;
- Requiring that the Division of Medical Quality Assurance (MQA) develop a plan to improve the efficiency of its functions;
- And significantly cleaning up the Florida Statutes related to the DOH by repealing outdated language and obsolete programs, deleting language related to legislative intent, deleting language which establishes unused rulemaking authority, and making conforming changes and amending cross-references.

This bill amends ss. 20.43, 20.435, 215.5602, 381.0016, 381.004, 381.0041, 381.0046, 381.005, 381.0051, 381.0052, 381.0053, 381.0056, 381.0057, 381.00591, 381.00593, 381.0062, 381.0065, 381.0066, 381.0068, 381.00781, 381.0098, 381.0101, 381.0203, 381.0261, 381.0303, 381.0403, 381.0405, 381.0406, 381.06015, 381.4018, 381.7352, 381.7353, 381.7356, 381.765, 381.853, 381.91, 84.25, 392.51, 392.56, 392.61, 392.62, 395.1027, 401.243, 401.245, 401.271, 400.914, 409.256, 456.032, 462.19, 464.208, 633.115, 768.28, 775.0877, 1009.66, and 1009.67, F.S.; repeals ss. 381.0013, 381.0015, 381.0017, 381.00325, 381.0037, 381.00656, 381.0301, 381.0302, 381.04015, 381.045, 381.0605, 381.102, 381.60225, 381.77, 381.795, 381.855, 381.87, 381.895, 381.90, 402.45, 458.346, and 464.0197, F.S.; and creates s. 381.00651, F.S., and three unnumbered sections of law.

II. Present Situation:

Department of Health

Prior to 1991, most of Florida's health and human services programs were administered by a single state agency, the Department of Health and Rehabilitative Services (HRS). From 1991 through 1997, the Legislature subdivided the programmatic functions of HRS, now the Department of Children and Family Services, and created four new agencies to achieve more effective program management.

By 1997, the Department of Children and Family Services, and the four new agencies—the Department of Elder Affairs, AHCA, the Department of Juvenile Justice, and the Department of Health[1]—were responsible for administering the majority of Florida's health and human services programs.

The DOH is established pursuant to section 20.43, Florida Statutes. Since being established in 1996, the DOH's mission has persistently grown and diversified. Currently, the DOH's 13 statutory mission statements comprise the following:[2]

- Prevent the occurrence and progression of communicable and non-communicable diseases and disabilities.
- Maintain a constant surveillance of disease occurrence and accumulate health statistics to establish disease trends and design health programs.

[1] Chapter 96-403, L.O.F.
[2] Section 20.43(1), F.S.

- Conduct special studies of the causes of diseases and formulate preventive strategies.
- Promote the maintenance and improvement of the environment as it affects public health.
- Promote the maintenance and improvement of health in the residents of the state.
- Provide leadership, in cooperation with the public and private sectors, to establish statewide and community public health delivery systems.
- Provide health care and early intervention services to infants, toddlers, children, adolescents, and high-risk perinatal patients who are at risk for disabling conditions or have chronic illnesses.
- Provide services to abused and neglected children through child protection teams and sexual abuse treatment programs.
- Develop working associations with all agencies and organizations involved and interested in health and health care delivery.
- Analyze trends in the evolution of health systems, and identify and promote the use of innovative, cost-effective health delivery systems.
- Serve as the statewide repository of all aggregate data accumulated by state agencies related to health care; analyze that data and issue periodic reports and policy statements, as appropriate; require that all aggregated data be kept in a manner that promotes easy utilization by the public, state agencies, and all other interested parties; provide technical assistance as required; and work cooperatively with the state's higher education programs to promote further study and analysis of health care systems and health care outcomes.
- Include in the department's strategic plan developed under section 186.021, Florida Statutes, an assessment of current health programs, systems, and costs; projections of future problems and opportunities; and recommended changes that are needed in the health care system to improve the public health.
- Regulate health practitioners, to the extent authorized by the Legislature, as necessary for the preservation of the health, safety, and welfare of the public.

Generally, the State Surgeon General has statutory authority to be the leading voice on wellness and disease prevention efforts through specified means; advocate on health lifestyles; develop public health policy; and build collaborative partnerships with other entities to promote health literacy.[3]

The DOH has 11 statutory divisions: Administration, Environmental Health, Disease Control, Family Health Services, Children's Medical Services Network, Emergency Medical Operations, Medical Quality Assurance, Children's Medical Services Prevention and Intervention, Information Technology, Health Access and Tobacco, and Disability Determinations.[4] The DOH operates numerous programs, provides administrative support for 29 statutory health care boards and commissions, contracts with thousands of vendors, oversees 67 county health departments, and performs a variety of regulatory functions.

The DOH is authorized to use state and federal funds to protect and improve the public health by administering health education campaigns; providing health promotional items such as shirts, hats, sports items, and calendars; planning and conducting promotional campaigns to recruit

[3] Section 20.43(2),F.S.
[4] Section 20.43(3), F.S.

health professionals to work for the DOH or participants for the DOH programs; or providing incentives to encourage health lifestyles and disease prevention behaviors.[5]

When the DOH was created in 1996, it received a total appropriation of $1.4 billion, including $384 million in general revenue funds, and had approximately 14,000 full-time equivalents (FTE) positions. "In Fiscal Year 2011-2012, the DOH received more than $377 million in general revenue fund and is authorized to spend a total of $2.8 billion." Fiscal Year 2011-2012, the General Appropriations Act funded 17,107.5 FTE.[6]

In 2010[7], the Legislature transferred the drug, device, and cosmetic (DDC) program to the Department of Business and Professional Regulation.[8] DDC regulates oversight of the manufacture and distribution of drugs, devices, cosmetics, either within or into Florida, pursuant to part I of chapter 499, Florida Statutes.

In 2010[9], the Legislature directed the DOH to conduct a comprehensive evaluation and justification review of each division and submit a report to the Legislature by March 1, 2011. The review was to be comprehensive in scope and, at a minimum, be conducted in a manner that:

- Identified the costs of each division and programs within the division;
- Specified the purpose of each division and programs;
- Specified the public health benefit derived from each program;
- Identified the progress toward achieving the outputs and outcomes associated with each division and program;
- Explained the circumstances for the ability to achieve, not achieve, or exceed projected outputs and outcomes for each program;
- Provided alternate course of action to administer the same program in a more efficient or effective manner. The course of action must include:
  - A determination on whether the DOH could be organized in a more efficient and effective manner to include a recommendation for reductions and restructuring;
  - Whether the goals, mission, or objectives of the DOH, divisions, or programs be redefined to avoid duplication, maximize the return on investment, or performed more efficiently or more effectively by another unit of government or private entity;
  - A determination of whether the cost to administer exceeds the revenues collected.

Starting Fiscal Year 2010-2011, the DOH was precluded from initiating or commencing any new programs without express authorization from the Legislative Budget Commission. Also, before applying for any continuation or new federal or private grant in an amount of $50,000 or greater,

[5] Section 20.43(7), F.S.
[6] This number includes County Health Department staff.
[7] Chapter 2010-161, L.O.F.
[8] Among many other provisions, chapter 499 provides for: criminal prohibitions against the distribution of contraband and adulterated prescription drugs; regulation of the advertising and labeling of drugs, devices, and cosmetics; establishment of permits for manufacturing and distributing drugs, devices, and cosmetics; regulation of the wholesale distribution of prescription drugs, which includes pedigree papers; regulation of the provision of drug samples; establishment of the Cancer Drug Donation Program; establishment of numerous enforcement avenues for DOH, including seizure and condemnation of drugs, devices, and cosmetics.
[9] Chapter 2010-161, L.O.F.

the DOH is required to provide written notification to the Governor and Legislature.[10] The notification must include detailed information about the purpose of the grant, the intended use of the funds, and the number of full-time permanent or temporary employees needed to administer the program funded by the grant.

On March 1, 2011, the DOH submitted the report titled, "Florida Department of Health Evaluation and Justification Review: Report on Findings & Recommendations." The report contained recommendations in the following areas:

- Transfer programs or activities to another state government agency,
- Outsource the program or activity and maintain contractual oversight ;
- Privatize the program or activity with no contractual oversight; and
- Eliminate the program or activity.

EMTs and Paramedics

Section 20.43, F.S., provides a detailed list of all the boards and professions that are established under and the responsibility of MQA. Currently, EMTs and Paramedics are not included in the list of professions governed by MQA under s. 20.43, F.S.

James and Esther King Biomedical Research Program, Annual Progress Report

The Biomedical Research Advisory Council currently provides this annual report on the state of biomedical research in the state to FLCURED, the Governor, the State Surgeon General, the President of the Senate, and the Speaker of the House of Representatives by February 1. Per statute, FLCURED currently receives up to $250,000 for operating costs from funds appropriated to accomplish the goals of this section.

Eminent Domain

"Eminent domain" may be described as the fundamental power of the sovereign to take private property for a public use without the owner's consent. The power of eminent domain is absolute, except as limited by the Federal and State Constitutions, and all private property is subject to the superior power of the government to take private property by eminent domain.

The U.S. Constitution places two general constraints on the use of eminent domain: The taking must be for a "public use" and government must pay the owner "just compensation" for the taken property.[11] Even though the U.S. Constitution requires private property to be taken for a "public use", the U.S. Supreme Court long ago rejected any requirement that condemned property be put into use for the general public. Instead, the Court embraced what the Court characterizes as a broader and more natural interpretation of public use as "public purpose".

The Florida Constitution prohibits takings of private property unless the taking is for a "public purpose" and the property owner is paid "full compensation." The Florida Supreme Court recognized long ago that the taking of private property is one of the most harsh proceedings

[10] Chapter 2010-161, L.O.F.
[11] U.S. Const. amend. V.

known to the law, that "private ownership and possession of property was one of the great rights preserved in our constitution and for which our forefathers fought and died; it must be jealously preserved within the reasonable limits prescribed pursuant to ch. 73, F.S."[12] Currently, the DOH does not exercise the power of eminent domain.

Presumptions

Section 381.0015, F.S., provides that the rules adopted concerning public health by the DOH supersede all rules enacted by other state departments, boards or commissions, or ordinances and regulations enacted by municipalities, except that this chapter does not alter or supersede any of the provisions set forth in chapter 502, F.S. Chapter 502, F.S., regulates milk, milk products, and frozen desserts. According to the DOH, it is unknown how this section of law is used.[13]

Ordinances and regulations

In 1955,[14] the Legislature enacted a provision permitting any municipality to enact, in a manner prescribed by law, health regulations and ordinances not inconsistent with state public health laws and rules adopted by the department.

Real Property

Section 381.0017, F.S., provides the DOH the authority to purchase, lease, or otherwise acquire land and buildings and take a deed thereto in the name of the state, for the use and benefit of the DOH when the acquisition is necessary to the efficient accomplishment of public health. According to the DOH, this section is obsolete: the DOH does not take deeds to buildings, and all lands reside with the Department of Environmental Protection.

Hepatitis A Awareness Program

Currently, the DOH has a hepatitis A (infectious hepatitis) awareness program to educate the public regarding the availability of hepatitis A vaccine and testing under the DOH's Hepatitis Prevention Program (HPP), which provides hepatitis A, hepatitis B, and hepatitis C services.

Currently, there are two separate statutory provisions that grant the DOH similar authority. Section 381.00325, F.S., requires the DOH to develop a Hepatitis A Awareness Program. The purpose of the program is to provide education and information to the public regarding the availability of the Hepatitis A vaccine. Section 381.0011(7), F.S., requires the DOH to provide information to the public regarding the prevention, control, and cure of diseases and illnesses. Under this authority, the Division of Disease Control, within the DOH, currently maintains a Hepatitis Awareness Program web page that provides necessary information regarding vaccines and educational tools for Hepatitis A, B and C.

[12] *Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So.2d 483 (Fla. 1947).
Baycol, Inc. v. Downtown Development Authority of City of Fort Lauderdale, 315 So.2d 451 (Fla. 1975).
[13] Email correspondence with DOH staff January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.
[14] Chapter 29834, L.O.F.

HIV and AIDS Prevention

Currently, the DOH operates a comprehensive program for prevention and control of HIV/AIDS which includes education programs.

Currently, the statewide AIDS minority coordinator reports directly to the Bureau Chief of HIV/AIDS, within the Division of Disease Control. These coordinators facilitate statewide efforts to implement and coordinate HIV and AIDS prevention and treatment programs.

Primary and Preventive Health Services

Section 381.005(2), F.S., was enacted in 1991.[15] It directs hospitals licensed by AHCA pursuant to chapter 395, F.S., to implement a program to offer an immunization program against influenza and pneumococcal bacteria to patients over 65.[16] According to AHCA, they have no authority to enforce this requirement.[17]

Family Planning

The DOH currently makes available to citizens of the state of childbearing age comprehensive medical knowledge, assistance, and services relating to the planning of families and maternal health care.

Dental Health and Comprehensive Nutrition Program, Rulemaking

The DOH has not established any rules under either section of law. Eligibility for dental services and comprehensive nutrition program services is established under primary care rules in ch. 64F-10, F.A.C., and ch. 64F-16, F.A.C.

School Health Services Program

Section 381.0056, F.S., authorizes the School Health Services Act. The act, in s. 381.0056(11), F.S., specifies that school health programs that are funded by health care districts or health care entity must be supplementary and consistent with the requirements of the act.

Currently, each county health department, in cooperation with its local school district, develops a school health plan, submitted every two years to the DOH for review and approval.

Environmental Health Laboratories

Section 381.00591, F.S., states that the DOH may apply for and become a National Environmental Laboratory Accreditation Program accrediting authority. The DOH, as an accrediting entity, may adopt rules to implement standards of the National Environmental Laboratory Accreditation Program, including requirements for proficiency testing providers to

[15] Chapter. 91-297, s. 18, L.O.F.
[16] Section 381.005(2), F.S.
[17] Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.

include rules pertaining to fees, application procedures, standards applicable to environmental or public water supply laboratories, and compliance.

Public School Volunteer Health Care Practitioner Program

The DOH has not established any rules under this subsection. County health departments currently have the ability, pursuant to ch. 110, F.S., to utilize volunteers to support the provision of county health department services, such as developmental, vision and hearing screenings, in local schools. Chapter 110, F.S., provides all the benefits of state employees, including sovereign immunity, travel reimbursement, etc., to county health department volunteers.

The Department of Health's Regulation of Septic Tanks

The DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is administration of septic systems.[18]

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.[19]

The DOH estimates there are approximately 2.67 million septic tanks in use statewide.[20] The DOH's Bureau of Onsite Sewage (bureau) develops statewide rules and provides training and standardization for county health department employees responsible for permitting the installation and repair of septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic system contractors, funds a hands-on training center, and mediates septic system contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.[21]

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years pursuant to the

[18] *See* s. 381.006, F.S.
[19] Section 381.0065(2)(j), F.S.
[20] Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, http://www.myfloridaeh.com/ostds/index.html (last visited January 29, 2012).
[21] Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, http://www.myfloridaeh.com/ostds/OSTDSdescription.html (last visited January 29, 2012).

DOH's procedure for voluntary inspection, including use of fees to offset costs.[22] This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (report).[23] According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of $83.93 to $215 per inspection.

The report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and may be under-designed by today's standards. The DOH's statistics indicate that approximately 2 million septic systems are 20 years or older, which is the average lifespan of a septic system in Florida.[24] Because repairs of septic systems were not regulated or permitted by the DOH until March 1992, some septic systems may have been unlawfully repaired, modified or replaced. Furthermore, 1.3 million septic systems were installed prior to 1983. Pre-1983 septic systems were required to have a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The standard since 1983 for drainfield separation is 24 inches and is based on the 1982 Water Quality Assurance Act and on research findings compiled by the DOH that indicate for septic tank effluent, the presence of at least 24 inches of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for pathogens and most other septic system effluent constituents.[25] Therefore, Florida's pre-1983 septic systems and any illegally repaired, modified or installed septic systems may not provide the same level of protection expected from systems permitted and installed under current construction standards.[26]

Flow and Septic System Design Determinations

For residences, domestic sewage flows are calculated using the number of bedrooms and the building area as criteria for consideration, including existing structures and any proposed additions.[27] Depending on the estimated sewage flow, the septic system may or may not be approved by the DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.[28]

Minimum required treatment capacities for septic systems serving any structure, building or group of buildings are based on estimated daily sewage flows as determined below.[29]

[22] *See* ch. 2008-152, Laws of Fla.
[23] Florida Dep't of Health, Bureau of Onsite Sewage, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf (last visited January 29, 2012).
[24] Florida Dep't of Health, Bureau of Onsite Sewage, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf (last visited January 29, 2012). *See also* Florida Dep't of Health, Bureau of Onsite Sewage, *What's New?*, available at http://www.doh.state.fl.us/environment/ostds/New.htm (last visited on January 29, 2012).
[25] Florida Dep't of Heath, Bureau of Onsite Sewage, *Bureau of Onsite Sewage Programs Introduction*, available at http://www.doh.state.fl.us/Environment/learning/hses-intro-transcript.htm (last visited January 29, 2012).
[26] *Id.*
[27] Rule 64E-6.001, F.A.C.
[28] *Id.*
[29] Table adapted from Rule 64E-6.012, F.A.C.

TABLE OF AEROBIC SYSTEMS PLANT SIZING RESIDENTIAL		
Number of Bedrooms	Building Area (ft^2)	Minimum Required Treatment Capacity (gallons per day)
1 or 2	Up to 1200	400
3	1201-2250	500
4	2251-3300	600

Minimum design flows for septic systems serving any structure, building or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single- or multiple-family dwelling unit, the estimated sewage flows are: for 1 bedroom with 750 square feet or less building area, 100 gallons; for two bedrooms with 751-1,200 square feet, 200 gallons; for three bedrooms with 1,201-2,250 square feet, 300 gallons; and for four bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing is to be increased by 100 gallons.[30]

Current Status of Evaluation Program

In 2010, SB 550 was signed into law, which became ch. 2010-205, Laws of Florida. This law provides for additional legislative intent on the importance of properly managing septic tanks and creates a septic system evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.[31] The evaluation program:

- Requires all septic tanks to be evaluated for functionality at least once every 5 years;
- Directs the DOH to provide proper notice to septic owners that their evaluations are due;
- Ensures proper separations from the wettest-season water table; and
- Specifies the professional qualifications necessary to carry out an evaluation.

The law also establishes a grant program under s. 381.00656, F.S., for owners of septic systems earning less than or equal to 133 percent of the federal poverty level. The grant program is to provide funding for inspections, pump-outs, repairs, or replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grants.

Finally, ch. 2010-205, Laws of Florida, amends s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that the DOH may collect. No more than $5 of each evaluation fee may be used to fund the grant program. The State Surgeon General, in consultation with the Revenue Estimating Conference, must determine a revenue neutral evaluation fee.

Several bills were introduced during the 2011 Regular Session aimed at either eliminating the inspection program or scaling it back. Although none passed, language was inserted into a budget implementing bill that prohibited the DOH from expending funds to implement the

[30] Rule 64E-6.008, F.A.C.
[31] However, implementation was delayed until July 1, 2011, by the Legislature's enactment of SB 2-A (2010). *See also* ch. 2010-283, L.O.F.

inspection program until it submitted a plan to the Legislative Budget Commission (LBC).[32] If approved, the DOH would then be able to expend funds to begin implementation. Currently, the DOH has not submitted a plan to the LBC for approval.

Springs in Florida

Florida has more than 700 recognized springs. It also has 33 historical first magnitude springs in 19 counties that discharge more than 64 million gallons of water per day.[33] First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on the spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry. Springs are historically low nitrogen systems. The DEP recently submitted numeric nutrient standards to the Legislature for ratification that include a nitrate-nitrite (variants of nitrogen) limit of 0.35 milligrams per liter for springs. For comparison, the U.S. Environmental Protection Agency's drinking water standard for nitrite is 1.0 milligrams per liter; for nitrate, 10 milligrams per liter.[34]

Local Government Powers and Legislative Preemption

The Florida Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[35] Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.[36] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[37] Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State.[38] Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication or by inference.[39] A county or municipality cannot forbid what legislature has expressly licensed, authorized or required, nor may it authorize what

[32] *See* ch. 2011-047, s. 13, Laws of Fla.
[33] Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm (last visited Dec. 19, 2011).
[34] U.S. Environmental Protection Agency, *National Primary Drinking Water Regulations*, available at http://water.epa.gov/drink/contaminants/upload/mcl-2.pdf (last visited January 29, 2012).
[35] FLA. CONST. art. VIII, s. 1(f).
[36] FLA. CONST. art. VIII, s. 1(g).
[37] FLA. CONST. art. VIII, s. 2(b); s*ee also* s. 166.021, F.S.
[38] *See, e.g.*, *City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[39] *Id.*

legislature has expressly forbidden.[40] The Legislature can preempt a county's broad authority to enact ordinances and may do so either expressly or by implication.[41]

Fees for Tattoo Profession

In 2010[42], the Legislature began regulation of the tattoo artists and tattoo establishments. As part of the created regulatory scheme, fees were authorized to support the cost of regulation. In s. 381.00781(2), F.S., allowed the DOH to annually adjust the maximum fees authorized according to the rate of inflation or deflation indicated by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, as reported by the United States Department of Labor.

Environmental Health Professionals

Section 381.0101, F.S., provides for the regulation for environmental health professions to include definitions of certified and environmental health profession. The definition of "certified" is a person who has displayed competency to perform evaluations of environmental or sanitary conditions through examination. The definition of "environmental health professional" is a person who is employed or assigned the responsibility for assessing the environmental health or sanitary conditions, as defined by the department, within a building, on an individual's property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these tasks. Environmental health professionals may be either field, supervisory, or administrative staff members.[43]

Section 381.0101(3), F.S. provides that no person shall perform environmental health or sanitary evaluations in any primary program area of environmental health without being certified by the department as competent to perform such evaluations.

Statewide Pharmacy

Section 381.0203, F.S, authorizes the DOH to contract on a statewide basis for the purchase of drugs, to be used by state agencies and CHDs. The DOH is directed to establish and maintain:[44]

- A central pharmacy to support pharmaceutical services provided by the CHDs, including pharmaceutical repackaging, dispensing, and the purchase and distribution of immunizations and other pharmaceuticals.
- Regulation of drugs, cosmetics, and household products pursuant to ch. 499.[45]
- Consultation to CHDs.

[40] *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[41] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[42] Chapter 2010-220, L.O.F.
[43] Section 381.0101(2)(d), F.S.
[44] Section 381.0203(2), F.S.
[45] Effective October 1, 2011, the regulatory authority over, ch. 499, F.S., The Florida Drug and Cosmetic Act, was transferred to the Department of Business and Professional Regulation from the DOH. *See* s. 27, ch. 2010-161, L.O.F..

Moreover, this section also establishes eligibility for a contraception distribution program to be operated through the licensed pharmacies of CHDs. According to the DOH, the contraception distribution program has never been implemented because funding has never been appropriated.

Section 381.0051, F.S., creates the comprehensive family planning act that requires the DOH to provide women medically recognized methods of contraception. Under s. 154.01(2)(c), F.S., the CHDs are required to provide primary care services, which includes family planning. As noted above, the statewide pharmacy is required to support pharmaceutical services provided by the CHDs, which would include contraceptives.

Patient's Bill of Rights

Section 381.0261, F.S., creates the Patient's Bill of Rights. Currently, AHCA is directed to print and made continuously available to health care facilities licensed under chapter 395, physicians licensed under chapter 458, osteopathic physicians licensed under chapter 459, and podiatric physicians licensed under chapter 461 a summary of the Florida Patient's Bill of Rights and Responsibilities. In adopting and making available to patients the summary of the Florida Patient's Bill of Rights and Responsibilities, health care providers and health care facilities are not limited to the format in which AHCA prints and distributes the summary.

According to AHCA, the Patient's Bill of Rights may be accessed on their website. AHCA does not print or distribute this document.[46]

The Florida Health Services Corps

This section of law was enacted in 1992,[47] and is modeled on the National Health Services Corps,[48] offering loan repayment and scholarships for health professionals in return for service in public health care programs or underserved areas. This program has not been funded since 1996.[49]

Office of Women's Health Strategy

In 2004[50], the Legislature created the Office of Women's Health Strategy.[51] The strategy is administered by a Women's Health Officer and is intended to focus on the unique health care needs of women. The Officer of Women's Health Strategy is tasked with:[52]

- Ensuring state policies and programs are responsive to sex and gender differences and women's health needs;

[46] Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.
[47] Chapter 92-33, s. 111, L.O.F.
[48] *See*, http://nhsc.hrsa.gov/ (site last visited February 2, 2012).
[49] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.
[50] Chapter 2004-350, LO.F.
[51] Section 381.04015, F.S.
[52] Section 381.04015(4), F.S.

- Organizing an interagency Committee for Women's Health with the DOH, the AHCA, the Department of Education, the Department of Elderly Affairs, the Department of Corrections, the Office of Insurance Regulation and the Department of Juvenile Justice in order to integrate women's health into current state programs;
- Collecting and reviewing health data and trends to assess the health status of women;
- Reviewing the state's insurance code as it relates to women's health issues;
- Working with medical school curriculum committees to integrate women's health issues into course requirements and promote clinical practice guidelines;
- Organizing statewide Women's Health Month activities;
- Coordinating a Governor's statewide conference on women's health;
- Promoting research, treatment, and collaboration on women's health issues at universities and medical centers in the state;
- Promoting employer incentives for wellness programs targeting women's health programs.
- Serving as the primary state resource for women's health information;
- Developing a statewide women's health plan emphasizing collaborative approaches to meeting the health needs of women;
- Promoting clinical practice guidelines specific to women;
- Serving as the state's liaison with other states and federal agencies and programs to develop best practices in women's health;
- Developing a statewide, web-based clearinghouse on women's health issues and resources; and
- Promoting public awareness campaigns and education on the health needs of women.

The Women's Health Officer provides an annual report to the Governor and presiding officers of the Legislature that includes recommended policy changes for implementing the strategy.[53] According to the National Conference on State Legislatures, at least 18 states have created either offices or commissions dedicated to women's health, while three states—Florida, Illinois and Maine—have designated a women's health officer or coordinator.[54]

Hepatitis B or HIV Carriers

Section 381.045, F.S., authorizes the DOH to establish procedures to handle, counsel, and provide other services to health care professionals licensed or certified under chapter 401, chapter 467, part IV of chapter 468, and chapter 483 who are infected with hepatitis B or the human immunodeficiency virus.

AHCA Survey of State Hospital Facilities

Section 381.0605, F.S., designates AHCA as the sole agency of the state to carry out the purposes and administration of the Federal Hospital and Medical Facilities Amendments (Hill-Burton Act) of 1964.[55] Section 381.0605, F.S., also authorizes the Governor to provide for carrying out such purposes in accordance with the standards prescribed by the Surgeon General

[53] Section 381.04015(2)(p), F.S.
[54] "Laws and Initiatives on Women's Health," National Conference of State Legislatures, *available at*: http://www.ncsl.org/default.aspx?tabid=14377 (last viewed on March 17, 2010).
[55] 42 U.S.C. 29 – Sec. 291

of the United States. According to AHCA, the current certificate of need program meets this requirement, although the federal funds to support this program have long since stopped.[56]

Community Health Pilot

This section of law was enacted in 1999[57] to develop community health pilot projects in rural and urban low-income areas. Specifically, this section of law created pilot projects in:

- Pinellas County, for the Greenwood Health Center in Clearwater;
- Escambia County, for the low income communities in the Palafox Redevelopment Area;
- In Hillsborough, Pasco, Pinellas and Manatee Counties, for the Urban League of Pinellas County;
- In Palm Beach County, for the low income communities within the City of Riveria;
- In the City of St. Petersburg, for the low-income communities within the Challenge 2001 Area; and
- Broward County, for the communities surrounding Miles Health Center in Ft. Lauderdale.

The department is authorized, to the extent that is possible, to assist pilot projects to enhance synergies and reduce duplication of efforts.[58] The pilot programs do not exist: the DOH states that they were unable to find any information on these two provisions, and the Division of Family Health Services did not implement the pilot programs.[59]

AHCA Background Screening

Section 381.60225, F.S., was created by chapter 98-171, L.O.F., to provide the following background screening requirements for licensure by AHCA:

- AHCA must require background screening, of the managing employee, agency, or entity;
- The applicant must comply with the procedures for level 2 background screening;
- AHCA may require background screening of any individual who is an applicant if they have probable cause to believe the applicant has been convicted of a crime and/or committed any other crime prohibited under the level 2 standards for screening;
- Each applicant must submit with its application to AHCA a description of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs;
- Each applicant must submit with its application to AHCA a description of any conviction of an offense prohibited under the level 2 standards by a member of the boards of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant; and
- Any organization, agency, or entity that has been found guilty of any offense prohibited under the level 2 standards for screening may not be certified by AHCA.

Nursing Home Residents, 55 and Younger, Survey

[56] Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.
[57] Chapter. 99-356, ss. 11-12, L.O.F.
[58] Section 381.103, F.S.
[59] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

The Brain and Spinal Cord Injury Program administers a statewide coordinated system of care to serve persons who have sustained moderate-to-severe traumatic brain and/or spinal cord injuries.[60]

In 1976[61], the Legislature required the DOH to conduct annual surveys of nursing homes in the state to determine the number of persons 55 years of age and under who reside in such homes due to brain or spinal cord injuries and were evaluated to determine if they would benefit from rehabilitation program.[62] At that time, persons who had sustained a brain or spinal cord injury were sent to nursing homes from acute care settings.

Today, individuals who are injured are referred to the Brain and Spinal Cord Injury Program Central Registry. If a person is placed in a nursing home they are provided services for one-year to determine if they will improve and are a candidate for community reintegration and may receive services through the Nursing Home Transition Imitative and the TBI/SCI Home and Community-Based Medicaid Waiver. Currently, the DOH states there is no funding allocated to conduct the survey and recommends repealing the program.

Long-term Community-based Supports

Section 381.795, F.S., authorizes the DOH to establish, contingent upon specific appropriations, a program of long-term community-based supports and services for individuals who have sustained traumatic brain or spinal cord injuries and who may be subject to inappropriate residential and institutional placement as a direct result of such injuries. Currently, eligible individuals who have sustained a brain or spinal cord injury receive services through the Home and Community-based Medicaid Waiver.

According to the DOH, no specific appropriation has ever been appropriated to implement this program. The DOH recommends repeal.[63]

Florida Center to Eradicate Disease

The Florida Center for Universal Research to Eradicate Disease (FLCURED) was created by the 2004 Legislature. The legislation followed a Senate Interim Report that found a need for improved coordination, information sharing and reduced duplication within Florida's medical research enterprise. To accomplish these goals, FLCURED holds an annual biomedical research summit, hosts this website and produces an annual report. FLCURED is operated within the Florida State University College of Medicine and is sponsored by the department. FLCURED has a 16 member Advisory Council that guides FLCURED's activities and recommends policies regarding biomedical research to the legislature.

Osteoporosis Prevention and Education Program

[60] Section 381.76, F.S.
[61] Chapter 76-201, L.O.F.
[62] Section 381.77, F.S.
[63] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.

This section of law was enacted in 1996,[64] and directs the department to establish, promote and maintain an osteoporosis education and prevention program in the state. The program has not been funded since Fiscal Year 2008-2009. The DOH recommends repeal.[65]

Standards for Compressed Air

In 1999, section 381.895, F.S., was enacted and requires the DOH to establish by rule the maximum allowable levels for contaminants in compressed air used for recreational sport diving.[66] These standards must take into consideration the levels of contaminants allowed by the Grade "E" Recreational Diving Standards of the Compressed Gas Association.[67]

Moreover, section 381.895(3), F.S., requires any compressed air provider receiving compensation for providing compressed air for recreational sport diving to have the air tested quarterly by specified accredited laboratories.[68] In addition, the compressed air provider must provide the DOH a copy of the quarterly test result and the DOH is required to maintain a record of all results.[69] The compressed air provider must post a certificate certifying that the compressed air meets the standards for contaminate levels.[70] The certificate must be posted in a conspicuous location where it can readily be seen by any person purchasing air.[71] It is a second degree misdemeanor[72] if:

- A compressed air provider does not receive a valid certificate that certifies that the compressed air meets the standards for contaminate levels established by the DOH; and
- The certificate is not posted in a conspicuous location.[73]

The following entities are exempt from these requirements:

- Individuals who provide compressed air for their own use;
- Any governmental entity that owns its own compressed air source, which is used for work related to the governmental entity; or
- Any foreign registered vessel that uses a compressor to compress air for its own work-related purposes.[74]

Since enactment, the provision has been amended once to delete the January 1, 2000, implementation date.[75] Florida is the only state that has a law governing the regulation of compressed air standards in recreational diving.[76]

[64] Chapter 96-282, s. 1, L.O.F.
[65] Email correspondence with DOH staff, January 28, 2012, on file with the Health & Human Service Quality Subcommittee staff.
[66] This includes any compressed air that may be provided as part of a dive package of equipment rental, or dive boat charter.
[67] Section 381.895(1), F.S.
[68] The laboratory must be accredited by either the American Industrial Hygiene Association or the American Association for Laboratory Accreditation
[69] Section 381.895(3),(4), F.S.
[70] Section 381.895(3), F.S.
[71] *Id.*
[72] A person who has been convicted of a second degree misdemeanor may be sentenced for a definite term of imprisonment not exceeding 60 days and a fine of up to $500. *See* ss. 775.082(4) and 775.083(1), F.S.
[73] Section 381.895(5), F.S.
[74] Section 381.895(2), F.S.

Currently, the DOH maintains a database that contains thirteen years of test results from approximately 250 compressed air providers located throughout the state.[77] According to the DOH, since 1999 none of the submitted reports[78] show any evidence of contamination.[79] Additionally, there have been no reports of injury, illness, or death associated with contaminated compressed air.[80]

The DOH recommended repeal of section 381.895, F.S., in its 2008 legislative package. When the provision was enacted, the DOH did not receive an appropriation to support the database, enforcement, or rule promulgation.

The dive industry considers it a self-regulating body[81] and has mechanisms in place to ensure customers have quality compressed air.[82] According to professional organizations in the field, repealing this provision in Florida will not have an impact on current business practices. Currently, dive shops are required to monitor air quality to maintain certification or membership in worldwide recreational dive associations. Consumers will still be required to have their tanks inspected by dive shops or instructors, as this is an industry-mandated requirement.[83]

There are three major organizations that engage in recreational diving training and certification: Professional Association of Diving Instructors (PADI), National Association of Underwater Instructors (NAUI), and Scuba Schools International (SSI).[84] According to NAUI, these three organizations represent 90 percent of the recreational diving market for training certification and professional association memberships worldwide. Many recreational dive operations hold certifications and/or memberships with all three organizations. This practice tends to make them more marketable to consumers who are seeking certain types of dive certifications.[85]

According to the Professional Association of Diving Instructors (PADI)[86], members of their organization are required to constantly maintain Compressed Gas Association, Grade "E" Recreational Diving Compressed Air Standards. If a member does not meet these standards their membership is revoked. PADI posts a list of all expelled members online.[87] According to PADI,

[75] Chapter 2002-1, L.O.F.
[76] Westlaw search for state statutory provisions requiring compressed air standards for recreational diving.
[77] Per email correspondence with DOH staff on file with the Health & Human Services Access Subcommittee staff (October 21, 2011).
[78] As of November 3, 2011, the DOH has received approximately a total of 3,395 reports.
[79] Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4037 (October 10, 2011).
[80] *Id.*
[81] "PADI has worked very hard over the years to keep the scuba diving industry as free from legislation as possible." *See* Professional Association of Diving Instructors, History of PADI, available at: http://www.padi.com/scuba/about-padi/PADI-history/default.aspx (last viewed October 21, 2011).
[82] Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 4037 (October 10, 2011); telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (October 21, 2011).
[83] Per telephone conversation with staff with the Professional Association of Diving Instructors and the National Association of Underwater Instructors (October 21, 2011).
[84] *Id.*
[85] *Id.*
[86] PADI represents approximately 125 dive operations located throughout Florida.
[87] Professional Association of Diving Instructors, Quality Management: Consumer Alerts, *available* at:

many dive operations are starting to utilize constant air quality monitoring devices, which self-monitor compressed air quality and just need to be calibrated every 90 days.[88]

The National Association of Underwater Instructors (NAUI)[89], requires certified businesses to provide medical grade compressed air, which NAUI considers a community standard. Dive operations that receive certification from NAUI are required to have their air checked and tested by an accredited nationally recognized lab every two years and the test results must be posted and available for consumers to view. According to NAUI, they have sales representatives that interact with dive shop owners multiple times a year. When NAUI salesmen are on site they are required to check compliance with NAUI policies. If a dive operator is not in compliance it will lose their NAUI certification. NAUI posts a list of all suspended and revoked certifications online.[90]

Health Information Systems Council

The Florida Health Information Systems Council (Council) was created in the Department of Health by the Information Resource Management Reform Act of 1997.[91] The purpose of the Council is to coordinate, and provide for, the identification, collection, standardization, and sharing of health-related data among federal, state, local, and private entities.[92] Members of the Council include:

- The State Surgeon General;
- The Executive Director of the Department of Veterans' Affairs;
- The Secretary of Children and Family Services;
- The Secretary of Health Care Administration;
- The Secretary of Corrections;
- The Attorney General;
- The Executive Director of the Corrections Medical Authority;
- One member representing a small CHD and one member representing a large CHD, both appointed by the Governor;
- A representative from the Florida Association of Counties;
- The Chief Financial Officer;
- A representative from the Florida Health Kids Corporation;
- A representative from a school of public health chosen by the Commissioner of Education;
- The Commissioner of Education;
- The Secretary of Elder Affairs; and
- The Secretary of Juvenile Justice.

http://www.padi.com/scuba/about-padi/quality-management/consumer-alerts/default.aspx (last viewed October 21, 2011).
[88] Per email correspondence with Professional Association of Diving Instructors staff on file with Health & Human Services Access Subcommittee staff (October 21, 2011).
[89] NAUI represents approximately 120 dive operations located throughout Florida.
[90] National Association of Underwater Instructors Worldwide, Quality and Ethics: Revoked and Suspended Memberships, *available* at: http://www.naui.org/quality_assurance.aspx (last viewed October 21, 2011).
[91] Chapter 97-286, L.O.F.
[92] Section 381.90(2), F.S.

Representatives from the federal government may also serve on the Council, but do not have voting rights.[93] The Council is required to meet at least quarterly, but may also meet at the call of its chair, at the request of a majority of the membership, or at the request of a department.[94]

According to the DOH, the Council has continued to meet as required, but takes no official action.[95] The last meeting of the Council at which any official action was taken occurred on October 22, 2003.[96] At that meeting, the Council adopted revisions to its Strategic Plan for FY 2004-05 through 2008-09.[97] However, none of the recommendations contained in the Plan have been implemented over the last 8 years. Lastly, the Council has not received any recent funding, nor have any appointments to the Council been made in the last two years.[98]

Arthritis Prevention and Education

The department has a cooperative agreement with the Centers for Disease Control and Prevention (CDC) for a project titled Implementation of Arthritis Evidence-Based Self-Management and Physical Activity, commonly referred to as the "Arthritis Program".

The program serves the purpose outlined in s. 385.210, including creating a statewide program to evaluate surveillance data, increase public and provider awareness about the impact of arthritis on the state, and facilitate evidence-based programs to prevent, reduce and manage the impact of arthritis on an individual. The cooperative agreement ends June 29, 2012. The program has worked with several large partners, including the Department of Elderly Affairs, Health Foundation of South Florida, the Veterans Administration, and Florida Hospital to establish self-sustaining chronic disease self management programs, at the community level, which help prevent the onset of or complications due to chronic diseases.

Effective July 1, 2012, this program would no longer be authorized and the DOH will not apply for CDC funding for this program in 2012. According to the DOH, these programs have been structured to be sustainable after the grant funding ends.[99]

A.G. Holley State Hospital

According to the United States Census Bureau, there are approximately four active tuberculosis hospitals in the United States.[100] Florida operates one of these tuberculosis hospitals, known as

[93] Section 381.90(3), F.S.
[94] Section 381.90(5), F.S.
[95] Telephone conference between Department of Health legislative affairs staff and Health and Human Services Quality Subcommittee staff.
[96] Florida Department of Health, Florida Health Information Systems Council, *Meeting Minutes, October 22, 2003*, available at http://www.doh.state.fl.us/floridahisc/Meetings/102203mts.html (last viewed on January 21, 2012).
[97] Department of Health, Florida Health Information Systems Council, *Strategic Plan-Fiscal Years 2004-05 through 2008-09*, May 15, 2003 (revised October 22, 2003), available at http://www.doh.state.fl.us/floridahisc/Plan/FHISCSP_2003_approved_revision_10_22_2003.pdf (last viewed January 22, 2012).
[98] Email correspondence with AHCA staff, January 21, 2012, on file with the Health & Human Services Quality Subcommittee staff.
[99] Florida Department of Health, Bill Analysis, Economic Statement and Fiscal Note for HB 1263, February 2, 2012.

the A.G. Holley State Hospital. A.G. Holley was opened in 1950 as the Southeast Tuberculosis Hospital, the second of four state tuberculosis hospitals built in Florida between 1938 and 1952.[101] Today, however, A.G. Holley is the only state-operated tuberculosis (TB) hospital in the state and is the last of the original American sanatoriums dedicated to treating tuberculosis patients.[102] A.G. Holley operates a complete X-ray department, bronchoscopy suite, dental office, optometric clinic, and pharmacy.

A.G. Holley is located in the City of Lantana on a 134 acre plot. In May 2007, the land was appraised at $34.1 million. The hospital is four stories and encompasses 194,000 square feet. It was originally built to serve 500 patients, with living accommodations for the physicians, nurses and administrative staff. However, by 1971 the daily census at the hospital dropped to less than half of the original 500. By 1976, the beds and staff at A.G. Holley were reduced to serve a maximum of 150 patients. Currently, the hospital does not operate at full capacity and receives state funding for 50 beds, of which, sixteen are isolation (negative air pressure) rooms.

Today, the hospital receives funding for approximately 160 FTE positions for an average daily census of 37 patients, some of whom are involuntarily committed to the hospital. It costs approximately $10 million a year to manage the hospital, and the hospital consistently runs an annual deficit. Moreover, the hospital will require significant outlay for capital improvements in the near future.

In addition to the main hospital, the campus includes a lab that is part of the state laboratory service (16,700 sq. ft.), a county health department (35,000 sq. ft.), a warehouse (26,500 sq. ft.), a boiler room (4,552 sq ft), a water treatment plant (880 sq. ft.), an additional building (26,500 sq. ft.), and ten small residential cottages.

According to a recent research memorandum issued by the Office of Program Policy Analysis and Government Accountability (OPPAGA), only one other large state, Texas, operates a state-run infectious disease hospital that treats TB patients. In other large states, such as California, Illinois, Michigan, New York, North Carolina, and Ohio, local health departments use local or regional hospitals to treat such medically complex TB patients.[103]

In 2006, the department proposed developing the A.G. Holley hospital and campus into a Florida Institute for Public Health at a cost of approximately $10 million. In 2008, the Legislature directed the DOH to procure a new TB hospital more suited to modern treatment and caseloads, and to outsource the management functions to a private vendor. The procurement was not successful. In 2009, the Legislature gave new, more specific direction to the DOH to initiate a second procurement. The DOH received one proposal, but the bidder did not meet the requirements of the procurement. In 2010[104], the Legislature, directed the DOH to develop a plan

[100] United States Census Bureau, Hospitals-Summary Characteristics, *available at*: http://www.census.gov/compendia/statab/2007/tables/07s0162.xls (last viewed March 30, 2010).
[101] Bureau of TB and Refugee Health, Florida Department of Health, A.G. Holley Hospital History, *available at*: http://www.doh.state.fl.us/AGHolley/history.htm (last viewed March 30, 210).
[102] *Id.*
[103] "*Tuberculosis Hospitalization in Other States*," OPPAGA Research Memorandum (March 11, 2010).
[104] Chapter 2010-161, L.O.F.

that exclusively uses private and nonstate public hospitals to provide treatment to cure, hospitalization, and isolation.

Public Sector Physician Advisory Committee

Section 458.346, F.S., creates a Public Sector Physician Advisory Committee which shall review and make recommendations to the Board of Medicine on all matters relating to public sector physicians that come before the board.

Nursing Student Loan Forgiveness Program

The bill amends ss. 1009.66, and 1009.67, F.S., the Nursing Student Loan Forgiveness Program and Nursing scholarship program, to transfer the programs and the associated trust fund from the DOH to the Department of Education.

The Nursing Student Loan Forgiveness Program, the Nursing Scholarship Program, the Nursing Student Loan Forgiveness Trust Funds and 1 FTE will be transferred to the Department of Education effective July 1, 2012. This is a DOH recommendation and part of their 2012 legislative package.

Division of Medical Quality Assurance (MQA)

The MQA regulates health care practitioners to ensure the health, safety and welfare of the public. Currently, MQA supports licensure and disciplinary activities for 43 professions and 37 types of facilities/establishments, and works with 22 boards and 6 councils.

Legislative Findings and Intent

The bill deletes or amends legislative findings or intent language for the following areas:

- Section 381.0037, F.S., relating to findings and intent for the AIDS program.
- Section 381.004(1), F.S., relating to HIV testing.
- Section 381.0051(2), F.S., relating to Family planning.
- Section 381.0056(2), F.S., relating to the School health services program.
- Section 381.0057(1), F.S., relating to Funding for school health services.
- Section 381.0062(1), F.S., relating to Supervision, private and certain public water systems.
- Section 381.0098(1), F.S., relating to Biomedical waste.
- Section 381.0101(1), F.S., relating to Environmental health professionals.
- Section 381.0301(1)-(2), F.S., relating to Education and Resource Development.
- Section 381.0403(2), F.S., relating to the Community Hospital Education Act.
- Section 381.4018(2), F.S., relating to Physician workforce assessment and development.
- Section 381.7352(1), F.S., relating to Legislative intent and findings for the Closing the Gap Act.
- Section 381.853(1), F.S., relating to the Florida Center for Brain Tumor Research.
- Section 381.91(1)(a), F.S., relating to the Jessie Trice Cancer Prevention Program.

The amendments to legislative intent language have no substantive policy impact on the programs.

Unused Rulemaking Authority

The bill amends several section of law to remove unused rulemaking authority. The bill repeals the following provisions:

- Section 381.0052(5), F.S., related to dental health;
- Section 381.0053(4), F.S., related to the comprehensive nutrition program;
- Section 381.00593(8), F.S., related to the public school volunteer healthcare practitioner program;
- Section 381.765(3), F.S., related to retention of title and disposal of equipment;
- Section 401.243(4), F.S., related to the injury prevention program;
- Section 401.245(5), F.S., related to the Emergency Medical Services Advisory Council;
- Section 401.271(2), F.S., related to certification of emergency medical technicians and paramedics who are on active duty with the Armed Forces, and their spouses;
- Section 402.45(9), F.S., related to the community resource mother or father program;
- Section 462.19(2), F.S., related to renewal of licenses and inactive status for naturopaths; and
- Section 464.208(4), F.S., related to background screening information for nurse licensure.

According to the DOH, no rules have been adopted which use these specific sections of authority.[105] The repeal of rulemaking authority has no substantive impact on these programs.

III. Effect of Proposed Changes:

Section 1 amends s. 20.43, F.S., to significantly alter the purpose of the DOH, to remove several of the Surgeon General's powers and duties, to eliminate the Officer of Women's Health Strategy, to rename several divisions of the DOH, and to place emergency medical technicians and paramedics under the oversight of MQA.

Section 2 amends s. 20.435, F.S., to eliminate two trust funds: the Drugs, Devices, and Cosmetics Trust Fund, and the Nursing Student Loan Forgiveness Trust Fund.

Section 3 amends s. 215.5602, F.S., the James and Esther King Biomedical Research Program, to eliminate references to the Florida Center for Universal Research to Eradicate Disease (FLCURED) and language authorizing up to $250,000 to be made available to this entity. It eliminates the requirement for the Biomedical Research Advisory Council to submit an annual progress report on biomedical research in the state to FLCURED. The FLCURED is repealed in this bill.

Section 4 amends s. 381.001, F.S., pertaining to the legislative intent behind the public health system, so that the DOH is responsible for the state's public health system, which shall be designed to promote, protect and improve the health of all people in the state; provide leadership

[105] Department of Health Memorandum, "Unused Rulemaking Authority", February 1, 2012, on file with Health & Human Services Quality Subcommittee staff.

for an active partnership, working toward shared public health goals and involving federal, state, and local governments, and the private sector.

This section deletes language setting forth that the mission of the state's public health system is to foster the conditions in which people can be healthy; language setting forth legislative intent that the DOH, in carrying out the mission of public health, focuses on identifying, assessing, and controlling the presence and spread of communicable diseases and other activities; and legislative intent language regarding comprehensive planning, data collection, technical support, and health resource development.

Section 5 amends 381.0011, F.S., by:

- Removing the specific means by which the DOH is to assess public health status and needs of the state;
- Deleting the authority of the DOH to cooperate with and accept assistance from federal, state, and local officials for the prevention and suppression of communicable and other diseases, illnesses, injuries, and hazards to human health;
- Deleting the requirement that the DOH conduct a workshop before issuing any health alert or advisory related to any food-borne illness or communicable disease in public lodging or food service establishments in order to inform persons, trade associations, and businesses of the risk to public health and to seek input of affected persons, trade associations, and businesses on the best methods of informing and protecting the public, except in an emergency, in which case the workshop must be held within 14 days after the issuance of the emergency alert or advisory.
- Deleting the powers and duties of the DOH to cooperate with and assist federal health officials in enforcing public health laws and regulations and to cooperate with other departments, local officials, and private boards and organizations for the improvement and preservation of the public health; and
- Deleting language giving the DOH authority to perform any other duties prescribed by law.

Section 6 repeals s. 381.0013, F.S., which grants the power of eminent domain.

Section 7 repeals s. 381.0015, F.S., which states that the DOH's actions in furtherance of public health should be presumed just and legal.

Section 8 amends s. 381.0016, F.S., so that counties, as well as municipalities, may enact health regulations and ordinances which are not inconsistent with state public health laws and rules adopted by the DOH.

Section 9 repeals s. 381.0017, F.S., which provides the DOH the authority to purchase, lease, or otherwise acquire land and buildings and take a deed thereto in the name of the state for the use and benefit of the DOH when the acquisition is necessary to the efficient accomplishment of public health.

Section 10 repeals s. 381.00325, F.S., which mandates that the DOH develop a Hepatitis A awareness program.

Section 11 amends s. 381.0034, F.S., which is related to the requirement for instruction on HIV and AIDS, to remove an obsolete date.

Section 12 repeals s. 381.0037, F.S., which establishes legislative findings and intent regarding HIV/AIDS education.

Section 13 amends s. 381.004, F.S., on HIV testing, to strike language establishing legislative intent.

Section 14 amends 381.0046, F.S., the statewide HIV and AIDS prevention campaign, to change the required number of AIDS regional minority coordinators from four to an unspecified number of dedicated positions and to remove the provision that the statewide AIDS minority coordinator must report directly to the Bureau Chief of HIV/AIDS within the DOH.

Section 15 amends s. 381.005, F.S., which is related to primary preventive health services, to remove the requirement that hospitals licensed pursuant to chapter 395, F.S., under the Agency for Health Care Administration, implement a program to offer immunizations against the influenza virus and pneumococcal bacteria to all patients age 65 or older.

Section 16 amends s. 381.0051, F.S., so that subsection (2), related to legislative intent, is deleted.

Section 17 amends s. 381.0052, F.S., related to dental health, so that subsection (5), which grants the DOH rulemaking authority, is deleted.

Section 18 amends s. 381.0053, F.S., related to the comprehensive nutrition program, by deleting subsection (4), which grants the DOH rulemaking authority.

Section 19 amends s. 381.0056, related to school health services programs, by deleting subsection (2), which establishes legislative intent, and subsection (11), which requires that school health programs funded by health care districts or entities defined in subsection (3) must be supplementary to and consistent with the requirements of this section and ss. 381.0057 and 381.0059, F.S.

Section 20 amends s. 381.0057, F.S., by deleting subsection (1) pertaining to legislative intent.

Section 21 amends s. 381.00591, F.S., related to national environmental laboratory accreditation, by granting authority to the DOH to apply for and become a NELAP accrediting body, rather than an accrediting authority; and deleting the DOH's authority to adopt rules to implement NELAP standards, including requirements for proficiency testing of providers and other rules pertaining to fees, application procedures, standards applicable to environmental or public water supply laboratories, and compliance.

Section 22 amends s. 381.00593, F.S., relating to the public school volunteer health care practitioner program, by removing the rulemaking authority the DOH has with the Florida Department of Education to implement the public school volunteer health care practitioner program.

Section 23 amends s. 381.0062, F.S., regarding the supervision of private and certain public waters systems, by deleting subsection (1), legislative intent language.

Section 24 amends s. 381.0065, F.S., relating to onsite sewage treatment and disposal systems. The bill repeals the state-wide septic system evaluation program, including program requirements, and the DOH's rulemaking authority to implement the program. It repeals legislative intent regarding the DOH's administration of a state-wide septic system evaluation program and an obsolete reporting requirement regarding the land application of septage.

The bill defines "bedroom" as a room that can be used for sleeping that, for site-built dwellings, has a minimum 70 square feet of conditioned space; or for manufactured homes, constructed to HUD standards having a minimum of 50 square feet of floor area. The room must be located along an exterior wall, have a closet and a door or an entrance where a door could be reasonably installed. It also must have an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet. The term does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. It also fixes two cross-references. One is related to research fees collected to fund hands-on training centers for septic systems. The other relates to determining the mean annual flood line.

The bill provides that a permit issued and approved by the DOH for the installation, modification, or repair of a septic system transfers with the title to the property. A title is not encumbered when transferred by new permit requirements that differ from the original permit requirements in effect when the septic system was permitted, modified or repaired. It also prohibits a government entity from requiring a septic system inspection at the point of sale in a real estate transaction.

The bill specifies that a septic system serving a foreclosed property is not considered abandoned. It also specifies that a septic system is not considered "abandoned" if it was properly functioning when disconnected from a structure made unusable or destroyed following a disaster, and the septic system was not adversely affected by the disaster. The septic system may be reconnected to a rebuilt structure if:

- Reconnection of the septic system is to the same type of structure that existed prior to the disaster;
- The rebuilt structure has the same number of bedrooms or less than the structure that existed prior to the disaster;
- The rebuilt structure is within 110 percent of the size of the structure that existed prior to the disaster;
- The septic system is not a sanitary nuisance; and
- The septic system has not been altered without prior authorization.

The bill provides that if a rule change occurs within 5 years after approval for construction, the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the septic system, but only if fundamental site conditions have not changed between the time of construction approval and final approval.

The bill provides that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added.

Section 25 creates s. 381.00651, F.S.

A county or municipality containing a first magnitude spring within its boundary must develop and adopt by ordinance a local septic system evaluation and assessment program meeting the requirements of this section within all or part of its geographic area by January 1, 2013, unless it opts out. All other counties and municipalities may opt in but otherwise are not required to take any affirmative action. Evaluation programs adopted before July 1, 2011, that do not contain a mandatory septic system inspection at the point of sale in a real estate transaction are not affected by this bill. Existing evaluation programs that require point of sale inspections are preempted by the bill regardless of when the program was adopted.

A county or municipality may opt out by majority plus one vote of the local elected body before January 1, 2013, by adopting a separate resolution. The resolution must be filed with the Secretary of State. Absent an interlocal agreement or county charter provision to the contrary, a municipality may elect to opt out of the requirements of this section notwithstanding the decision of the county in which it is located. A county or municipality may subsequently adopt an ordinance imposing a septic system evaluation and assessment program if the program meets the requirements of this section. The bill preempts counties' and municipalities' authority to adopt more stringent requirements for a septic system evaluation program than those contained in the bill.

Local ordinances must provide for the following:

- An evaluation of a septic system, including drainfield, every 5 years to assess the fundamental operational condition of the system and to identify system failures. The ordinance may not mandate an evaluation at the point of sale in a real estate transaction or a soil examination. The location of the system shall be identified;
- May not require a septic system inspection at the point of sale in a real estate transaction;
- May not require a soil examination;
- Each evaluation must be performed by:
  - A septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.,
  - A professional engineer having wastewater treatment system experience and licensed pursuant to ch. 471, F.S.,
  - An environmental health professional certified under ch. 381, F.S., in the area of septic system evaluation, or
  - An authorized employee working under the supervision of any of the above four listed individuals. Soil samples may only be conducted by certified individuals.

Evaluation forms must be written or electronically signed by a qualified contractor.

The local ordinance may not require a repair, modification, or replacement of a septic system as a result of an evaluation unless the evaluation identifies a failure. The term "system failure" is defined as:

- A condition existing within a septic system that results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water; or
- A condition which results in a sanitary nuisance caused by the failure of building plumbing to discharge properly.

A system is not a failure if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. The bill specifies that a drainfield not achieving the minimum separation distance from the bottom of the drainfield to the wettest season water table contained in current law is not a system failure.

The local ordinance may not require more than the least costly remedial measure to resolve the system failure. The homeowner may choose the remedial measure to fix the system. There may be instances in which a pump out is sufficient to resolve a system failure. Remedial measures to resolve a system failure must meet, to the extent possible, the requirements in effect at the time the repair is made, subject to the exceptions specified in s. 381.0065(4)(g), F.S. This allows certain older septic systems to be repaired instead of replaced if they cannot be repaired to operate to current code. An ordinance may not require an engineer-designed performance-based system as an alternative septic system to remediate a failure of a conventional septic system.

The bill specifies that the following systems are exempt from inclusion in a septic system evaluation program:

- A septic system that is required to obtain an operating permit or that is inspected by the department on an annual basis pursuant to ch. 513, F.S., related to mobile home and recreational vehicle parks;. and
- A septic system serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater. For example, if a person has a four-bedroom house served by a septic system on a four-acre or larger lot, that septic system is exempt.

An ordinance may also exempt or grant an extension of time for a septic system serving a structure that will soon be connected to a sewer system if the connection is available, imminent and written arrangements have been made for payment of connection fees or assessments by the septic system owner.

The bill requires the owner of a septic system subject to an evaluation program to have it pumped out and evaluated at least once every 5 years. A pump out is not required if the owner can provide documentation to show a pump out has been performed or there has been a permitted new installation, repair or modification of the septic system within the previous 5 years. The documentation must show both the capacity and that the condition of the tank is structurally sound and watertight.

If a tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank must be refilled before concluding the inspection. Replacing broken or damaged lids or manholes does not require a repair permit.

In addition to a pump out, the evaluation procedures require an assessment of the apparent structural condition and watertightness of the tank and an estimation of its size. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks or other defects.

The baffles or tees must be checked to ensure that they are intact and secure.[106] The evaluation must note the presence and condition of:

- Outlet devices;
- Effluent filters;
- Compartment walls;
- Any structural defect in the tank; and
- The condition and fit of the tank lid, including manholes.

The bill also requires a drainfield evaluation and requires certain assessments to be performed when a system contains pumps, siphons or alarms. The drainfield evaluation must include a determination of the approximate size and location of the drainfield. The evaluation must contain a statement noting whether there is any visible effluent on the ground or discharging to a ditch or water body and identifying the location of any downspout or other source of water near the drainfield.

If the septic system contains pumps, siphons or alarms, the following information may be provided:

- An assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;
- Whether the pump is elevated off of the bottom of the chamber and its operational status;
- Whether the septic system has a check valve and purge hole; and
- Whether there is a high-water alarm, including whether the type of alarm is audio, visual or both, the location of the alarm, its operational condition and whether the electrical connections appears satisfactory.

The bill provides that if a homeowner does not request information about the system's pumps, siphons, or alarms, the qualified contractor and its employee are not liable for any damages directly relating from a failure of the system's pumps, siphons, or alarms. The evaluation report completed by the contractor must include a statement on the front cover that provides notice of the exclusion of such liability.

The reporting procedures provided for in the bill require:

- The qualified contractor to document all the evaluation procedures used;
- The qualified contractor to provide a copy of a written, signed evaluation report to the property owner and the county health department within 30 days after the evaluation;
- The name and license number of the company providing the report;
- The local county health department to retain a copy of the evaluation report for a minimum of 5 years and until a subsequent report is filed;

[106] The septic tank baffle or tee is a device on the inlet or outlet of a septic tank which prevents sewage back-flow into the inlet or outlet pipe. The device may be made of concrete, steel, plastic, or other materials, but in all cases the septic tank tee or baffle forms a barrier between the septic tank and the inlet or outlet pipes to or from the septic tank. InspectAPedia, *Encyclopedia of Building & Environmental Inspection, Testing, Diagnosis, Repair*, available at http://www.inspectapedia.com/septic/tanktees.htm (last visited January 29, 2012).

- The front cover of the report to identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation performed by a contractor other than the contractor performing the evaluation;
- The report to identify tank defects, improper fit or other defects in the tank, manhole or lid, and any other missing component of the septic system;
- Noting if any sewage or effluent is present on the ground or discharging to a ditch or surface water body;
- Stating if any downspout, stormwater or other source of water is directed onto or towards the septic system;
- Identification of any maintenance need or condition that has the potential to interfere with or restrict any future repair or modification to the existing septic system; and
- Conclude with an overall assessment of the fundamental operational condition of the septic system.

The county health department will be responsible for administering the program on behalf of a county or municipality. A county or municipality may develop a reasonable fee schedule in consultation with a county health department. The fee must only be used to pay for the costs of administering the program and must be revenue neutral. The fee schedule must be included in the adopted ordinance for a septic system evaluation program. The fee shall be assessed to the septic system owner, collected by the qualified contractor and remitted to the county health department.

The county health department in a jurisdiction where a septic system evaluation program is adopted must:

- Provide a notice to a septic system owner at least 60 days before the septic system is due for an evaluation;
- In consultation with the DOH, provide for uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance; and
- Be the sole entity to assess penalties against a septic tank owner who fails to comply with the requirements of an adopted ordinance.

The bill requires the DOH to allow county health departments and qualified contractors to access the environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite sewage treatment and disposal systems. The database must be used by qualified contractors to report service evaluations and by county health departments to notify septic system owners that their evaluations are due.

The bill requires a county or municipality that adopts a septic system evaluation and assessment program to notify the Secretary of Environmental Protection, the DOH and the requisite county health department. Once the DEP receives notice a county or municipality has adopted an evaluation program, it must, within existing resources, notify the county or municipality of the potential availability of Clean Water Act or Clean Water State Revolving Fund funds. If a county or municipality requests, the DEP must, within existing resources, provide guidance in the application process to access the abovementioned funding sources and provide advice and technical assistance on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving

Fund. The DEP is not required to provide any money to fund such programs. The bill specifically prohibits the DOH from adopting any rule that alters the provisions contained in the bill.

The bill specifies that it does not derogate or limit county and municipal home rule authority to act outside the scope of the evaluation program created in this bill. The bill clarifies it does not repeal or affect any other law relating to the subject matter of this section. It does not prohibit a county or municipality that has adopted an evaluation program pursuant to this section from:

- Enforcing existing ordinances or adopting new ordinances if such ordinances do not repeal, suspend or alter the requirements or limitations of this section; or
- Exercising its independent and existing authority to use and meet the requirements of s. 381.00655, F.S. (relating to connection to central sewer systems).

Section 26 repeals s. 381.00656, F.S., related to a low-income grant program to assist residents with costs associated from a septic system evaluation program and any necessary repairs or replacements.

Section 27 amends s. 381.0066, F.S., related to septic system fees. The bill deletes the existing fees for the 5-year evaluation report. The bill also reduces the annual operating permit fee for waterless, incinerating or organic waste composting toilets from not less than $50 to not less than $15 and from not more than $150 to not more than $30.

The bill repeals an obsolete provision related to setting a revenue neutral fee schedule for a state-wide septic system inspection program.

Section 28 amends s. 381.0068, F.S., and s. 381.0068(2), F.S., related to technical review and advisory panel, by deleting an obsolete date and redundant language.

Section 29 amends s. 381.00781, F.S., by deleting subsection (2), removing language that gives the DOH the authority to annually adjust the maximum fees authorized under subsection (1) according to the rate of inflation deflation as indicated by the Consumer Price Index.

Section 30 amends s. 381.0098, F.S., by removing the legislative intent language related to biomedical waste program.

Section 31 amends s. 381.0101, F.S., related to environmental health professionals. It deletes legislative intent language in subsection (1) and changes the Division Director of Environmental Health to the Division Director of Emergency Preparedness and Community Support.

Section 32 amends s. 381.0203, F.S., related to pharmacy services. It deletes subsection (1)(b), which established that the Pharmacy Services program regulated drugs, cosmetics, and household products, pursuant to ch. 499, F.S. It also deletes subsection (2)(d), which required the implementation of a contraception distribution program, to the extent resources permit, through the licensed pharmacies of county health departments and established eligibility requirements for participation in the program, the fees to be charged, and the DOH's rulemaking authority to administer the program.

Section 33 amends s. 381.0261(1), F.S., to transfer responsibility to the DOH from AHCA to publish, on its internet web site, a summary of the Florida Patients' Bill of Rights and Responsibilities.

Section 34 repeals s. 381.0301, F.S., related to education and resource development.

Section 35 repeals s. 381.0302, F.S., Florida Health Services Corps, a long dormant and unfunded program.

Section 36 amends s. 381.0303(5), F.S., related to the Special Needs Shelter Interagency Committee, by deleting language requiring the committee to submit recommendations to the legislature as necessary.

Section 37 repeals s. 381.04015, F.S., related to the designation of an Officer of Women's Health Strategy.

Section 38 amends s. 381.0403, F.S., related to the Community Hospital Education Act.

Subsection (2)(a) has been amended to delete legislative intent language stipulating that health care services for the citizens of this state be upgraded, and that a program for continuing these services be maintained for community medical education. It amends the remaining legislative intent language to require a program be established for community medical education, increase the supply of highly trained physicians, and expand graduate medical education.

This section also deletes subsection (2)(b), which established that the legislature acknowledges the critical need for increased numbers of primary care physicians, supports an expansion in the number of family practice residency positions, and intends that the funding for graduate education in family practice be maintained and that funding for all primary care specialties be provided at a minimum of $10,000 per resident per year.

This section also amends subsection (3)(a), (3)(b), and (3)(c) to make technical changes deleting obsolete language, as well as removing the authority of the Community Hospital Education Council to approve new program participants.

Section 39 amends s. 381.0405, F.S., related to the Office of Rural Health, to delete subsection (7), requiring the legislature to appropriate funds as are necessary to support the Office of Rural Health.

Section 40 amends s. 381.0406, F.S., related to rural health networks, to remove unnecessary language.

Section 41 repeals s. 381.045, F.S., related to hepatitis B or HIV carriers, which authorized the DOH to establish procedures to handle, counsel, and provide other services to health care professionals infected with hepatitis B or HIV.

Section 42 amends s. 381.06015, F.S., related to Public Cord Blood Tissue Bank, to repeal subsection (7), which required AHCA and the DOH to seek private or federal funds to initiate program actions for fiscal year 2000-2001.

Section 43 repeals s. 381.0605, F.S., relating to an AHCA survey of state hospital facilities that does not pertain to the DOH.

Section 44 repeals s. 381.102, F.S., related to community health pilot projects, which establishes community health pilot projects in order to promote disease prevention and health promotion among low-income persons living in urban and rural communities.

Section 45 repeals s. 381.103, F.S., related to community health pilot projects, which establishes the duties of the DOH, to the extent feasible, for the purpose of supporting community health pilot projects established in s. 381.102, F.S.

Section 46 amends s. 381.4018, F.S., to delete legislative intent language related to Physician Workforce Assessment and Development.

Section 47 repeals s. 381.60225, F.S., related to background screening, which does not pertain to the DOH.

Section 48 deletes s. 381.7352(1), F.S., removing legislative findings language with regard to the Office of Minority Health.

Section 49 deletes s. 381.7353(3), F.S., which authorized the State Surgeon General to appoint an ad hoc advisory committee to examine areas where public awareness, public education, research, and coordination regarding racial and ethnic health outcome disparities are lacking; consider access and transportation issues which contribute to health access disparities; and make recommendations for closing gaps in health outcomes and increasing the public's awareness of health outcome disparities that exist between racial and ethnic populations.

Section 50 deletes s. 381.7356(4), F.S., relating to dissemination of grant awards that begin no later than January 1, 2001.

Section 51 deletes s. 381.765(3), F.S., which granted the DOH the authority to adopt rules relating to records and recordkeeping for the DOH-owned property.

Section 52 repeals s. 381.77, F.S., relating to nursing home residents 55 and under.

Section 53 repeals s. 381.795, F.S., related to long-term community-based supports for individuals who have sustained traumatic brain or spinal cord injuries, and who may be subject to inappropriate residential and institutional placement as a direct result of such injuries.

Section 54 deletes s. 381.853(1), F.S., legislative findings related to Florida Center for Brain Tumor Research.

Section 55 repeals s. 381.855, F.S., related to the Florida Center for Universal Research to Eradicate Disease (FLCURED). This repeal eliminates the center, the center's goal, purpose, responsibilities and advisory council.

Section 56 repeals s. 381.87, F.S., related to the Osteoporosis Prevention and Education Program. This section directs the DOH to establish, promote, and maintain an osteoporosis prevention and education program to promote public awareness of the causes of osteoporosis, options for prevention, value of early detection, and possible treatments, including the benefits and risks of those treatments.

Section 57 amends s. 381.895, F.S., to delete old provisions relating to the regulation of compressed air replace them with standards for certification, posting and compressed air for persons selling compressed air for recreational sport diving. Also, this section grants the DOH rulemaking authority and provides for penalties.

Section 58 repeals s. 381.90, F.S., related to the Health Information Systems Council, established in 1997 to facilitate the identification, collection, standardization, sharing, and coordination of health-related data.

Section 59 deletes s. 381.91(1)(a), F.S., related to the Jessie Trice Cancer Prevention Program, to remove legislative intent language to reduce the rates of illness and death from lung cancer and other cancers, and improve the quality of life among low-income African-American and Hispanic populations through increased access to early effective screening and diagnosis, education, and treatment programs.

Section 60 amends s. 381.922(5), F.S., related to the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program, eliminating language allowing up to $250,000 to be provided for the operating costs of FLCURED.

Sections 61 – 64 address tuberculosis control. The bill removes the authority for the DOH to operate a TB hospital, effective January 1, 2013. The bill authorizes the DOH to contract for the operation of a treatment program for persons with active TB. The contractor must use existing licensed community hospitals and other facilities for the care and treatment to cure of persons with active TB and a history of non-compliance with prescribed drug regimens.

The bill requires the DOH to develop and implement a transition plan for the closure of AG Holley. The plan must include specific steps to end voluntary admissions, transfer patient to alternate facilities, communicate with families, providers, other affected parities, and the general public, enter into necessary contracts with providers, and coordinate with the Department of Management Services regarding the disposition of equipment and supplies and closure of the facility. The plan must be submitted to the Legislature by May 31, 2012 and be fully implanted by January 1, 2013. The bill makes conforming changes to ss. 392.51, 392.61, and 392.62, F.S., to reflect the closure of AG Holley State Hospital.

Section 61 amends s. 392.51, F.S., related to tuberculosis control, effective January 1, 2013. It deletes legislative intent language and creates language to establish a statewide system to control tuberculosis infection, and mitigate its effects. Further, it amends this section to direct that

tuberculosis control services shall be provided by the coordinated efforts of the respective county health departments and contracted or other private health care providers, rather than the A.G. Holley State Hospital (AGH) and the private health care delivery system.

Section 62 amends s. 392.61, F.S., related to community tuberculosis control programs, and eliminates the requirement for the DOH to develop, by rule, a methodology for distributing funds appropriated for TB control programs that considers the basic infrastructure available for TB control, caseload requirements, laboratory support services needed, and epidemiologic factors, effective January 1, 2013.

Section 63 amends s. 392.62, F.S., related to hospitalization and placement programs for persons who have active TB.

Subsection (1) is amended to require that the DOH contract for operation of a program for the treatment of persons who have active TB in hospitals licensed under ch. 395, F.S. Also, it requires that the DOH require the contractor to use existing, licensed community hospitals and other facilities for the care and treatment of persons who have active TB, a history of non-compliance with prescribed drug regimens, and require inpatient or other residential services.

Subsection (2), which authorized the DOH to operate a licensed hospital for the care and treatment, to cure, for persons with active TB, is deleted.

Subsection (3) is amended to delete language referencing a licensed hospital operated by the DOH, and inserts new language specifying that the program for control of TB shall provide funding for participating facilities and requiring the facilities to meet specific conditions.

Subsection (3)(c) is amended to change the requirement that TB facilities provide for a method of paying for the care of patients who cannot afford to do so, requiring the facility to provide for the care of patients in the program regardless of ability to pay.

Subsection (3)(g) is amended to delete the word “all” with regard to patients discharged from the hospital.

Section 64 directs the DOH to develop and implement a transition plan for closure of A.G. Holley State Hospital. The plan shall include specific steps to end voluntary admissions, transfer patients to alternate facilities, communicate with families, providers, other affected parties, and the general public, enter into any necessary contracts with providers, and coordinate with the Department of Management Services regarding the disposition of equipment and supplies and the closure of the facility. The plan shall be submitted to the Governor, the Speaker of the House of Representatives and the President of the Senate by May 31, 2012. This section requires that the DOH fully implement the plan by January 1, 2013.

Section 65 amends s. 395.1027, F.S., to correct cross references.

Section 66 deletes s. 401.243(4), F.S., related to injury prevention and rule adoption by the DOH.

Section 67 deletes s. 401.245(5), F.S., related to emergency medical services advisory council and rule adoption by the DOH.

Section 68 deletes s. 401.271(2), F.S., related to certification of emergency medical technicians and paramedics who are on active duty with the Armed Forces of the United States, and rule adoption by the DOH.

Section 69 repeals s. 402.45, F.S., related to the community resource mother or father program and rule adoption by the DOH.

Section 70 amends 400.914, F.S., to correct cross references.

Section 71 makes a technical amendment to s. 409.256(11)(d), F.S., related to administrative proceedings to establish paternity or paternity and child support; order to appear for genetic testing, to change the name of the Division of Vital Statistics of the DOH to the Bureau of Vital Statistics of the DOH.

Section 72 repeals s. 458.346, F.S., related to the Public Sector Physicians Advisory Committee.

Section 73 deletes s. 462.19(2), F.S., related to naturopathic physicians, to repeal rulemaking authority for the DOH for biennial renewal of license.

Section 74 repeals s. 464.0197, F.S., legislative findings related to the Florida Center for Nursing, as well as the direction that the center be given state budget support for its operations so that it has adequate resources for the tasks assigned by the legislature in s. 464.0195, F.S.

Section 75 deletes s. 464.208(4), F.S., related to rulemaking authority for background screening.

Section 76 amends s. 633.115, F.S., related to Fire and Emergency Incident Information Reporting Program, within the Division of the State Fire Marshall. Subsections (1)(b) and (2)(c) are amended to change the name of Emergency Medical Services to the Bureau of Emergency Preparedness and Response.

Section 77 amends s. 768.28, F.S., to correct cross references.

Sections 78-80 provide for a Type Two transfer of the Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program, and the Nursing Student Loan Forgiveness Trust Fund from the DOH to the Florida Department of Education.

Section 81 requires that the DOH’s MQA develop a plan to improve the efficiency of its functions (reduce the average length of time for a qualified applicant to receive license). Specifically, the plan is required to delineate methods to: reduce the average length of time for a qualified applicant to receive initial and renewal licensure, certification, or registration, by one-third; improve the agenda process for board meetings to increase transparency, timeliness, and usefulness for board decision-making; and improve the cost-effectiveness and efficiency of the joint functions of MQA and the regulatory boards. MQA is required to identify and analyze best practices found within MQA and other state agencies with similar functions, options for

information technology improvements, options for contracting with outside entities, and any other option MQA deems useful. MQA is required to consult with and solicit recommendations from the regulatory boards in developing the plan. MQA is required to prepare and submit the plan to the Governor, Speaker of the House of Representatives, and President of the Senate by November 1, 2012.

Sections 82-86 amend ss. 381.0041, 384.25, 392.56, 456.032, and 775.0877, F.S., to correct cross references.

Section 87 provides an effective date.

Other Potential Implications:

The bill prohibits local ordinances from requiring repairs, modifications or system replacements unless a septic system is found to be failing. Septic system problems that do not rise to the level of a system failure cannot be required to be remedied under an ordinance. The septic system owner will have the option to repair or modify a septic system found to have problems. A county or municipality is preempted from requiring more stringent repair guidelines in its ordinance.

The bill prohibits counties and municipalities from acting outside the requirements and limitations of the bill to address public health and safety or provide for pollution abatement measures for water quality improvements. This prohibition may directly conflict with existing laws to address these issues. In addition, a local county or municipality may be required to take future action to comply with a future determination that an area within its jurisdiction is contributing to violations of water quality standards but may be prohibited from doing so by the provisions in this bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A full fiscal analysis has not been conducted on this bill, however, these are some possible fiscal results which could occur from implementation of the provisions of this bill:

A. Tax/Fee Issues:

The bill reduces the fees for annual operating permits for waterless, incinerating, or organic waste composting toilets from not less than $50 to not less than $15 and from not more than $150 to not more than $30.

B. Private Sector Impact:

Owners of septic systems subject to the evaluation program will have to pay for septic system evaluations, including pump outs, every 5 years. The owners will also be responsible for the cost of required repairs, modifications or replacements of the septic system if it is found to be "failing." Although owners are responsible under current law for repairing failing septic systems, they may be unaware of the failing condition or unwilling or unable to pay for repairs or replacements.

A survey of septic contractors has not been completed to determine costs for inspections; however, anecdotal evidence has demonstrated a cost between $75 and $200, depending on the area of the state.

Current costs for pump outs range as low as $75 to over $300 depending on the size of the tank and local disposal options. Evaluation costs would be set by private contractors. Septic system owners would pay for any necessary remediation, including permit fees. Repair costs will vary from minor repairs to full system replacements and will only be available on a case-by-case basis. Whether or not demand for septic system contractor service increases is dependent on how many counties or municipalities implement inspection programs. Therefore, the impact of supply and demand on pricing trends cannot be determined at this time.

Therefore, adding in all potential costs not including repairs or replacements required under current law or the local administrative fee, a septic system owner can expect to pay between $150 and $500 every 5 years. It should be noted that in June 2010, the DOH and the Revenue Estimating Conference settled on a $50 fee per inspection report to cover programmatic costs of implementing a state-wide program.

The DOH estimates a cost savings to the public of $2,500 to $7,500 per system through preventive maintenance, thus eliminating the need for costly repairs associated with neglected, failing or improperly functioning systems.

C. Government Sector Impact:

The cost to counties or municipalities adopting evaluation programs is indeterminate as it depends on how large an area is covered by the evaluation program and how many septic

systems are included.[107] Counties or municipalities with first magnitude springs will be required to expend funds to implement the provisions of this bill unless they opt out.

The DOH may incur costs associated with reprogramming the environmental health database to support the information reported by contractors and to be used by county health departments to notify owners when system evaluations are due. The DOH is in the process of determining whether there is a fiscal impact associated with reprogramming the database.

The DEP is required to take certain actions if and when it is notified of an ordinance that implements a local septic system evaluation program but only within existing resources.

Eventual closure of the A.G. Holley State Hospital will make possible the sale of public land upon which it is sited.

Additional savings in operating, maintenance, and repair costs will occur from the closure of the A.G. Holley State Hospital.

There may be some savings as a result of repealing duplicative and unnecessary programs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[107] There are 19 counties with first magnitude springs: Alachua, Bay, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Madison, Marion, Suwannee, Volusia and Wakulla.

PROPOSED COMMITTEE SUBSTITUTE

661060

HR.HR.03324

Proposed Committee Substitute by the Committee on Health Regulation

A bill to be entitled

An act relating to the Department of Health; amending s. 20.43, F.S.; revising the purpose of the department; revising duties of the State Surgeon General; eliminating the Officer of Women's Health Strategy; revising divisions within the department; amending s. 20.435, F.S.; eliminating the Florida Drug, Device, and Cosmetic Trust Fund and the Nursing Student Loan Forgiveness Trust Fund as trust funds under the department; amending s. 215.5602, F.S.; conforming references; repealing s. 381.0013, F.S., relating to the department's authority to exercise the power of eminent domain; repealing s. 381.0015, F.S., relating to judicial presumptions regarding the department's authority to enforce public health rules; amending s. 381.0016, F.S.; allowing a county to enact health regulations and ordinances consistent with state law; repealing s. 381.0017, F.S., relating to the purchase, lease, and sale of real property by the department; repealing s. 381.00325, F.S., relating to the Hepatitis A awareness program; amending s. 381.0034, F.S.; deleting an obsolete qualifying date reference; repealing s. 381.0037, F.S., relating to legislative findings and intent with respect to AIDS; amending s. 381.004, F.S.; deleting legislative intent; conforming cross-references; amending 381.0046, F.S.; requiring the department to establish

661060

HR.HR.03324

28 dedicated HIV and AIDS regional and statewide minority
29 coordinators; deleting the requirement that the
30 statewide director report to the chief of the Bureau
31 of HIV and AIDS within the department; amending s.
32 381.005, F.S.; deleting the requirement that hospitals
33 implement a plan to offer immunizations for
34 pneumococcal bacteria and influenza virus to all
35 patients 65 years of age or older; amending s.
36 381.0051, F.S.; deleting legislative intent for the
37 Comprehensive Family Planning Act; amending s.
38 381.0052, F.S., relating to the "Public Health Dental
39 Program Act"; repealing unused department rulemaking
40 authority; amending s. 381.0053, F.S., relating to the
41 comprehensive nutrition program; repealing unused
42 department rulemaking authority; amending s. 381.0056,
43 F.S., relating to the "School Health Services Act";
44 deleting legislative findings; deleting the
45 requirement that school health programs funded by
46 health care districts or entities be supplementary to
47 and consistent with the act and other applicable
48 statutes; amending s. 381.0057, F.S., relating to
49 funding for school health services; deleting
50 legislative intent; amending s. 381.00591, F.S.;
51 permitting the department to apply for and become a
52 National Environmental Laboratory Accreditation
53 Program accreditation body; eliminating rulemaking
54 authority of the department to implement standards of
55 the National Environmental Laboratory Accreditation
56 Program; amending s. 381.00593, F.S.; repealing unused

661060

HR.HR.03324

57 rulemaking authority relating to the public school
58 volunteer health care practitioner program; amending
59 s. 381.0062, F.S., relating to the "Comprehensive
60 Family Planning Act"; deleting legislative intent;
61 amending s. 381.0065, F.S.; deleting legislative
62 intent; defining the term "bedroom"; conforming cross-
63 references; providing for any permit issued and
64 approved by the Department of Health for the
65 installation, modification, or repair of an onsite
66 sewage treatment and disposal system to transfer with
67 the title of the property; providing circumstances in
68 which an onsite sewage treatment and disposal system
69 is not considered abandoned; providing for the
70 validity of an onsite sewage treatment and disposal
71 system permit if rules change before final approval of
72 the constructed system, under certain conditions;
73 providing that a system modification, replacement, or
74 upgrade is not required unless a bedroom is added to a
75 single-family home; deleting provisions requiring the
76 department to administer an evaluation and assessment
77 program of onsite sewage treatment and disposal
78 systems and requiring property owners to have such
79 systems evaluated at least once every 5 years;
80 deleting obsolete provisions; creating s. 381.00651,
81 F.S.; requiring a county or municipality containing a
82 first magnitude spring to adopt by ordinance, under
83 certain circumstances, the program for the periodic
84 evaluation and assessment of onsite sewage treatment
85 and disposal systems; requiring the county or

661060

HR.HR.03324

86 municipality to notify the Secretary of State of the
87 ordinance; authorizing a county or municipality, in
88 specified circumstances, to opt out by a majority plus
89 one vote of certain requirements by a specified date;
90 authorizing a county or municipality to adopt or
91 repeal, after a specified date, an ordinance creating
92 an evaluation and assessment program, subject to
93 notification of the Secretary of State; providing
94 criteria for evaluations, qualified contractors, and
95 repair of systems; providing for certain procedures
96 and exemptions in special circumstances; defining the
97 term “system failure”; requiring that certain
98 procedures be used for conducting tank and drainfield
99 evaluations; providing for certain procedures in
100 special circumstances; providing for contractor
101 immunity from liability under certain conditions;
102 providing for assessment procedures; providing
103 requirements for county health departments; requiring
104 the Department of Health to allow county health
105 departments and qualified contractors to access the
106 state database to track data and evaluation reports;
107 requiring counties and municipalities to notify the
108 Secretary of Environmental Protection and the
109 Department of Health when an evaluation program
110 ordinance is adopted; requiring the Department of
111 Environmental Protection to notify those counties or
112 municipalities of the use of, and access to, certain
113 state and federal program funds and to provide certain
114 guidance and technical assistance upon request;

661060

HR.HR.03324

115 prohibiting the adoption of certain rules by the
116 Department of Health; providing for applicability;
117 repealing s. 381.00656, F.S., relating to a grant
118 program for the repair of onsite sewage treatment and
119 disposal systems; amending s. 381.0066, F.S.; lowering
120 the fees imposed by the department for certain
121 permits; conforming cross-references; amending s.
122 381.0068, F.S.; deleting a date by which a technical
123 review and advisory panel must be established within
124 the department for assistance with rule adoption;
125 deleting the authority of the chair of the panel to
126 advise affected persons or the Legislature of the
127 panel's position on legislation, proposed state
128 policy, or other issue; amending s. 381.00781, F.S.;
129 eliminating authority of the department to annually
130 adjust maximum fees according to the Consumer Price
131 Index; amending s. 381.0098, F.S.; deleting
132 legislative intent with respect to standards for the
133 safe packaging, transport, storage, treatment, and
134 disposal of biomedical waste; amending s. 381.0101,
135 F.S.; deleting legislative intent regarding
136 certification of environmental health professionals;
137 conforming a cross-reference; amending s. 381.0203,
138 F.S.; eliminating the regulation of drugs, cosmetics,
139 and household products under ch. 499, F.S., from the
140 pharmacy services program; eliminating the
141 contraception distribution program at county health
142 departments; amending s. 381.0261, F.S.; requiring the
143 department, rather than the Agency for Health Care

661060

HR.HR.03324

144 Administration, to publish a summary of the Florida
145 Patient's Bill of Rights and Responsibilities on its
146 Internet website; deleting the requirement to print
147 and distribute the summary; repealing s. 381.0301,
148 F.S. relating to the Centers for Disease Control and
149 Prevention, the State University System, Florida
150 medical schools, and the College of Public Health of
151 the University of South Florida; deleting the
152 requirement that the College of Public Health be
153 consulted by state officials in the management of
154 public health; repealing s. 381.0302, F.S.;
155 eliminating the Florida Health Services Corps;
156 amending s. 381.0303, F.S.; eliminating the
157 requirement that the Special Needs Shelter Interagency
158 Committee submit recommendations to the Legislature;
159 repealing s. 381.04015, F.S.; eliminating the Women's
160 Health Strategy Office and Officer of Women's Health
161 Strategy; amending s. 381.0403, F.S., relating to the
162 "Community Hospital Education Act"; deleting
163 legislative findings and intent; revising the mission
164 of the program; requiring minimum funding for graduate
165 education in family practice; deleting reference to an
166 intent to establish a statewide graduate medical
167 education program; amending s. 381.0405, F.S.;
168 deleting an appropriation to the Office of Rural
169 Health; amending s. 381.0406, F.S.; deleting
170 unnecessary introductory language in provisions
171 relating to rural health networks; repealing s.
172 381.045, F.S.; eliminating department authority to

661060

HR.HR.03324

173 provide services to certain health care providers
174 infected with Hepatitis B or HIV; amending s.
175 381.06015, F.S.; deleting obsolete provision that
176 requires the department, the Agency for Health Care
177 Administration, and private consortium members seeking
178 private or federal funds to initiate certain program
179 actions relating to the Public Cord Blood Tissue Bank;
180 repealing s. 381.0605, F.S., relating to designating
181 the Agency for Health Care Administration as the state
182 agency to administer the Federal Hospital and Medical
183 Facilities Amendments of 1964; eliminating authority
184 of the Governor to provide for administration of the
185 amendments; repealing s. 381.102, F.S., to eliminate
186 the community health pilot projects; repealing s.
187 381.103, F.S., to eliminate the duties of the
188 department to assist the community health pilot
189 projects; amending s. 381.4018, F.S.; deleting
190 legislative findings and intent with respect to
191 physician workforce assessment and development;
192 conforming a cross-reference: repealing s. 381.60225,
193 F.S., to eliminate background screening requirements
194 for health care professionals and owners, operators,
195 and employees of certain health care providers,
196 services, and programs; amending s. 381.7352, F.S.;
197 deleting legislative findings relating to the
198 “Reducing Racial and Ethnic Health Disparities:
199 Closing the Gap Act”; amending s. 381.7353, F.S.;
200 removing the authority of the State Surgeon General to
201 appoint an ad hoc committee to study certain aspects

661060

HR.HR.03324

202 of racial and ethnic health outcome disparities and
203 make recommendations; amending s. 381.7356, F.S.;
204 deleting a provision requiring dissemination of
205 Closing the Gap grant awards to begin on a date
206 certain; amending s. 381.765, F.S.; repealing unused
207 rulemaking authority relating to records and
208 recordkeeping for department-owned property; repealing
209 s. 381.77, F.S., to eliminate the annual survey of
210 nursing home residents age 55 and under; repealing s.
211 381.795, F.S., to eliminate the requirement that the
212 department establish a program of long-term community-
213 based supports and services for individuals with
214 traumatic brain or spinal cord injuries; amending s.
215 381.853, F.S.; repealing s. 381.855, F.S., which
216 established the Florida Center for Universal Research
217 to Eradicate Disease; deleting legislative findings
218 relating to brain tumor research; repealing s. 381.87,
219 F.S., to eliminate the osteoporosis prevention and
220 education program; repealing s. 381.90, F.S., to
221 eliminate the Health Information Systems Council;
222 amending s. 381.91, F.S., relating to the Jesse Trice
223 Cancer Program; revising legislative intent; amending
224 s. 392.51, F.S., relating to tuberculosis control;
225 removing legislative findings and intent; amending s.
226 392.61, F.S.; eliminating the requirement that the
227 department develop a methodology for distributing
228 funds appropriated for community tuberculosis control
229 programs; amending s. 392.62, F.S.; requiring a
230 contractor to use licensed community hospitals and

661060

HR.HR.03324

231 other facilities for the care and treatment of persons
232 who have active tuberculosis or a history of
233 noncompliance with prescribed drug regimens and
234 require inpatient or other residential services;
235 removing authority of the department to operate a
236 licensed hospital to treat tuberculosis patients;
237 requiring the tuberculosis control program to fund
238 participating facilities; requiring facilities to meet
239 specific conditions; requiring the department to
240 develop a transition plan for the closure of A.G.
241 Holley State Hospital; specifying content of
242 transition plan; requiring submission of the plan to
243 the Governor and Legislature; requiring full
244 implementation of the transition plan by a certain
245 date; amending s. 395.1027, F.S.; making conforming
246 changes; amending s. 401.243, F.S.; repealing unused
247 rulemaking authority governing the implementation of
248 injury-prevention grant programs; amending s. 401.245,
249 F.S.; repealing unused rulemaking authority relating
250 to operating procedures for the Emergency Medical
251 Services Advisory Council; amending s. 401.271, F.S.;
252 repealing unused rulemaking authority relating to an
253 exemption for the spouse of a member of the Armed
254 Forces of the United States on active duty from
255 certification renewal provisions while the spouse is
256 absent from the state because of the member’s active
257 duty with the Armed Forces; repealing s. 402.45, F.S.;
258 relating to the community resource mother or father
259 program; amending ss. 400.914 and 409.256, F.S.;

661060

HR.HR.03324

260 conforming references; repealing s. 458.346, F.S.,
261 which created the Public Sector Physician Advisory
262 Committee and established its responsibilities;
263 amending s. 462.19, F.S., relating to the renewal of
264 licenses for practitioners of naturopathy; repealing
265 unused rulemaking authority; repealing s. 464.0197,
266 F.S., relating to state budget support for the Florida
267 Center for Nursing; amending s. 464.208, F.S.;
268 repealing unused rulemaking authority relating to
269 background screening information of certified nursing
270 assistants; amending s. 633.115, F.S.; making
271 conforming changes; amending s. 768.28, F.S.; making
272 conforming changes; amending s. 1009.66, F.S.;
273 reassigning responsibility for the Nursing Student
274 Loan Forgiveness Program from the Department of Health
275 to the Department of Education; amending s. 1009.67,
276 F.S.; reassigning responsibility for the nursing
277 scholarship program from the Department of Health to
278 the Department of Education; providing type two
279 transfers of the programs; providing for transfer of a
280 trust fund; providing applicability to contracts;
281 authorizing transfer of funds and positions between
282 departments; requiring the Division of Medical Quality
283 and Assurance to create a plan to improve efficiency
284 of the function of the division; directing the
285 division to take certain actions in creating the plan;
286 directing the division to address particular topics in
287 the plan; requiring all executive branch agencies to
288 assist the department in creating the plan; requesting

289 all other state agencies to assist the department in
290 creating the plan; amending ss. 381.0041, 384.25,
291 392.56, 456.032, and 775.0877, F.S.; conforming cross-
292 references; providing effective dates.
293
294 Be It Enacted by the Legislature of the State of Florida:
295
296 Section 1. Subsections (1), (2), and (3) of section 20.43,
297 Florida Statutes, are amended to read:
298 20.43 Department of Health.—There is created a Department
299 of Health.
300 (1) The purpose of the Department of Health is to protect
301 and promote ~~and protect~~ the health of all residents and visitors
302 in the state through organized state and community efforts,
303 including cooperative agreements with counties. The department
304 shall:
305 (a) Identify, diagnose, and conduct surveillance of
306 diseases and health conditions in the state and accumulate the
307 health statistics necessary to establish trends ~~Prevent to the~~
308 ~~fullest extent possible, the occurrence and progression of~~
309 ~~communicable and noncommunicable diseases and disabilities~~.
310 (b) Implement interventions that prevent or limit the
311 impact or spread of diseases and health conditions ~~Maintain a~~
312 ~~constant surveillance of disease occurrence and accumulate~~
313 ~~health statistics necessary to establish disease trends and to~~
314 ~~design health programs~~.
315 (c) Collect, manage, and analyze vital statistics and other
316 health data to inform the public and formulate public health
317 policy and planning ~~Conduct special studies of the causes of~~

~~diseases and formulate preventive strategies~~.

(d) Maintain and coordinate preparedness for and responses to public health emergencies in the state ~~Promote the maintenance and improvement of the environment as it affects public health~~.

(e) Provide or ensure the provision of quality health care and related services to identified populations in the state ~~Promote the maintenance and improvement of health in the residents of the state~~.

(f) Regulate environmental activities that have a direct impact on public health in the state ~~Provide leadership, in cooperation with the public and private sectors, in establishing statewide and community public health delivery systems~~.

(g) Regulate health practitioners for the preservation of the health, safety, and welfare of the public ~~Provide health care and early intervention services to infants, toddlers, children, adolescents, and high-risk perinatal patients who are at risk for disabling conditions or have chronic illnesses~~.

(h) Provide services to abused and neglected children through child protection teams and sexual abuse treatment programs.

~~(i) Develop working associations with all agencies and organizations involved and interested in health and health care delivery.~~

~~(j) Analyze trends in the evolution of health systems, and identify and promote the use of innovative, cost-effective health delivery systems.~~

~~(k) Serve as the statewide repository of all aggregate data accumulated by state agencies related to health care; analyze~~

347 ~~that data and issue periodic reports and policy statements, as~~
348 ~~appropriate; require that all aggregated data be kept in a~~
349 ~~manner that promotes easy utilization by the public, state~~
350 ~~agencies, and all other interested parties; provide technical~~
351 ~~assistance as required; and work cooperatively with the state's~~
352 ~~higher education programs to promote further study and analysis~~
353 ~~of health care systems and health care outcomes.~~
354 ~~(l) Include in the department's strategic plan developed~~
355 ~~under s. 186.021 an assessment of current health programs,~~
356 ~~systems, and costs; projections of future problems and~~
357 ~~opportunities; and recommended changes that are needed in the~~
358 ~~health care system to improve the public health.~~
359 ~~(m) Regulate health practitioners, to the extent authorized~~
360 ~~by the Legislature, as necessary for the preservation of the~~
361 ~~health, safety, and welfare of the public.~~
362 (2)~~(a)~~ The head of the Department of Health is the State
363 Surgeon General and State Health Officer. The State Surgeon
364 General must be a physician licensed under chapter 458 or
365 chapter 459 who has advanced training or extensive experience in
366 public health administration. The State Surgeon General is
367 appointed by the Governor subject to confirmation by the Senate.
368 The State Surgeon General serves at the pleasure of the
369 Governor. ~~The State Surgeon General shall serve as the leading~~
370 ~~voice on wellness and disease prevention efforts, including the~~
371 ~~promotion of healthful lifestyles, immunization practices,~~
372 ~~health literacy, and the assessment and promotion of the~~
373 ~~physician and health care workforce in order to meet the health~~
374 ~~care needs of the state. The State Surgeon General shall focus~~
375 ~~on advocating healthy lifestyles, developing public health~~

376 ~~policy, and building collaborative partnerships with schools,~~
377 ~~businesses, health care practitioners, community-based~~
378 ~~organizations, and public and private institutions in order to~~
379 ~~promote health literacy and optimum quality of life for all~~
380 ~~Floridians.~~
381 ~~(b) The Officer of Women's Health Strategy is established~~
382 ~~within the Department of Health and shall report directly to the~~
383 ~~State Surgeon General.~~
384 (3) The following divisions of the Department of Health are
385 established:
386 (a) Division of Administration.
387 (b) Division of Emergency Preparedness and Community
388 Support ~~Environmental Health~~.
389 (c) Division of Disease Control and Health Protection.
390 (d) Division of Community Health Promotion ~~Family Health~~
391 ~~Services~~.
392 (e) Division of Children's Medical Services ~~Network~~.
393 (f) Division of Public Health Statistics and Performance
394 Management ~~Emergency Medical Operations~~.
395 (g) Division of Medical Quality Assurance, which is
396 responsible for the following boards and professions established
397 within the division:
398 1. The Board of Acupuncture, created under chapter 457.
399 2. The Board of Medicine, created under chapter 458.
400 3. The Board of Osteopathic Medicine, created under chapter
401 459.
402 4. The Board of Chiropractic Medicine, created under
403 chapter 460.
404 5. The Board of Podiatric Medicine, created under chapter

661060

HR.HR.03324

405 461.
406 6. Naturopathy, as provided under chapter 462.
407 7. The Board of Optometry, created under chapter 463.
408 8. The Board of Nursing, created under part I of chapter
409 464.
410 9. Nursing assistants, as provided under part II of chapter
411 464.
412 10. The Board of Pharmacy, created under chapter 465.
413 11. The Board of Dentistry, created under chapter 466.
414 12. Midwifery, as provided under chapter 467.
415 13. The Board of Speech-Language Pathology and Audiology,
416 created under part I of chapter 468.
417 14. The Board of Nursing Home Administrators, created under
418 part II of chapter 468.
419 15. The Board of Occupational Therapy, created under part
420 III of chapter 468.
421 16. Respiratory therapy, as provided under part V of
422 chapter 468.
423 17. Dietetics and nutrition practice, as provided under
424 part X of chapter 468.
425 18. The Board of Athletic Training, created under part XIII
426 of chapter 468.
427 19. The Board of Orthotists and Prosthetists, created under
428 part XIV of chapter 468.
429 20. Electrolysis, as provided under chapter 478.
430 21. The Board of Massage Therapy, created under chapter
431 480.
432 22. The Board of Clinical Laboratory Personnel, created
433 under part III of chapter 483.

661060

HR.HR.03324

434 23. Medical physicists, as provided under part IV of
435 chapter 483.
436 24. The Board of Opticianry, created under part I of
437 chapter 484.
438 25. The Board of Hearing Aid Specialists, created under
439 part II of chapter 484.
440 26. The Board of Physical Therapy Practice, created under
441 chapter 486.
442 27. The Board of Psychology, created under chapter 490.
443 28. School psychologists, as provided under chapter 490.
444 29. The Board of Clinical Social Work, Marriage and Family
445 Therapy, and Mental Health Counseling, created under chapter
446 491.
447 30. Emergency medical technicians and paramedics, as
448 provided under part III of chapter 401.
449 ~~(h) Division of Children's Medical Services Prevention and~~
450 ~~Intervention.~~
451 ~~(i) Division of Information Technology.~~
452 ~~(j) Division of Health Access and Tobacco.~~
453 (h)~~(k)~~ Division of Disability Determinations.
454 Section 2. Subsections (14) through (22) of section 20.435,
455 Florida Statutes, are renumbered as subsection (13) through
456 (20), respectively, and present subsections (13) and (17) of
457 that section are amended to read:
458 20.435 Department of Health; trust funds.—The following
459 trust funds shall be administered by the Department of Health:
460 ~~(13) Florida Drug, Device, and Cosmetic Trust Fund.~~
461 ~~(a) Funds to be credited to and uses of the trust fund~~
462 ~~shall be administered in accordance with the provisions of~~

661060

HR.HR.03324

463 ~~chapter 499.~~
464 ~~(b) Notwithstanding the provisions of s. 216.301 and~~
465 ~~pursuant to s. 216.351, any balance in the trust fund at the end~~
466 ~~of any fiscal year shall remain in the trust fund at the end of~~
467 ~~the year and shall be available for carrying out the purposes of~~
468 ~~the trust fund.~~
469 ~~(17) Nursing Student Loan Forgiveness Trust Fund.~~
470 ~~(a) Funds to be credited to and uses of the trust fund~~
471 ~~shall be administered in accordance with the provisions of s.~~
472 ~~1009.66.~~
473 ~~(b) Notwithstanding the provisions of s. 216.301 and~~
474 ~~pursuant to s. 216.351, any balance in the trust fund at the end~~
475 ~~of any fiscal year shall remain in the trust fund at the end of~~
476 ~~the year and shall be available for carrying out the purposes of~~
477 ~~the trust fund.~~
478 Section 3. Subsections (10) and (12) of section 215.5602,
479 Florida Statutes, are amended to read:
480 215.5602 James and Esther King Biomedical Research
481 Program.—
482 (10) The council shall submit an annual progress report on
483 the state of biomedical research in this state to ~~the Florida~~
484 ~~Center for Universal Research to Eradicate Disease and to~~ the
485 Governor, the State Surgeon General, the President of the
486 Senate, and the Speaker of the House of Representatives by
487 February 1. The report must include:
488 (a) A list of research projects supported by grants or
489 fellowships awarded under the program.
490 (b) A list of recipients of program grants or fellowships.
491 (c) A list of publications in peer reviewed journals

661060

HR.HR.03324

492 involving research supported by grants or fellowships awarded
493 under the program.
494 (d) The total amount of biomedical research funding
495 currently flowing into the state.
496 (e) New grants for biomedical research which were funded
497 based on research supported by grants or fellowships awarded
498 under the program.
499 (f) Progress in the prevention, diagnosis, treatment, and
500 cure of diseases related to tobacco use, including cancer,
501 cardiovascular disease, stroke, and pulmonary disease.
502 (12) ~~From funds appropriated to accomplish the goals of~~
503 ~~this section, up to $250,000 shall be available for the~~
504 ~~operating costs of the Florida Center for Universal Research to~~
505 ~~Eradicate Disease.~~ Beginning in the 2011-2012 fiscal year and
506 thereafter, $25 million from the revenue deposited into the
507 Health Care Trust Fund pursuant to ss. 210.011(9) and 210.276(7)
508 shall be reserved for research of tobacco-related or cancer-
509 related illnesses. Of the revenue deposited in the Health Care
510 Trust Fund pursuant to this section, $25 million shall be
511 transferred to the Biomedical Research Trust Fund within the
512 Department of Health. Subject to annual appropriations in the
513 General Appropriations Act, $5 million shall be appropriated to
514 the James and Esther King Biomedical Research Program, $5
515 million shall be appropriated to the William G. “Bill” Bankhead,
516 Jr., and David Coley Cancer Research Program created under s.
517 381.922, $5 million shall be appropriated to the H. Lee Moffitt
518 Cancer Center and Research Institute established under s.
519 1004.43, $5 million shall be appropriated to the Sylvester
520 Comprehensive Cancer Center of the University of Miami, and $5

521 million shall be appropriated to the ~~University of Florida~~
522 Shands Cancer Hospital ~~Center~~.
523 Section 4. Section 381.001, Florida Statutes, is amended to
524 read:
525 381.001 ~~Legislative intent;~~ Public health system.—
526 ~~(1) It is the intent of the Legislature that~~ The Department
527 of Health is ~~be~~ responsible for the state's public health system
528 which shall be designed to promote, protect, and improve the
529 health of all people in the state. ~~The mission of the state's~~
530 ~~public health system is to foster the conditions in which people~~
531 ~~can be healthy, by assessing state and community health needs~~
532 ~~and priorities through data collection, epidemiologic studies,~~
533 ~~and community participation; by developing comprehensive public~~
534 ~~health policies and objectives aimed at improving the health~~
535 ~~status of people in the state; and by ensuring essential health~~
536 ~~care and an environment which enhances the health of the~~
537 ~~individual and the community.~~ The department shall provide
538 leadership for ~~Legislature recognizes~~ ~~that the state's public~~
539 ~~health system must be founded on~~ an active partnership working
540 toward shared public health goals and involving ~~between~~ federal,
541 state, and local governments and the private sector ~~government~~
542 ~~and between the public and private sectors, and, therefore,~~
543 ~~assessment, policy development, and service provision must be~~
544 ~~shared by all of these entities to achieve its mission~~.
545 ~~(2) It is the intent of the Legislature that the~~
546 ~~department, in carrying out the mission of public health, focus~~
547 ~~attention on identifying, assessing, and controlling the~~
548 ~~presence and spread of communicable diseases; on monitoring and~~
549 ~~regulating factors in the environment which may impair the~~

661060

HR.HR.03324

550 ~~public's health, with particular attention to preventing~~
551 ~~contamination of drinking water, the air people breathe, and the~~
552 ~~food people consume; and ensuring availability of and access to~~
553 ~~preventive and primary health care, including, but not limited~~
554 ~~to, acute and episodic care, prenatal and postpartum care, child~~
555 ~~health, family planning, school health, chronic disease~~
556 ~~prevention, child and adult immunization, dental health,~~
557 ~~nutrition, and health education and promotion services.~~
558 ~~(3) It is, furthermore, the intent of the Legislature that~~
559 ~~the public health system include comprehensive planning, data~~
560 ~~collection, technical support, and health resource development~~
561 ~~functions. These functions include, but are not limited to,~~
562 ~~state laboratory and pharmacy services, the state vital~~
563 ~~statistics system, the Florida Center for Health Information and~~
564 ~~Policy Analysis, emergency medical services coordination and~~
565 ~~support, and recruitment, retention, and development of~~
566 ~~preventive and primary health care professionals and managers.~~
567 (4) ~~It is, furthermore, the intent of the Legislature that~~
568 ~~the department~~ The department shall provide public health
569 services through the 67 county health departments in partnership
570 with county governments, as specified in part I of chapter 154,
571 and in so doing make every attempt possible to solicit the
572 support and involvement of private and not-for-profit health
573 care agencies in fulfilling the public health mission.
574 Section 5. Section 381.0011, Florida Statutes, is amended
575 to read:
576 381.0011 Duties and powers of the Department of Health.—It
577 is the duty of the Department of Health to:
578 (1) Assess the public health status and needs of the state

579 ~~through statewide data collection and other appropriate means,~~
580 ~~with special attention to future needs that may result from~~
581 ~~population growth, technological advancements, new societal~~
582 ~~priorities, or other changes~~.
583 (2) Formulate general policies affecting the public health
584 of the state.
585 (3) Administer and enforce laws and rules relating to
586 sanitation, control of communicable diseases, illnesses and
587 hazards to health among humans and from animals to humans, and
588 the general health of the people of the state.
589 (4) Coordinate with ~~Cooperate with and accept assistance~~
590 ~~from~~ federal, state, and local officials for the prevention and
591 suppression of communicable and other diseases, illnesses,
592 injuries, and hazards to human health.
593 (5) Declare, enforce, modify, and abolish quarantine of
594 persons, animals, and premises as the circumstances indicate for
595 controlling communicable diseases or providing protection from
596 unsafe conditions that pose a threat to public health, except as
597 provided in ss. 384.28 and 392.545-392.60.
598 (a) The department shall adopt rules to specify the
599 conditions and procedures for imposing and releasing a
600 quarantine. The rules must include provisions related to:
601 1. The closure of premises.
602 2. The movement of persons or animals exposed to or
603 infected with a communicable disease.
604 3. The tests or treatment, including vaccination, for
605 communicable disease required prior to employment or admission
606 to the premises or to comply with a quarantine.
607 4. Testing or destruction of animals with or suspected of

608 having a disease transmissible to humans.
609 5. Access by the department to quarantined premises.
610 6. The disinfection of quarantined animals, persons, or
611 premises.
612 7. Methods of quarantine.
613 (b) Any health regulation that restricts travel or trade
614 within the state may not be adopted or enforced in this state
615 except by authority of the department.
616 (6) Provide for a thorough investigation and study of the
617 incidence, causes, modes of propagation and transmission, and
618 means of prevention, control, and cure of diseases, illnesses,
619 and hazards to human health.
620 (7) Provide for the dissemination of information to the
621 public relative to the prevention, control, and cure of
622 diseases, illnesses, and hazards to human health. ~~The department~~
623 ~~shall conduct a workshop before issuing any health alert or~~
624 ~~advisory relating to food-borne illness or communicable disease~~
625 ~~in public lodging or food service establishments in order to~~
626 ~~inform persons, trade associations, and businesses of the risk~~
627 ~~to public health and to seek the input of affected persons,~~
628 ~~trade associations, and businesses on the best methods of~~
629 ~~informing and protecting the public, except in an emergency, in~~
630 ~~which case the workshop must be held within 14 days after the~~
631 ~~issuance of the emergency alert or advisory.~~
632 (8) Act as registrar of vital statistics.
633 ~~(9) Cooperate with and assist federal health officials in~~
634 ~~enforcing public health laws and regulations.~~
635 ~~(10) Cooperate with other departments, local officials, and~~
636 ~~private boards and organizations for the improvement and~~

637 ~~preservation of the public health.~~
638 (9) ~~(11)~~ Maintain a statewide injury-prevention program.
639 (10) ~~(12)~~ Adopt rules pursuant to ss. 120.536(1) and 120.54
640 to implement the provisions of law conferring duties upon it.
641 This subsection does not authorize the department to require a
642 permit or license unless such requirement is specifically
643 provided by law.
644 (11) ~~(13)~~ Manage and coordinate emergency preparedness and
645 disaster response functions to: investigate and control the
646 spread of disease; coordinate the availability and staffing of
647 special needs shelters; support patient evacuation; ensure the
648 safety of food and drugs; provide critical incident stress
649 debriefing; and provide surveillance and control of
650 radiological, chemical, biological, and other environmental
651 hazards.
652 ~~(14) Perform any other duties prescribed by law.~~
653 Section 6. Section 381.0013, Florida Statutes, is repealed.
654 Section 7. Section 381.0015, Florida Statutes, is repealed.
655 Section 8. Section 381.0016, Florida Statutes, is amended
656 to read:
657 381.0016 County and municipal regulations and ordinances.—
658 Any county or municipality may enact, in a manner prescribed by
659 law, health regulations and ordinances not inconsistent with
660 state public health laws and rules adopted by the department.
661 Section 9. Section 381.0017, Florida Statutes, is repealed.
662 Section 10. Section 381.00325, Florida Statutes, is
663 repealed.
664 Section 11. Subsection (1) of section 381.0034, Florida
665 Statutes, is amended to read:

661060

HR.HR.03324

381.0034 Requirement for instruction on HIV and AIDS.—

(1) ~~As of July 1, 1991,~~ The Department of Health shall require each person licensed or certified under chapter 401, chapter 467, part IV of chapter 468, or chapter 483, as a condition of biennial relicensure, to complete an educational course approved by the department on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome. Such course shall include information on current Florida law on acquired immune deficiency syndrome and its impact on testing, confidentiality of test results, and treatment of patients. Each such licensee or certificateholder shall submit confirmation of having completed said course, on a form provided by the department, when submitting fees or application for each biennial renewal.

Section 12. Section 381.0037, Florida Statutes, is repealed.

Section 13. Subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), paragraph (a) of subsection (4), paragraph (d) of subsection (5), paragraph (a) of subsection (6), subsections (7) and (8), paragraph (a) of subsection (9), subsection (10), and paragraph (c) of subsection (11) of section 381.004, Florida Statutes, are amended to read:

381.004 HIV testing.—

~~(1) LEGISLATIVE INTENT.—The Legislature finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus infection can be a valuable tool in protecting the public health. The Legislature finds that despite existing laws, regulations, and professional standards which~~

695 ~~require or promote the informed, voluntary, and confidential use~~
696 ~~of tests designed to reveal human immunodeficiency virus~~
697 ~~infection, many members of the public are deterred from seeking~~
698 ~~such testing because they misunderstand the nature of the test~~
699 ~~or fear that test results will be disclosed without their~~
700 ~~consent. The Legislature finds that the public health will be~~
701 ~~served by facilitating informed, voluntary, and confidential use~~
702 ~~of tests designed to detect human immunodeficiency virus~~
703 ~~infection.~~
704 ~~(2)~~(1) DEFINITIONS.—As used in this section:
705 (a) "HIV test" means a test ordered after July 6, 1988, to
706 determine the presence of the antibody or antigen to human
707 immunodeficiency virus or the presence of human immunodeficiency
708 virus infection.
709 ~~(3)~~(2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
710 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—
711 (a) No person in this state shall order a test designed to
712 identify the human immunodeficiency virus, or its antigen or
713 antibody, without first obtaining the informed consent of the
714 person upon whom the test is being performed, except as
715 specified in paragraph (h). Informed consent shall be preceded
716 by an explanation of the right to confidential treatment of
717 information identifying the subject of the test and the results
718 of the test to the extent provided by law. Information shall
719 also be provided on the fact that a positive HIV test result
720 will be reported to the county health department with sufficient
721 information to identify the test subject and on the availability
722 and location of sites at which anonymous testing is performed.
723 As required in paragraph (3)(c)~~(4)(c)~~, each county health

661060

HR.HR.03324

724 department shall maintain a list of sites at which anonymous
725 testing is performed, including the locations, phone numbers,
726 and hours of operation of the sites. Consent need not be in
727 writing provided there is documentation in the medical record
728 that the test has been explained and the consent has been
729 obtained.
730 ~~(4)~~(3) COUNTY HEALTH DEPARTMENT NETWORK OF VOLUNTARY HUMAN
731 IMMUNODEFICIENCY VIRUS TESTING PROGRAMS.—
732 (a) The Department of Health shall establish a network of
733 voluntary human immunodeficiency virus testing programs in every
734 county in the state. These programs shall be conducted in each
735 health department established under the provisions of part I of
736 chapter 154. Additional programs may be contracted to other
737 private providers to the extent that finances permit and local
738 circumstances dictate.
739 ~~(5)~~(4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
740 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
741 REGISTRATION.—No county health department and no other person in
742 this state shall conduct or hold themselves out to the public as
743 conducting a testing program for acquired immune deficiency
744 syndrome or human immunodeficiency virus status without first
745 registering with the Department of Health, reregistering each
746 year, complying with all other applicable provisions of state
747 law, and meeting the following requirements:
748 (d) The program must meet all the informed consent criteria
749 contained in subsection (2)~~(3)~~.
750 ~~(6)~~(5) PENALTIES.—
751 (a) Any violation of this section by a facility or licensed
752 health care provider shall be a ground for disciplinary action

661060

HR.HR.03324

753 contained in the facility's or professional's respective
754 licensing chapter.
755 ~~(7)~~(6) EXEMPTIONS.—Except as provided in paragraph
756 (3)(d)~~(4)(d)~~ and ss. 627.429 and 641.3007, insurers and others
757 participating in activities related to the insurance application
758 and underwriting process shall be exempt from this section.
759 ~~(8)~~(7) MODEL PROTOCOL FOR COUNSELING AND TESTING FOR HUMAN
760 IMMUNODEFICIENCY VIRUS.—The Department of Health shall develop,
761 by rule, a model protocol consistent with the provisions of this
762 section for counseling and testing persons for the human
763 immunodeficiency virus. The protocol shall include criteria for
764 evaluating a patient's risk for human immunodeficiency virus
765 infection and for offering human immunodeficiency virus testing,
766 on a voluntary basis, as a routine part of primary health care
767 or admission to a health care facility. The Department of Health
768 shall ensure that the protocols developed under this section are
769 made available to health care providers.
770 ~~(9)~~(8) FEES.—
771 (a) Each person or private organization registered as an
772 AIDS or HIV testing site shall pay the department a fee which
773 shall be set by rule of the department.
774 ~~(10)~~(9) RULES.—The Department of Health may adopt rules to
775 implement this section, including definitions of terms,
776 procedures for accessing confidential information, requirements
777 for testing, and requirements for registered testing sites.
778 ~~(11)~~(10) TESTING AS A CONDITION OF TREATMENT OR ADMISSION.—
779 (c) Any violation of this subsection or the rules
780 implementing it shall be punishable as provided in subsection
781 (5)~~(6)~~.

661060

HR.HR.03324

782 Section 14. Subsection (2) of section 381.0046, Florida
783 Statutes, is amended to read:
784 381.0046 Statewide HIV and AIDS prevention campaign.—
785 (2) The Department of Health shall establish dedicated ~~four~~
786 positions within the department for HIV and AIDS regional
787 minority coordinators and ~~one position for~~ a statewide HIV and
788 AIDS minority coordinator. The coordinators shall facilitate
789 statewide efforts to implement and coordinate HIV and AIDS
790 prevention and treatment programs. ~~The statewide coordinator~~
791 ~~shall report directly to the chief of the Bureau of HIV and AIDS~~
792 ~~within the Department of Health.~~
793 Section 15. Subsection (3) of section 381.005, Florida
794 Statutes, is renumbered as subsection (2), and present
795 subsection (2) of that section is amended to read:
796 381.005 Primary and preventive health services.—
797 ~~(2) Between October 1, or earlier if the vaccination is~~
798 ~~available, and February 1 of each year, subject to the~~
799 ~~availability of an adequate supply of the necessary vaccine,~~
800 ~~each hospital licensed pursuant to chapter 395 shall implement a~~
801 ~~program to offer immunizations against the influenza virus and~~
802 ~~pneumococcal bacteria to all patients age 65 or older, in~~
803 ~~accordance with the recommendations of the Advisory Committee on~~
804 ~~Immunization Practices of the United States Centers for Disease~~
805 ~~Control and Prevention and subject to the clinical judgment of~~
806 ~~the responsible practitioner.~~
807 Section 16. Subsections (3) through (7) of section
808 381.0051, Florida Statutes, are renumbered as subsections (2)
809 through (6), respectively, and present subsection (2) of that
810 section is amended to read:

811 381.0051 Family planning.—
812 ~~(2) LEGISLATIVE INTENT.—It is the intent of the Legislature~~
813 ~~to make available to citizens of the state of childbearing age~~
814 ~~comprehensive medical knowledge, assistance, and services~~
815 ~~relating to the planning of families and maternal health care.~~
816 Section 17. Subsection (5) of section 381.0052, Florida
817 Statutes, is amended to read:
818 381.0052 Dental health.—
819 ~~(5) The department may adopt rules to implement this~~
820 ~~section.~~
821 Section 18. Subsection (4) of section 381.0053, Florida
822 Statutes, is amended to read:
823 381.0053 Comprehensive nutrition program.—
824 ~~(4) The department may promulgate rules to implement the~~
825 ~~provisions of this section.~~
826 Section 19. Subsections (3) through (11) of section
827 381.0056, Florida Statutes are renumbered as subsections (2)
828 through (9), respectively, and present subsections (2), (3), and
829 (11) of that section are amended to read:
830 381.0056 School health services program.—
831 ~~(2) The Legislature finds that health services conducted as~~
832 ~~a part of the total school health program should be carried out~~
833 ~~to appraise, protect, and promote the health of students. School~~
834 ~~health services supplement, rather than replace, parental~~
835 ~~responsibility and are designed to encourage parents to devote~~
836 ~~attention to child health, to discover health problems, and to~~
837 ~~encourage use of the services of their physicians, dentists, and~~
838 ~~community health agencies.~~
839 (2) ~~(3)~~ As ~~When~~ used in ~~or for purposes of~~ this section:

661060

HR.HR.03324

840 (a) “Emergency health needs” means onsite management and
841 aid for illness or injury pending the student’s return to the
842 classroom or release to a parent, guardian, designated friend,
843 or designated health care provider.
844 (b) “Entity” or “health care entity” means a unit of local
845 government or a political subdivision of the state; a hospital
846 licensed under chapter 395; a health maintenance organization
847 certified under chapter 641; a health insurer authorized under
848 the Florida Insurance Code; a community health center; a migrant
849 health center; a federally qualified health center; an
850 organization that meets the requirements for nonprofit status
851 under s. 501(c)(3) of the Internal Revenue Code; a private
852 industry or business; or a philanthropic foundation that agrees
853 to participate in a public-private partnership with a county
854 health department, local school district, or school in the
855 delivery of school health services, and agrees to the terms and
856 conditions for the delivery of such services as required by this
857 section and as documented in the local school health services
858 plan.
859 (c) “Invasive screening” means any screening procedure in
860 which the skin or any body orifice is penetrated.
861 (d) “Physical examination” means a thorough evaluation of
862 the health status of an individual.
863 (e) “School health services plan” means the document that
864 describes the services to be provided, the responsibility for
865 provision of the services, the anticipated expenditures to
866 provide the services, and evidence of cooperative planning by
867 local school districts and county health departments.
868 (f) “Screening” means presumptive identification of unknown

869 or unrecognized diseases or defects by the application of tests
870 that can be given with ease and rapidity to apparently healthy
871 persons.
872 ~~(11) School health programs funded by health care districts~~
873 ~~or entities defined in subsection (3) must be supplementary to~~
874 ~~and consistent with the requirements of this section and ss.~~
875 ~~381.0057 and 381.0059.~~
876 Section 20. Subsections (2) through (7) of section
877 381.0057, Florida Statutes, are renumbered as subsections (1)
878 through (6), respectively, and present subsections (1), (4), and
879 (6) of that section are amended to read:
880 381.0057 Funding for school health services.—
881 ~~(1) It is the intent of the Legislature that funds in~~
882 ~~addition to those provided under the School Health Services Act~~
883 ~~be provided to those school districts and schools where there is~~
884 ~~a high incidence of medically underserved high-risk children,~~
885 ~~low birthweight babies, infant mortality, or teenage pregnancy.~~
886 ~~The purpose of this funding is to phase in those programs which~~
887 ~~offer the greatest potential for promoting the health of~~
888 ~~students and reducing teenage pregnancy.~~
889 (3) ~~(4)~~ Any school district, school, or laboratory school
890 which desires to receive state funding under the provisions of
891 this section shall submit a proposal to the joint committee
892 established in subsection (2) ~~(3)~~. The proposal shall state the
893 goals of the program, provide specific plans for reducing
894 teenage pregnancy, and describe all of the health services to be
895 available to students with funds provided pursuant to this
896 section, including a combination of initiatives such as health
897 education, counseling, extracurricular, and self-esteem

661060

HR.HR.03324

898 components. School health services shall not promote elective
899 termination of pregnancy as a part of counseling services. Only
900 those program proposals which have been developed jointly by
901 county health departments and local school districts or schools,
902 and which have community and parental support, shall be eligible
903 for funding. Funding shall be available specifically for
904 implementation of one of the following programs:
905 (a) School health improvement pilot project.—The program
906 shall include basic health care to an elementary school, middle
907 school, and high school feeder system. Program services shall
908 include, but not be limited to:
909 1. Planning, implementing, and evaluating school health
910 services. Staffing shall include a full-time, trained school
911 health aide in each elementary, middle, and high school; one
912 full-time nurse to supervise the aides in the elementary and
913 middle schools; and one full-time nurse in each high school.
914 2. Providing student health appraisals and identification
915 of actual or potential health problems by screenings, nursing
916 assessments, and record reviews.
917 3. Expanding screening activities.
918 4. Improving the student utilization of school health
919 services.
920 5. Coordinating health services for students with parents
921 or guardians and other agencies in the community.
922 (b) Student support services team program.—The program
923 shall include a multidisciplinary team composed of a
924 psychologist, social worker, and nurse whose responsibilities
925 are to provide basic support services and to assist, in the
926 school setting, children who exhibit mild to severely complex

661060

HR.HR.03324

927 health, behavioral, or learning problems affecting their school
928 performance. Support services shall include, but not be limited
929 to: evaluation and treatment for minor illnesses and injuries,
930 referral and followup for serious illnesses and emergencies,
931 onsite care and consultation, referral to a physician, and
932 followup care for pregnancy or chronic diseases and disorders as
933 well as emotional or mental problems. Services also shall
934 include referral care for drug and alcohol abuse and sexually
935 transmitted diseases, sports and employment physicals,
936 immunizations, and in addition, effective preventive services
937 aimed at delaying early sexual involvement and aimed at
938 pregnancy, acquired immune deficiency syndrome, sexually
939 transmitted diseases, and destructive lifestyle conditions, such
940 as alcohol and drug abuse. Moneys for this program shall be used
941 to fund three teams, each consisting of one half-time
942 psychologist, one full-time nurse, and one full-time social
943 worker. Each team shall provide student support services to an
944 elementary school, middle school, and high school that are a
945 part of one feeder school system and shall coordinate all
946 activities with the school administrator and guidance counselor
947 at each school. A program which places all three teams in middle
948 schools or high schools may also be proposed.
949 (c) Full service schools.—The full-service schools shall
950 integrate the services of the Department of Health that are
951 critical to the continuity-of-care process. The department shall
952 provide services to students on the school grounds. Department
953 personnel shall provide their specialized services as an
954 extension of the educational environment. Such services may
955 include nutritional services, medical services, aid to dependent

956 children, parenting skills, counseling for abused children, and
957 education for the students' parents or guardians.
958
959 Funding may also be available for any other program that is
960 comparable to a program described in this subsection but is
961 designed to meet the particular needs of the community.
962 (5) ~~(6)~~ Each school district or school program that is
963 funded through the provisions of this section shall provide a
964 mechanism through which a parent may, by written request, exempt
965 a child from all or certain services provided by a school health
966 services program described in subsection (3) ~~(4)~~.
967 Section 21. Section 381.00591, Florida Statutes, is amended
968 to read:
969 381.00591 Department of Health; National Environmental
970 Laboratory accreditation; application~~; rules~~.—The Department of
971 Health may apply for and become a National Environmental
972 Laboratory Accreditation Program accreditation body ~~accrediting~~
973 ~~authority~~. ~~The department, as an accrediting entity, may adopt~~
974 ~~rules pursuant to ss. 120.536(1) and 120.54, to implement~~
975 ~~standards of the National Environmental Laboratory Accreditation~~
976 ~~Program, including requirements for proficiency testing~~
977 ~~providers and other rules that are not inconsistent with this~~
978 ~~section, including rules pertaining to fees, application~~
979 ~~procedures, standards applicable to environmental or public~~
980 ~~water supply laboratories, and compliance.~~
981 Section 22. Subsection (9) of section 381.00593, Florida
982 Statutes, is renumbered as subsection (8), and present
983 subsection (8) of that section is amended to read:
984 381.00593 Public school volunteer health care practitioner

661060

HR.HR.03324

985 program.—
986 ~~(8) The Department of Health, in cooperation with the~~
987 ~~Department of Education, may adopt rules necessary to implement~~
988 ~~this section. The rules shall include the forms to be completed~~
989 ~~and procedures to be followed by applicants and school personnel~~
990 ~~under the program.~~
991 Section 23. Subsections (2) through (6) of section
992 381.0062, Florida Statutes, are renumbered as subsections (1)
993 through (6), respectively, and present subsection (1) of that
994 section is amended to read:
995 381.0062 Supervision; private and certain public water
996 systems.—
997 ~~(1) LEGISLATIVE INTENT.—It is the intent of the Legislature~~
998 ~~to protect the public's health by establishing standards for the~~
999 ~~construction, modification, and operation of public and private~~
1000 ~~water systems to assure consumers that the water provided by~~
1001 ~~those systems is potable.~~
1002 Section 24. Subsections (1), (5), (6), and (7) of section
1003 381.0065, Florida Statues, are amended, paragraphs (b) through
1004 (p) of subsection (2) of that section are redesignated as
1005 paragraphs (c) through (q), respectively, a new paragraph (b) is
1006 added to that subsection, paragraph (j) of subsection (3) and
1007 paragraph (n) of subsection (4) of that section are amended, and
1008 paragraphs (w) through (z) are added to subsection (4) of that
1009 section, to read:
1010 381.0065 Onsite sewage treatment and disposal systems;
1011 regulation.—
1012 (1) LEGISLATIVE INTENT.—
1013 (a) It is the intent of the Legislature that proper

1014 management of onsite sewage treatment and disposal systems is
1015 paramount to the health, safety, and welfare of the public. ~~It~~
1016 ~~is further the intent of the Legislature that the department~~
1017 ~~shall administer an evaluation program to ensure the operational~~
1018 ~~condition of the system and identify any failure with the~~
1019 ~~system.~~
1020 ~~(b)~~ It is the intent of the Legislature that where a
1021 publicly owned or investor-owned sewerage system is not
1022 available, the department shall issue permits for the
1023 construction, installation, modification, abandonment, or repair
1024 of onsite sewage treatment and disposal systems under conditions
1025 as described in this section and rules adopted under this
1026 section. It is further the intent of the Legislature that the
1027 installation and use of onsite sewage treatment and disposal
1028 systems not adversely affect the public health or significantly
1029 degrade the groundwater or surface water.
1030 (2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the
1031 term:
1032 (b)1. “Bedroom” means a room that can be used for sleeping
1033 and that:
1034 a. For site-built dwellings, has a minimum of 70 square
1035 feet of conditioned space;
1036 b. For manufactured homes, is constructed according to
1037 standards of the United States Department of Housing and Urban
1038 Development and has a minimum of 50 square feet of floor area;
1039 c. Is located along an exterior wall;
1040 d. Has a closet and a door or an entrance where a door
1041 could be reasonably installed; and
1042 e. Has an emergency means of escape and rescue opening to

1043 the outside.
1044 2. A room may not be considered a bedroom if it is used to
1045 access another room except a bathroom or closet.
1046 3. “Bedroom” does not include a hallway, bathroom, kitchen,
1047 living room, family room, dining room, den, breakfast nook,
1048 pantry, laundry room, sunroom, recreation room, media/video
1049 room, or exercise room.
1050 (3) DUTIES AND POWERS OF THE DEPARTMENT OF HEALTH.—The
1051 department shall:
1052 (j) Supervise research on, demonstration of, and training
1053 on the performance, environmental impact, and public health
1054 impact of onsite sewage treatment and disposal systems within
1055 this state. Research fees collected under s. 381.0066(2)(k)
1056 ~~381.0066(2)(l)~~ must be used to develop and fund hands-on
1057 training centers designed to provide practical information about
1058 onsite sewage treatment and disposal systems to septic tank
1059 contractors, master septic tank contractors, contractors,
1060 inspectors, engineers, and the public and must also be used to
1061 fund research projects which focus on improvements of onsite
1062 sewage treatment and disposal systems, including use of
1063 performance-based standards and reduction of environmental
1064 impact. Research projects shall be initially approved by the
1065 technical review and advisory panel and shall be applicable to
1066 and reflect the soil conditions specific to Florida. Such
1067 projects shall be awarded through competitive negotiation, using
1068 the procedures provided in s. 287.055, to public or private
1069 entities that have experience in onsite sewage treatment and
1070 disposal systems in Florida and that are principally located in
1071 Florida. Research projects shall not be awarded to firms or

661060

HR.HR.03324

1072 entities that employ or are associated with persons who serve on
1073 either the technical review and advisory panel or the research
1074 review and advisory committee.
1075 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not
1076 construct, repair, modify, abandon, or operate an onsite sewage
1077 treatment and disposal system without first obtaining a permit
1078 approved by the department. The department may issue permits to
1079 carry out this section, but shall not make the issuance of such
1080 permits contingent upon prior approval by the Department of
1081 Environmental Protection, except that the issuance of a permit
1082 for work seaward of the coastal construction control line
1083 established under s. 161.053 shall be contingent upon receipt of
1084 any required coastal construction control line permit from the
1085 Department of Environmental Protection. A construction permit is
1086 valid for 18 months from the issuance date and may be extended
1087 by the department for one 90-day period under rules adopted by
1088 the department. A repair permit is valid for 90 days from the
1089 date of issuance. An operating permit must be obtained prior to
1090 the use of any aerobic treatment unit or if the establishment
1091 generates commercial waste. Buildings or establishments that use
1092 an aerobic treatment unit or generate commercial waste shall be
1093 inspected by the department at least annually to assure
1094 compliance with the terms of the operating permit. The operating
1095 permit for a commercial wastewater system is valid for 1 year
1096 from the date of issuance and must be renewed annually. The
1097 operating permit for an aerobic treatment unit is valid for 2
1098 years from the date of issuance and must be renewed every 2
1099 years. If all information pertaining to the siting, location,
1100 and installation conditions or repair of an onsite sewage

1101 treatment and disposal system remains the same, a construction
1102 or repair permit for the onsite sewage treatment and disposal
1103 system may be transferred to another person, if the transferee
1104 files, within 60 days after the transfer of ownership, an
1105 amended application providing all corrected information and
1106 proof of ownership of the property. There is no fee associated
1107 with the processing of this supplemental information. A person
1108 may not contract to construct, modify, alter, repair, service,
1109 abandon, or maintain any portion of an onsite sewage treatment
1110 and disposal system without being registered under part III of
1111 chapter 489. A property owner who personally performs
1112 construction, maintenance, or repairs to a system serving his or
1113 her own owner-occupied single-family residence is exempt from
1114 registration requirements for performing such construction,
1115 maintenance, or repairs on that residence, but is subject to all
1116 permitting requirements. A municipality or political subdivision
1117 of the state may not issue a building or plumbing permit for any
1118 building that requires the use of an onsite sewage treatment and
1119 disposal system unless the owner or builder has received a
1120 construction permit for such system from the department. A
1121 building or structure may not be occupied and a municipality,
1122 political subdivision, or any state or federal agency may not
1123 authorize occupancy until the department approves the final
1124 installation of the onsite sewage treatment and disposal system.
1125 A municipality or political subdivision of the state may not
1126 approve any change in occupancy or tenancy of a building that
1127 uses an onsite sewage treatment and disposal system until the
1128 department has reviewed the use of the system with the proposed
1129 change, approved the change, and amended the operating permit.

1130 (n) Evaluations for determining the seasonal high-water
1131 table elevations or the suitability of soils for the use of a
1132 new onsite sewage treatment and disposal system shall be
1133 performed by department personnel, professional engineers
1134 registered in the state, or such other persons with expertise,
1135 as defined by rule, in making such evaluations. Evaluations for
1136 determining mean annual flood lines shall be performed by those
1137 persons identified in paragraph (2)(j) ~~(2)(i)~~. The department
1138 shall accept evaluations submitted by professional engineers and
1139 such other persons as meet the expertise established by this
1140 section or by rule unless the department has a reasonable
1141 scientific basis for questioning the accuracy or completeness of
1142 the evaluation.
1143 (w) Any permit issued and approved by the department for
1144 the installation, modification, or repair of an onsite sewage
1145 treatment and disposal system shall transfer with the title to
1146 the property in a real estate transaction. A title may not be
1147 encumbered at the time of transfer by new permit requirements by
1148 a governmental entity for an onsite sewage treatment and
1149 disposal system which differ from the permitting requirements in
1150 effect at the time the system was permitted, modified, or
1151 repaired. No inspection of a system shall be mandated by any
1152 governmental entity at the point of sale in a real estate
1153 transaction.
1154 (x)1. An onsite sewage treatment and disposal system is not
1155 considered abandoned if the system is disconnected from a
1156 structure that was made unusable or destroyed following a
1157 disaster and was properly functioning at the time of
1158 disconnection and not adversely affected by the disaster. The

1159 onsite sewage treatment and disposal system may be reconnected
1160 to a rebuilt structure if:
1161 a. The reconnection of the system is to the same type of
1162 structure which contains the same number of bedrooms or less,
1163 provided the square footage of the structure is less than or
1164 equal to 110 percent of the original square footage of the
1165 structure that existed prior to the disaster;
1166 b. The system is not a sanitary nuisance; and
1167 c. The system has not been altered without prior
1168 authorization.
1169 2. An onsite sewage treatment and disposal system that
1170 serves a property that is foreclosed upon is not considered
1171 abandoned.
1172 (y) If an onsite sewage treatment and disposal system
1173 permittee receives, relies upon, and undertakes construction of
1174 a system based upon a validly issued construction permit under
1175 rules applicable at the time of construction but a change to a
1176 rule occurs within 5 years after the approval of the system for
1177 construction but before the final approval of the system, the
1178 rules applicable and in effect at the time of construction
1179 approval apply at the time of final approval if fundamental site
1180 conditions have not changed between the time of construction
1181 approval and final approval.
1182 (z) A modification, replacement, or upgrade of an onsite
1183 sewage treatment and disposal system is not required for a
1184 remodeling addition to a single-family home if a bedroom is not
1185 added.
1186 ~~(5) EVALUATION AND ASSESSMENT.~~
1187 ~~(a) Beginning July 1, 2011, the department shall administer~~

1188 ~~an onsite sewage treatment and disposal system evaluation~~
1189 ~~program for the purpose of assessing the fundamental operational~~
1190 ~~condition of systems and identifying any failures within the~~
1191 ~~systems. The department shall adopt rules implementing the~~
1192 ~~program standards, procedures, and requirements, including, but~~
1193 ~~not limited to, a schedule for a 5-year evaluation cycle,~~
1194 ~~requirements for the pump-out of a system or repair of a failing~~
1195 ~~system, enforcement procedures for failure of a system owner to~~
1196 ~~obtain an evaluation of the system, and failure of a contractor~~
1197 ~~to timely submit evaluation results to the department and the~~
1198 ~~system owner. The department shall ensure statewide~~
1199 ~~implementation of the evaluation and assessment program by~~
1200 ~~January 1, 2016.~~
1201 ~~(b) Owners of an onsite sewage treatment and disposal~~
1202 ~~system, excluding a system that is required to obtain an~~
1203 ~~operating permit, shall have the system evaluated at least once~~
1204 ~~every 5 years to assess the fundamental operational condition of~~
1205 ~~the system, and identify any failure within the system.~~
1206 ~~(c) All evaluation procedures must be documented and~~
1207 ~~nothing in this subsection limits the amount of detail an~~
1208 ~~evaluator may provide at his or her professional discretion. The~~
1209 ~~evaluation must include a tank and drainfield evaluation, a~~
1210 ~~written assessment of the condition of the system, and, if~~
1211 ~~necessary, a disclosure statement pursuant to the department's~~
1212 ~~procedure.~~
1213 ~~(d)1. Systems being evaluated that were installed prior to~~
1214 ~~January 1, 1983, shall meet a minimum 6-inch separation from the~~
1215 ~~bottom of the drainfield to the wettest season water table~~
1216 ~~elevation as defined by department rule. All drainfield repairs,~~

1217 ~~replacements or modifications to systems installed prior to~~
1218 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
1219 ~~the bottom of the drainfield to the wettest season water table~~
1220 ~~elevation as defined by department rule.~~
1221 ~~2. Systems being evaluated that were installed on or after~~
1222 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
1223 ~~the bottom of the drainfield to the wettest season water table~~
1224 ~~elevation as defined by department rule. All drainfield repairs,~~
1225 ~~replacements or modification to systems developed on or after~~
1226 ~~January 1, 1983, shall meet a minimum 24-inch separation from~~
1227 ~~the bottom of the drainfield to the wettest season water table~~
1228 ~~elevation.~~
1229 ~~(e) If documentation of a tank pump-out or a permitted new~~
1230 ~~installation, repair, or modification of the system within the~~
1231 ~~previous 5 years is provided, and states the capacity of the~~
1232 ~~tank and indicates that the condition of the tank is not a~~
1233 ~~sanitary or public health nuisance pursuant to department rule,~~
1234 ~~a pump-out of the system is not required.~~
1235 ~~(f) Owners are responsible for paying the cost of any~~
1236 ~~required pump-out, repair, or replacement pursuant to department~~
1237 ~~rule, and may not request partial evaluation or the omission of~~
1238 ~~portions of the evaluation.~~
1239 ~~(g) Each evaluation or pump-out required under this~~
1240 ~~subsection must be performed by a septic tank contractor or~~
1241 ~~master septic tank contractor registered under part III of~~
1242 ~~chapter 489, a professional engineer with wastewater treatment~~
1243 ~~system experience licensed pursuant to chapter 471, or an~~
1244 ~~environmental health professional certified under chapter 381 in~~
1245 ~~the area of onsite sewage treatment and disposal system~~

1246 ~~evaluation.~~
1247 ~~(h) The evaluation report fee collected pursuant to s.~~
1248 ~~381.0066(2)(b) shall be remitted to the department by the~~
1249 ~~evaluator at the time the report is submitted.~~
1250 ~~(i) Prior to any evaluation deadline, the department must~~
1251 ~~provide a minimum of 60 days' notice to owners that their~~
1252 ~~systems must be evaluated by that deadline. The department may~~
1253 ~~include a copy of any homeowner educational materials developed~~
1254 ~~pursuant to this section which provides information on the~~
1255 ~~proper maintenance of onsite sewage treatment and disposal~~
1256 ~~systems.~~
1257 (5)~~(6)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.—
1258 (a) Department personnel who have reason to believe
1259 noncompliance exists, may at any reasonable time, enter the
1260 premises permitted under ss. 381.0065-381.0066, or the business
1261 premises of any septic tank contractor or master septic tank
1262 contractor registered under part III of chapter 489, or any
1263 premises that the department has reason to believe is being
1264 operated or maintained not in compliance, to determine
1265 compliance with the provisions of this section, part I of
1266 chapter 386, or part III of chapter 489 or rules or standards
1267 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
1268 part III of chapter 489. As used in this paragraph, the term
1269 "premises" does not include a residence or private building. To
1270 gain entry to a residence or private building, the department
1271 must obtain permission from the owner or occupant or secure an
1272 inspection warrant from a court of competent jurisdiction.
1273 (b)1. The department may issue citations that may contain
1274 an order of correction or an order to pay a fine, or both, for

661060

HR.HR.03324

1275 violations of ss. 381.0065-381.0067, part I of chapter 386, or
1276 part III of chapter 489 or the rules adopted by the department,
1277 when a violation of these sections or rules is enforceable by an
1278 administrative or civil remedy, or when a violation of these
1279 sections or rules is a misdemeanor of the second degree. A
1280 citation issued under ss. 381.0065-381.0067, part I of chapter
1281 386, or part III of chapter 489 constitutes a notice of proposed
1282 agency action.
1283 2. A citation must be in writing and must describe the
1284 particular nature of the violation, including specific reference
1285 to the provisions of law or rule allegedly violated.
1286 3. The fines imposed by a citation issued by the department
1287 may not exceed $500 for each violation. Each day the violation
1288 exists constitutes a separate violation for which a citation may
1289 be issued.
1290 4. The department shall inform the recipient, by written
1291 notice pursuant to ss. 120.569 and 120.57, of the right to an
1292 administrative hearing to contest the citation within 21 days
1293 after the date the citation is received. The citation must
1294 contain a conspicuous statement that if the recipient fails to
1295 pay the fine within the time allowed, or fails to appear to
1296 contest the citation after having requested a hearing, the
1297 recipient has waived the recipient’s right to contest the
1298 citation and must pay an amount up to the maximum fine.
1299 5. The department may reduce or waive the fine imposed by
1300 the citation. In determining whether to reduce or waive the
1301 fine, the department must consider the gravity of the violation,
1302 the person’s attempts at correcting the violation, and the
1303 person’s history of previous violations including violations for

1304 which enforcement actions were taken under ss. 381.0065-
1305 381.0067, part I of chapter 386, part III of chapter 489, or
1306 other provisions of law or rule.
1307 6. Any person who willfully refuses to sign and accept a
1308 citation issued by the department commits a misdemeanor of the
1309 second degree, punishable as provided in s. 775.082 or s.
1310 775.083.
1311 7. The department, pursuant to ss. 381.0065-381.0067, part
1312 I of chapter 386, or part III of chapter 489, shall deposit any
1313 fines it collects in the county health department trust fund for
1314 use in providing services specified in those sections.
1315 8. This section provides an alternative means of enforcing
1316 ss. 381.0065-381.0067, part I of chapter 386, and part III of
1317 chapter 489. This section does not prohibit the department from
1318 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part
1319 III of chapter 489, or its rules, by any other means. However,
1320 the department must elect to use only a single method of
1321 enforcement for each violation.
1322 (6) ~~(7)~~ LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective
1323 January 1, 2016, the land application of septage from onsite
1324 sewage treatment and disposal systems is prohibited. ~~By February~~
1325 ~~1, 2011, the department, in consultation with the Department of~~
1326 ~~Environmental Protection, shall provide a report to the~~
1327 ~~Governor, the President of the Senate, and the Speaker of the~~
1328 ~~House of Representatives, recommending alternative methods to~~
1329 ~~establish enhanced treatment levels for the land application of~~
1330 ~~septage from onsite sewage and disposal systems. The report~~
1331 ~~shall include, but is not limited to, a schedule for the~~
1332 ~~reduction in land application, appropriate treatment levels,~~

1333 ~~alternative methods for treatment and disposal, enhanced~~
1334 ~~application site permitting requirements including any~~
1335 ~~requirements for nutrient management plans, and the range of~~
1336 ~~costs to local governments, affected businesses, and individuals~~
1337 ~~for alternative treatment and disposal methods. The report shall~~
1338 ~~also include any recommendations for legislation or rule~~
1339 ~~authority needed to reduce land application of septage.~~
1340 Section 25. Section 381.00651, Florida Statutes, is created
1341 to read:
1342 381.00651 Periodic evaluation and assessment of onsite
1343 sewage treatment and disposal systems.—
1344 (1) For the purposes of this section, the term "first
1345 magnitude spring" means a spring that has a median water
1346 discharge of greater than or equal to 100 cubic feet per second
1347 for the period of record, as determined by the Department of
1348 Environmental Protection.
1349 (2) A county or municipality that contains a first
1350 magnitude spring shall, by no later than January 1, 2013,
1351 develop and adopt by local ordinance an onsite sewage treatment
1352 and disposal system evaluation and assessment program that meets
1353 the requirements of this section. The ordinance may apply within
1354 all or part of its geographic area. Those counties or
1355 municipalities containing a first magnitude spring which have
1356 already adopted an onsite sewage treatment and disposal system
1357 evaluation and assessment program and which meet the
1358 grandfathering requirements contained in this section, or have
1359 chosen to opt out of this section in the manner provided herein,
1360 are exempt from the requirement to adopt an ordinance
1361 implementing an evaluation and assessment program. The governing

661060

HR.HR.03324

1362 body of a local government that chooses to opt out of this
1363 section, by a majority plus one vote of the members of the
1364 governing board, shall do so by adopting a resolution that
1365 indicates an intent on the part of such local government not to
1366 adopt an onsite sewage treatment and disposal system evaluation
1367 and assessment program. Such resolution shall be addressed and
1368 transmitted to the Secretary of State. Absent an interlocal
1369 agreement or county charter provision to the contrary, a
1370 municipality may elect to opt out of the requirements of this
1371 section, by a majority plus one vote of the members of the
1372 governing board, notwithstanding a contrary decision of the
1373 governing body of a county. Any local government that has
1374 properly opted out of this section but subsequently chooses to
1375 adopt an evaluation and assessment program may do so only
1376 pursuant to the requirements of this section and may not deviate
1377 from such requirements.
1378 (3) Any county or municipality that does not contain a
1379 first magnitude spring may at any time develop and adopt by
1380 local ordinance an onsite sewage treatment and disposal system
1381 evaluation and assessment program, provided such program meets
1382 and does not deviate from the requirements of this section.
1383 (4) Notwithstanding any other provision in this section, a
1384 county or municipality that has adopted a program before July 1,
1385 2011, may continue to enforce its current program without having
1386 to meet the requirements of this section, provided such program
1387 does not require an evaluation at the point of sale in a real
1388 estate transaction.
1389 (5) Any county or municipality may repeal an ordinance
1390 adopted pursuant to this section only if the county or

661060

HR.HR.03324

1391 municipality notifies the Secretary of State by letter of the
1392 repeal. No county or municipality may adopt an onsite sewage
1393 treatment and disposal system evaluation and assessment program
1394 except pursuant to this section.
1395 (6) The requirements for an onsite sewage treatment and
1396 disposal system evaluation and assessment program are as
1397 follows:
1398 (a) *Evaluations.*—An evaluation of each onsite sewage
1399 treatment and disposal system within all or part of the county's
1400 or municipality's jurisdiction must take place once every 5
1401 years to assess the fundamental operational condition of the
1402 system and to identify system failures. The ordinance may not
1403 mandate an evaluation at the point of sale in a real estate
1404 transaction and may not require a soil examination. The location
1405 of the system shall be identified. A tank and drainfield
1406 evaluation and a written assessment of the overall condition of
1407 the system pursuant to the assessment procedure prescribed in
1408 subsection (7) are required.
1409 (b) *Qualified contractors.*—Each evaluation required under
1410 this subsection must be performed by a qualified contractor, who
1411 may be a septic tank contractor or master septic tank contractor
1412 registered under part III of chapter 489, a professional
1413 engineer having wastewater treatment system experience and
1414 licensed under chapter 471, or an environmental health
1415 professional certified under this chapter in the area of onsite
1416 sewage treatment and disposal system evaluation. Evaluations and
1417 pump-outs may also be performed by an authorized employee
1418 working under the supervision of an individual listed in this
1419 paragraph; however, all evaluation forms must be signed by a

661060

HR.HR.03324

1420 qualified contractor in writing or by electronic signature.
1421 (c) *Repair of systems.*—The local ordinance may not require
1422 a repair, modification, or replacement of a system as a result
1423 of an evaluation unless the evaluation identifies a system
1424 failure. For purposes of this subsection, the term "system
1425 failure" means a condition existing within an onsite sewage
1426 treatment and disposal system which results in the discharge of
1427 untreated or partially treated wastewater onto the ground
1428 surface or into surface water or that results in the failure of
1429 building plumbing to discharge properly and presents a sanitary
1430 nuisance. A system is not in failure if the system does not have
1431 a minimum separation distance between the drainfield and the
1432 wettest season water table or if an obstruction in a sanitary
1433 line or an effluent screen or filter prevents effluent from
1434 flowing into a drainfield. If a system failure is identified and
1435 several allowable remedial measures are available to resolve the
1436 failure, the system owner may choose the least costly allowable
1437 remedial measure to fix the system. There may be instances in
1438 which a pump-out is sufficient to resolve a system failure.
1439 Allowable remedial measures to resolve a system failure are
1440 limited to what is necessary to resolve the failure and must
1441 meet, to the maximum extent practicable, the requirements of the
1442 repair code in effect when the repair is made, subject to the
1443 exceptions specified in s. 381.0065(4)(g). An engineer-designed
1444 performance-based treatment system to reduce nutrients may not
1445 be required as an alternative remediation measure to resolve the
1446 failure of a conventional system.
1447 (d) *Exemptions.*—
1448 1. The local ordinance shall exempt from the evaluation

661060

HR.HR.03324

1449 requirements any system that is required to obtain an operating
1450 permit pursuant to state law or that is inspected by the
1451 department pursuant to the annual permit inspection requirements
1452 of chapter 513.
1453 2. The local ordinance may provide for an exemption or an
1454 extension of time to obtain an evaluation and assessment if
1455 connection to a sewer system is available, connection to the
1456 sewer system is imminent, and written arrangements for payment
1457 of any utility assessments or connection fees have been made by
1458 the system owner.
1459 3. An onsite sewage treatment and disposal system serving a
1460 residential dwelling unit on a lot with a ratio of one bedroom
1461 per acre or greater is exempt from the requirements of this
1462 section and may not be included in any onsite sewage treatment
1463 and disposal system inspection program.
1464 (7) The following procedures shall be used for conducting
1465 evaluations:
1466 (a) *Tank evaluation.*—The tank evaluation shall assess the
1467 apparent structural condition and watertightness of the tank and
1468 shall estimate the size of the tank. The evaluation must include
1469 a pump-out. However, an ordinance may not require a pump-out if
1470 there is documentation indicating that a tank pump-out or a
1471 permitted new installation, repair, or modification of the
1472 system has occurred within the previous 5 years, identifying the
1473 capacity of the tank, and indicating that the condition of the
1474 tank is structurally sound and watertight. Visual inspection of
1475 the tank must be made when the tank is empty to detect cracks,
1476 leaks, or other defects. Baffles or tees must be checked to
1477 ensure that they are intact and secure. The evaluation shall

661060

HR.HR.03324

1478 note the presence and condition of outlet devices, effluent
1479 filters, and compartment walls; any structural defect in the
1480 tank; the condition and fit of the tank lid, including manholes;
1481 whether surface water can infiltrate the tank; and whether the
1482 tank was pumped out. If the tank, in the opinion of the
1483 qualified contractor, is in danger of being damaged by leaving
1484 the tank empty after inspection, the tank shall be refilled
1485 before concluding the inspection. Broken or damaged lids or
1486 manholes shall be replaced without obtaining a repair permit.
1487 (b) *Drainfield evaluation.*—The drainfield evaluation must
1488 include a determination of the approximate size and location of
1489 the drainfield. The evaluation shall state whether there is any
1490 sewage or effluent visible on the ground or discharging to a
1491 ditch or other water body and the location of any downspout or
1492 other source of water near or in the vicinity of the drainfield.
1493 (c) *Special circumstances.*—If the system contains pumps,
1494 siphons, or alarms, the following information may be provided at
1495 the request of the homeowner:
1496 1. An assessment of dosing tank integrity, including the
1497 approximate volume and the type of material used in the tank's
1498 construction;
1499 2. Whether the pump is elevated off the bottom of the
1500 chamber and its operational status;
1501 3. Whether the system has a check valve and purge hole; and
1502 4. Whether the system has a high-water alarm, and if so
1503 whether the alarm is audio or visual or both, the location and
1504 operational condition of the alarm, and whether the electrical
1505 connections to the alarm appear satisfactory.
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661060

HR.HR.03324

1507 If the homeowner does not request this information, the
1508 qualified contractor and its employee are not liable for any
1509 damages directly relating from a failure of the system's pumps,
1510 siphons, or alarms. This exclusion of liability must be stated
1511 on the front cover of the report required under paragraph (d).
1512 (d) *Assessment procedure.*—All evaluation procedures used by
1513 a qualified contractor shall be documented in the environmental
1514 health database of the Department of Health. The qualified
1515 contractor shall provide a copy of a written, signed evaluation
1516 report to the property owner upon completion of the evaluation
1517 and to the county health department within 30 days after the
1518 evaluation. The report shall contain the name and license number
1519 of the company providing the report. A copy of the evaluation
1520 report shall be retained by the local county health department
1521 for a minimum of 5 years and until a subsequent inspection
1522 report is filed. The front cover of the report must identify any
1523 system failure and include a clear and conspicuous notice to the
1524 owner that the owner has a right to have any remediation of the
1525 failure performed by a qualified contractor other than the
1526 contractor performing the evaluation. The report must further
1527 identify any crack, leak, improper fit, or other defect in the
1528 tank, manhole, or lid, and any other damaged or missing
1529 component; any sewage or effluent visible on the ground or
1530 discharging to a ditch or other surface water body; any
1531 downspout, stormwater, or other source of water directed onto or
1532 toward the system; and any other maintenance need or condition
1533 of the system at the time of the evaluation which, in the
1534 opinion of the qualified contractor, would possibly interfere
1535 with or restrict any future repair or modification to the

661060

HR.HR.03324

1536 existing system. The report shall conclude with an overall
1537 assessment of the fundamental operational condition of the
1538 system.
1539 (8) The county health department shall administer any
1540 evaluation program on behalf of a county, or a municipality
1541 within the county, that has adopted an evaluation program
1542 pursuant to this section. In order to administer the evaluation
1543 program, the county or municipality, in consultation with the
1544 county health department, may develop a reasonable fee schedule
1545 to be used solely to pay for the costs of administering the
1546 evaluation program. Such a fee schedule shall be identified in
1547 the ordinance that adopts the evaluation program. When arriving
1548 at a reasonable fee schedule, the estimated annual revenues to
1549 be derived from fees may not exceed reasonable estimated annual
1550 costs of the program. Fees shall be assessed to the system owner
1551 during an inspection and separately identified on the invoice of
1552 the qualified contractor. Fees shall be remitted by the
1553 qualified contractor to the county health department. The county
1554 health department's administrative responsibilities include the
1555 following:
1556 (a) Providing a notice to the system owner at least 60 days
1557 before the system is due for an evaluation. The notice may
1558 include information on the proper maintenance of onsite sewage
1559 treatment and disposal systems.
1560 (b) In consultation with the Department of Health,
1561 providing uniform disciplinary procedures and penalties for
1562 qualified contractors who do not comply with the requirements of
1563 the adopted ordinance, including, but not limited to, failure to
1564 provide the evaluation report as required in this subsection to

661060

HR.HR.03324

1565 the system owner and the county health department. Only the
1566 county health department may assess penalties against system
1567 owners for failure to comply with the adopted ordinance,
1568 consistent with existing requirements of law.
1569 (9)(a) A county or municipality that adopts an onsite
1570 sewage treatment and disposal system evaluation and assessment
1571 program pursuant to this section shall notify the Secretary of
1572 Environmental Protection, the Department of Health, and the
1573 applicable county health department upon the adoption of its
1574 ordinance establishing the program.
1575 (b) Upon receipt of the notice under paragraph (a), the
1576 Department of Environmental Protection shall, within existing
1577 resources, notify the county or municipality of the potential
1578 use of, and access to, program funds under the Clean Water State
1579 Revolving Fund or s. 319 of the Clean Water Act, provide
1580 guidance in the application process to receive such moneys, and
1581 provide advice and technical assistance to the county or
1582 municipality on how to establish a low-interest revolving loan
1583 program or how to model a revolving loan program after the low-
1584 interest loan program of the Clean Water State Revolving Fund.
1585 This paragraph does not obligate the Department of Environmental
1586 Protection to provide any county or municipality with money to
1587 fund such programs.
1588 (c) The Department of Health may not adopt any rule that
1589 alters the provisions of this section.
1590 (d) The Department of Health must allow county health
1591 departments and qualified contractors access to the
1592 environmental health database to track relevant information and
1593 assimilate data from assessment and evaluation reports of the

661060

HR.HR.03324

1594 overall condition of onsite sewage treatment and disposal
1595 systems. The environmental health database must be used by
1596 contractors to report each service and evaluation event and by a
1597 county health department to notify owners of onsite sewage
1598 treatment and disposal systems when evaluations are due. Data
1599 and information must be recorded and updated as service and
1600 evaluations are conducted and reported.
1601 (10) This section does not:
1602 (a) Limit county and municipal home rule authority to act
1603 outside the scope of the evaluation and assessment program set
1604 forth in this section;
1605 (b) Repeal or affect any other law relating to the subject
1606 matter of onsite sewage treatment and disposal systems; or
1607 (c) Prohibit a county or municipality from:
1608 1. Enforcing existing ordinances or adopting new ordinances
1609 relating to onsite sewage treatment facilities to address public
1610 health and safety if such ordinances do not repeal, suspend, or
1611 alter the requirements or limitations of this section.
1612 2. Adopting local environmental and pollution abatement
1613 ordinances for water quality improvement as provided for by law
1614 if such ordinances do not repeal, suspend, or alter the
1615 requirements or limitations of this section.
1616 3. Exercising its independent and existing authority to
1617 meet the requirements of s. 381.0065.
1618 Section 26. Section 381.00656, Florida Statutes, is
1619 repealed.
1620 Section 27. Subsection (2) of section 381.0066, Florida
1621 Statutes, is amended to read:
1622 381.0066 Onsite sewage treatment and disposal systems;

1623 fees.—
1624 (2) The minimum fees in the following fee schedule apply
1625 until changed by rule by the department within the following
1626 limits:
1627 (a) Application review, permit issuance, or system
1628 inspection, including repair of a subsurface, mound, filled, or
1629 other alternative system or permitting of an abandoned system: a
1630 fee of not less than $25, or more than $125.
1631 ~~(b) A 5-year evaluation report submitted pursuant to s.~~
1632 ~~381.0065(5): a fee not less than $15, or more than $30. At least~~
1633 ~~$1 and no more than $5 collected pursuant to this paragraph~~
1634 ~~shall be used to fund a grant program established under s.~~
1635 ~~381.00656.~~
1636 (b) ~~(c)~~ Site evaluation, site reevaluation, evaluation of a
1637 system previously in use, or a per annum septage disposal site
1638 evaluation: a fee of not less than $40, or more than $115.
1639 (c) ~~(d)~~ Biennial Operating permit for aerobic treatment
1640 units or performance-based treatment systems: a fee of not more
1641 than $100.
1642 (d) ~~(e)~~ Annual operating permit for systems located in areas
1643 zoned for industrial manufacturing or equivalent uses or where
1644 the system is expected to receive wastewater which is not
1645 domestic in nature: a fee of not less than $150, or more than
1646 $300.
1647 (e) ~~(f)~~ Innovative technology: a fee not to exceed $25,000.
1648 (f) ~~(g)~~ Septage disposal service, septage stabilization
1649 facility, portable or temporary toilet service, tank
1650 manufacturer inspection: a fee of not less than $25, or more
1651 than $200, per year.

1652 (g) ~~(h)~~ Application for variance: a fee of not less than
1653 $150, or more than $300.
1654 (h) ~~(i)~~ Annual operating permit for waterless, incinerating,
1655 or organic waste composting toilets: a fee of not less than $15
1656 ~~$50~~, or more than $30 ~~$150~~.
1657 (i) ~~(j)~~ Aerobic treatment unit or performance-based
1658 treatment system maintenance entity permit: a fee of not less
1659 than $25, or more than $150, per year.
1660 (j) ~~(k)~~ Reinspection fee per visit for site inspection after
1661 system construction approval or for noncompliant system
1662 installation per site visit: a fee of not less than $25, or more
1663 than $100.
1664 (k) ~~(l)~~ Research: An additional $5 fee shall be added to
1665 each new system construction permit issued to be used to fund
1666 onsite sewage treatment and disposal system research,
1667 demonstration, and training projects. Five dollars from any
1668 repair permit fee collected under this section shall be used for
1669 funding the hands-on training centers described in s.
1670 381.0065(3)(j).
1671 (l) ~~(m)~~ Annual operating permit, including annual inspection
1672 and any required sampling and laboratory analysis of effluent,
1673 for an engineer-designed performance-based system: a fee of not
1674 less than $150, or more than $300.
1675
1676 ~~On or before January 1, 2011, the Surgeon General, after~~
1677 ~~consultation with the Revenue Estimating Conference, shall~~
1678 ~~determine a revenue neutral fee schedule for services provided~~
1679 ~~pursuant to s. 381.0065(5) within the parameters set in~~
1680 ~~paragraph (b). Such determination is not subject to the~~

661060

HR.HR.03324

1681 ~~provisions of chapter 120.~~ The funds collected pursuant to this
1682 subsection must be deposited in a trust fund administered by the
1683 department, to be used for the purposes stated in this section
1684 and ss. 381.0065 and 381.00655.
1685 Section 28. Section 381.0068, Florida Statutes, is amended
1686 to read:
1687 381.0068 Technical review and advisory panel.—
1688 (1) The Department of Health shall~~, by July 1, 1996,~~
1689 establish and staff a technical review and advisory panel to
1690 assist the department with rule adoption.
1691 (2) The primary purpose of the panel is to assist the
1692 department in rulemaking and decisionmaking by drawing on the
1693 expertise of representatives from several groups that are
1694 affected by onsite sewage treatment and disposal systems. The
1695 panel may also review and comment on any legislation or any
1696 existing or proposed state policy or issue related to onsite
1697 sewage treatment and disposal systems. ~~If requested by the~~
1698 ~~panel, the chair will advise any affected person or member of~~
1699 ~~the Legislature of the panel's position on the legislation or~~
1700 ~~any existing or proposed state policy or issue.~~ The chair may
1701 also take such other action as is appropriate to allow the panel
1702 to function. At a minimum, the panel shall consist of a soil
1703 scientist; a professional engineer registered in this state who
1704 is recommended by the Florida Engineering Society and who has
1705 work experience in onsite sewage treatment and disposal systems;
1706 two representatives from the home-building industry recommended
1707 by the Florida Home Builders Association, including one who is a
1708 developer in this state who develops lots using onsite sewage
1709 treatment and disposal systems; a representative from the county

661060

HR.HR.03324

1710 health departments who has experience permitting and inspecting
1711 the installation of onsite sewage treatment and disposal systems
1712 in this state; a representative from the real estate industry
1713 who is recommended by the Florida Association of Realtors; a
1714 consumer representative with a science background; two
1715 representatives of the septic tank industry recommended by the
1716 Florida Onsite Wastewater Association, including one who is a
1717 manufacturer of onsite sewage treatment and disposal systems; a
1718 representative from local government who is knowledgeable about
1719 domestic wastewater treatment and who is recommended by the
1720 Florida Association of Counties and the Florida League of
1721 Cities; and a representative from the environmental health
1722 profession who is recommended by the Florida Environmental
1723 Health Association and who is not employed by a county health
1724 department. Members are to be appointed for a term of 2 years.
1725 The panel may also, as needed, be expanded to include ad hoc,
1726 nonvoting representatives who have topic-specific expertise. All
1727 rules proposed by the department which relate to onsite sewage
1728 treatment and disposal systems must be presented to the panel
1729 for review and comment prior to adoption. The panel’s position
1730 on proposed rules shall be made a part of the rulemaking record
1731 that is maintained by the agency. The panel shall select a
1732 chair, who shall serve for a period of 1 year and who shall
1733 direct, coordinate, and execute the duties of the panel. The
1734 panel shall also solicit input from the department’s variance
1735 review and advisory committee before submitting any comments to
1736 the department concerning proposed rules. The panel’s comments
1737 must include any dissenting points of view concerning proposed
1738 rules. The panel shall hold meetings as it determines necessary

1739 to conduct its business, except that the chair, a quorum of the
1740 voting members of the panel, or the department may call
1741 meetings. The department shall keep minutes of all meetings of
1742 the panel. Panel members shall serve without remuneration, but,
1743 if requested, shall be reimbursed for per diem and travel
1744 expenses as provided in s. 112.061.
1745 Section 29. Section 381.00781, Florida Statutes, is amended
1746 to read:
1747 381.00781 Fees; disposition.—
1748 ~~(1)~~ The department shall establish by rule the following
1749 fees:
1750 (1)~~(a)~~ ~~Fee~~ For the initial licensure of a tattoo
1751 establishment and the renewal of such license, a fee ~~which,~~
1752 ~~except as provided in subsection (2), may~~ not to exceed $250 per
1753 year.
1754 (2)~~(b)~~ ~~Fee~~ For licensure of a temporary establishment, a
1755 fee ~~which, except as provided in subsection (2), may~~ not to
1756 exceed $250.
1757 (3)~~(c)~~ ~~Fee~~ For the initial licensure of a tattoo artist and
1758 the renewal of such license, a fee ~~which, except as provided in~~
1759 ~~subsection (2), may~~ not to exceed $150 per year.
1760 (3)~~(d)~~ ~~Fee~~ For registration or reregistration of a guest
1761 tattoo artist, a fee ~~which, except as provided in subsection~~
1762 ~~(2), may~~ not to exceed $45.
1763 (4)~~(e)~~ ~~Fee~~ For reactivation of an inactive tattoo
1764 establishment license or tattoo artist license. A license
1765 becomes inactive if it is not renewed before the expiration of
1766 the current license.
1767 ~~(2) The department may annually adjust the maximum fees~~

661060

HR.HR.03324

1768 ~~authorized under subsection (1) according to the rate of~~
1769 ~~inflation or deflation indicated by the Consumer Price Index for~~
1770 ~~All Urban Consumers, U.S. City Average, All Items, as reported~~
1771 ~~by the United States Department of Labor.~~
1772 Section 30. Subsection (1) of section 381.0098, Florida
1773 Statutes, is amended to read:
1774 381.0098 Biomedical waste.—
1775 (1) LEGISLATIVE INTENT.—~~It is the intent of the Legislature~~
1776 ~~to protect the public health by establishing standards for the~~
1777 ~~safe packaging, transport, storage, treatment, and disposal of~~
1778 ~~biomedical waste.~~ Except as otherwise provided herein, the
1779 Department of Health shall regulate the packaging, transport,
1780 storage, and treatment of biomedical waste. The Department of
1781 Environmental Protection shall regulate onsite and offsite
1782 incineration and disposal of biomedical waste. Consistent with
1783 the foregoing, the Department of Health shall have the exclusive
1784 authority to establish treatment efficacy standards for
1785 biomedical waste and the Department of Environmental Protection
1786 shall have the exclusive authority to establish statewide
1787 standards relating to environmental impacts, if any, of
1788 treatment and disposal including, but not limited to, water
1789 discharges and air emissions. An interagency agreement between
1790 the Department of Environmental Protection and the Department of
1791 Health shall be developed to ensure maximum efficiency in
1792 coordinating, administering, and regulating biomedical wastes.
1793 Section 31. Subsections (2) through (8) of section
1794 381.0101, Florida Statutes, are renumbered as subsection (1)
1795 through (7), respectively, and present subsections (1), (2),
1796 (3), and (4) and paragraph (a) of present subsection (5) of that

661060

HR.HR.03324

1797 section are amended to read:
1798 381.0101 Environmental health professionals.—
1799 ~~(1) LEGISLATIVE INTENT.—Persons responsible for providing~~
1800 ~~technical and scientific evaluations of environmental health and~~
1801 ~~sanitary conditions in business establishments and communities~~
1802 ~~throughout the state may create a danger to the public health if~~
1803 ~~they are not skilled or competent to perform such evaluations.~~
1804 ~~The public relies on the judgment of environmental health~~
1805 ~~professionals employed by both government agencies and~~
1806 ~~industries to assure them that environmental hazards are~~
1807 ~~identified and removed before they endanger the health or safety~~
1808 ~~of the public. The purpose of this section is to assure the~~
1809 ~~public that persons specifically responsible for performing~~
1810 ~~environmental health and sanitary evaluations have been~~
1811 ~~certified by examination as competent to perform such work.~~
1812 (1) ~~(2)~~ DEFINITIONS.—As used in this section:
1813 (a) "Board" means the Environmental Health Professionals
1814 Advisory Board.
1815 (b) "Department" means the Department of Health.
1816 (c) "Environmental health" means that segment of public
1817 health work which deals with the examination of those factors in
1818 the human environment which may impact adversely on the health
1819 status of an individual or the public.
1820 (d) "Environmental health professional" means a person who
1821 is employed or assigned the responsibility for assessing the
1822 environmental health or sanitary conditions, as defined by the
1823 department, within a building, on an individual's property, or
1824 within the community at large, and who has the knowledge,
1825 skills, and abilities to carry out these tasks. Environmental

1826 health professionals may be either field, supervisory, or
1827 administrative staff members.
1828 (2) ~~(3)~~ CERTIFICATION REQUIRED.—A ~~No~~ person may not ~~shall~~
1829 perform environmental health or sanitary evaluations in any
1830 primary program area of environmental health without being
1831 certified by the department as competent to perform such
1832 evaluations. This section does not apply to:
1833 (a) Persons performing inspections of public food service
1834 establishments licensed under chapter 509; or
1835 (b) Persons performing site evaluations in order to
1836 determine proper placement and installation of onsite wastewater
1837 treatment and disposal systems who have successfully completed a
1838 department-approved soils morphology course and who are working
1839 under the direct responsible charge of an engineer licensed
1840 under chapter 471.
1841 (3) ~~(4)~~ ENVIRONMENTAL HEALTH PROFESSIONALS ADVISORY BOARD.—
1842 The State Health Officer shall appoint an advisory board to
1843 assist the department in the promulgation of rules for
1844 certification, testing, establishing standards, and seeking
1845 enforcement actions against certified professionals.
1846 (a) The board shall be comprised of the Division Director
1847 for Emergency Preparedness and Community Support ~~Environmental~~
1848 ~~Health~~ or his or her designee, one individual who will be
1849 certified under this section, one individual not employed in a
1850 governmental capacity who will or does employ a certified
1851 environmental health professional, one individual whose business
1852 is or will be evaluated by a certified environmental health
1853 professional, a citizen of the state who neither employs nor is
1854 routinely evaluated by a person certified under this section.

661060

HR.HR.03324

1855 (b) The board shall advise the department as to the minimum
1856 disciplinary guidelines and standards of competency and
1857 proficiency necessary to obtain certification in a primary area
1858 of environmental health practice.
1859 1. The board shall recommend primary areas of environmental
1860 health practice in which environmental health professionals
1861 should be required to obtain certification.
1862 2. The board shall recommend minimum standards of practice
1863 which the department shall incorporate into rule.
1864 3. The board shall evaluate and recommend to the department
1865 existing registrations and certifications which meet or exceed
1866 minimum department standards and should, therefore, exempt
1867 holders of such certificates or registrations from compliance
1868 with this section.
1869 4. The board shall hear appeals of certificate denials,
1870 revocation, or suspension and shall advise the department as to
1871 the disposition of such an appeal.
1872 5. The board shall meet as often as necessary, but no less
1873 than semiannually, handle appeals to the department, and conduct
1874 other duties of the board.
1875 6. Members of the board shall receive no compensation but
1876 are entitled to reimbursement for per diem and travel expenses
1877 in accordance with s. 112.061.
1878 (4) ~~(5)~~ STANDARDS FOR CERTIFICATION.—The department shall
1879 adopt rules that establish definitions of terms and minimum
1880 standards of education, training, or experience for those
1881 persons subject to this section. The rules must also address the
1882 process for application, examination, issuance, expiration, and
1883 renewal of certification and ethical standards of practice for

1884 the profession.
1885 (a) Persons employed as environmental health professionals
1886 shall exhibit a knowledge of rules and principles of
1887 environmental and public health law in Florida through
1888 examination. A person may not conduct environmental health
1889 evaluations in a primary program area unless he or she is
1890 currently certified in that program area or works under the
1891 direct supervision of a certified environmental health
1892 professional.
1893 1. All persons who begin employment in a primary
1894 environmental health program on or after September 21, 1994,
1895 must be certified in that program within 6 months after
1896 employment.
1897 2. Persons employed in the primary environmental health
1898 program of a food protection program or an onsite sewage
1899 treatment and disposal system prior to September 21, 1994, shall
1900 be considered certified while employed in that position and
1901 shall be required to adhere to any professional standards
1902 established by the department pursuant to paragraph (b),
1903 complete any continuing education requirements imposed under
1904 paragraph (d), and pay the certificate renewal fee imposed under
1905 subsection (6) ~~(7)~~.
1906 3. Persons employed in the primary environmental health
1907 program of a food protection program or an onsite sewage
1908 treatment and disposal system prior to September 21, 1994, who
1909 change positions or program areas and transfer into another
1910 primary environmental health program area on or after September
1911 21, 1994, must be certified in that program within 6 months
1912 after such transfer, except that they will not be required to

1913 possess the college degree required under paragraph (e).
1914 4. Registered sanitarians shall be considered certified and
1915 shall be required to adhere to any professional standards
1916 established by the department pursuant to paragraph (b).
1917 Section 32. Section 381.0203, Florida Statutes, is amended
1918 to read:
1919 381.0203 Pharmacy services.—
1920 (1) The department may contract on a statewide basis for
1921 the purchase of drugs, as defined in s. 499.003, to be used by
1922 state agencies and political subdivisions, and may adopt rules
1923 to administer this section.
1924 (2) The department shall establish and maintain a pharmacy
1925 services program, including, but not limited to:
1926 (a) A central pharmacy to support pharmaceutical services
1927 provided by the county health departments, including
1928 pharmaceutical repackaging, dispensing, and the purchase and
1929 distribution of immunizations and other pharmaceuticals.
1930 ~~(b) Regulation of drugs, cosmetics, and household products~~
1931 ~~pursuant to chapter 499.~~
1932 (b) ~~(c)~~ Consultation to county health departments as
1933 required by s. 154.04(1)(c).
1934 ~~(d) A contraception distribution program which shall be~~
1935 ~~implemented, to the extent resources permit, through the~~
1936 ~~licensed pharmacies of county health departments. A woman who is~~
1937 ~~eligible for participation in the contraceptive distribution~~
1938 ~~program is deemed a patient of the county health department.~~
1939 ~~1. To be eligible for participation in the program a woman~~
1940 ~~must:~~
1941 ~~a. Be a client of the department or the Department of~~

661060

HR.HR.03324

1942 ~~Children and Family Services.~~
1943 ~~b. Be of childbearing age with undesired fertility.~~
1944 ~~c. Have an income between 150 and 200 percent of the~~
1945 ~~federal poverty level.~~
1946 ~~d. Have no Medicaid benefits or applicable health insurance~~
1947 ~~benefits.~~
1948 ~~e. Have had a medical examination by a licensed health care~~
1949 ~~provider within the past 6 months.~~
1950 ~~f. Have a valid prescription for contraceptives that are~~
1951 ~~available through the contraceptive distribution program.~~
1952 ~~g. Consent to the release of necessary medical information~~
1953 ~~to the county health department.~~
1954 ~~2. Fees charged for the contraceptives under the program~~
1955 ~~must cover the cost of purchasing and providing contraceptives~~
1956 ~~to women participating in the program.~~
1957 ~~3. The department may adopt rules to administer this~~
1958 ~~program.~~
1959 Section 33. Subsection (1) of section 381.0261, Florida
1960 Statutes, is amended to read:
1961 381.0261 Summary of patient’s bill of rights; distribution;
1962 penalty.—
1963 (1) The Department of Health shall publish on its Internet
1964 website ~~Agency for Health Care Administration shall have printed~~
1965 ~~and made continuously available to health care facilities~~
1966 ~~licensed under chapter 395, physicians licensed under chapter~~
1967 ~~458, osteopathic physicians licensed under chapter 459, and~~
1968 ~~podiatric physicians licensed under chapter 461~~ a summary of the
1969 Florida Patient’s Bill of Rights and Responsibilities. In
1970 adopting and making available to patients the summary of the

1971 Florida Patient's Bill of Rights and Responsibilities, health
1972 care providers and health care facilities are not limited to the
1973 format in which the department publishes ~~Agency for Health Care~~
1974 ~~Administration prints and distributes~~ the summary.
1975 Section 34. Section 381.0301, Florida Statutes, is
1976 repealed.
1977 Section 35. Section 381.0302, Florida Statutes, is
1978 repealed.
1979 Section 36. Subsection (5) of section 381.0303, Florida
1980 Statutes, is amended to read:
1981 381.0303 Special needs shelters.—
1982 (5) SPECIAL NEEDS SHELTER INTERAGENCY COMMITTEE.—The State
1983 Surgeon General may establish a special needs shelter
1984 interagency committee and serve as, or appoint a designee to
1985 serve as, the committee's chair. The department shall provide
1986 any necessary staff and resources to support the committee in
1987 the performance of its duties. The committee shall address and
1988 resolve problems related to special needs shelters not addressed
1989 in the state comprehensive emergency medical plan and shall
1990 consult on the planning and operation of special needs shelters.
1991 (a) The committee shall~~:~~
1992 ~~1.~~ develop, negotiate, and regularly review any necessary
1993 interagency agreements, and~~.~~
1994 ~~2.~~ undertake other such activities as the department deems
1995 necessary to facilitate the implementation of this section.
1996 ~~3. Submit recommendations to the Legislature as necessary.~~
1997 (b) The special needs shelter interagency committee shall
1998 be composed of representatives of emergency management, health,
1999 medical, and social services organizations. Membership shall

661060

HR.HR.03324

2000 include, but shall not be limited to, representatives of the
2001 Departments of Health, Children and Family Services, Elderly
2002 Affairs, and Education; the Agency for Health Care
2003 Administration; the Division of Emergency Management; the
2004 Florida Medical Association; the Florida Osteopathic Medical
2005 Association; Associated Home Health Industries of Florida, Inc.;
2006 the Florida Nurses Association; the Florida Health Care
2007 Association; the Florida Assisted Living Affiliation; the
2008 Florida Hospital Association; the Florida Statutory Teaching
2009 Hospital Council; the Florida Association of Homes for the
2010 Aging; the Florida Emergency Preparedness Association; the
2011 American Red Cross; Florida Hospices and Palliative Care, Inc.;
2012 the Association of Community Hospitals and Health Systems; the
2013 Florida Association of Health Maintenance Organizations; the
2014 Florida League of Health Systems; the Private Care Association;
2015 the Salvation Army; the Florida Association of Aging Services
2016 Providers; the AARP; and the Florida Renal Coalition.
2017 (c) Meetings of the committee shall be held in Tallahassee,
2018 and members of the committee shall serve at the expense of the
2019 agencies or organizations they represent. The committee shall
2020 make every effort to use teleconference or videoconference
2021 capabilities in order to ensure statewide input and
2022 participation.
2023 Section 37. Section 381.04015, Florida Statutes, is
2024 repealed.
2025 Section 38. Subsections (2), (3), and (4) of section
2026 381.0403, Florida Statutes, are amended to read:
2027 381.0403 The Community Hospital Education Act.—
2028 (2) ESTABLISHMENT OF PROGRAM ~~LEGISLATIVE INTENT~~.—

661060

HR.HR.03324

2029 ~~(a) It is the intent of the Legislature that health care~~
2030 ~~services for the citizens of this state be upgraded and that a~~
2031 ~~program for continuing these services be maintained through a~~
2032 ~~plan for community medical education. The~~ A program is ~~intended~~
2033 established to plan for community medical education, provide
2034 additional outpatient and inpatient services, increase the ~~a~~
2035 ~~continuing~~ supply of highly trained physicians, and expand
2036 graduate medical education.
2037 ~~(b) The Legislature further acknowledges the critical need~~
2038 ~~for increased numbers of primary care physicians to provide the~~
2039 ~~necessary current and projected health and medical services. In~~
2040 ~~order to meet both present and anticipated needs, the~~
2041 ~~Legislature supports an expansion in the number of family~~
2042 ~~practice residency positions. The Legislature intends that the~~
2043 ~~funding for graduate education in family practice be maintained~~
2044 ~~and that funding for all primary care specialties be provided at~~
2045 ~~a minimum of $10,000 per resident per year. Should funding for~~
2046 ~~this act remain constant or be reduced, it is intended that all~~
2047 ~~programs funded by this act be maintained or reduced~~
2048 ~~proportionately.~~
2049 (3) PROGRAM FOR COMMUNITY HOSPITAL EDUCATION; STATE AND
2050 LOCAL PLANNING.—
2051 (a) ~~There is established under the Department of Health a~~
2052 ~~program for statewide graduate medical education. It is intended~~
2053 ~~that continuing graduate medical education programs for interns~~
2054 ~~and residents be established on a statewide basis.~~ The program
2055 shall provide financial support for primary care specialty
2056 interns and residents based on recommendations of ~~policies~~
2057 ~~recommended and approved by~~ the Community Hospital Education

2058 Council, herein established, and the Department of Health, as
2059 authorized by the General Appropriations Act. Only those
2060 programs with at least three residents or interns in each year
2061 of the training program are qualified to apply for financial
2062 support. Programs with fewer than three residents or interns per
2063 training year are qualified to apply for financial support, but
2064 only if the appropriate accrediting entity for the particular
2065 specialty has approved the program for fewer positions. New
2066 programs ~~added after fiscal year 1997-1998~~ shall have 5 years to
2067 attain the requisite number of residents or interns. When
2068 feasible and to the extent allowed through the General
2069 Appropriations Act, state funds shall be used to generate
2070 federal matching funds under Medicaid, or other federal
2071 programs, and the resulting combined state and federal funds
2072 shall be allocated to participating hospitals for the support of
2073 graduate medical education.
2074 (b) For the purposes of this section, primary care
2075 specialties include emergency medicine, family practice,
2076 internal medicine, pediatrics, psychiatry,
2077 obstetrics/gynecology, and combined pediatrics and internal
2078 medicine, and other primary care specialties as may be included
2079 by the council and Department of Health.
2080 (c) Medical institutions throughout the state may apply to
2081 the Community Hospital Education Council for grants-in-aid for
2082 financial support of their approved programs. Recommendations
2083 for funding of approved programs shall be forwarded to the
2084 Department of Health.
2085 (d) The program shall provide a plan for community clinical
2086 teaching and training with the cooperation of the medical

661060

HR.HR.03324

2087 profession, hospitals, and clinics. The plan shall also include
2088 formal teaching opportunities for intern and resident training.
2089 In addition, the plan shall establish an off-campus medical
2090 faculty with university faculty review to be located throughout
2091 the state in local communities.
2092 (4) PROGRAM FOR GRADUATE MEDICAL EDUCATION INNOVATIONS.—
2093 (a) There is established under the Department of Health a
2094 program for fostering graduate medical education innovations.
2095 Funds appropriated annually by the Legislature for this purpose
2096 shall be distributed to participating hospitals or consortia of
2097 participating hospitals and Florida medical schools or to a
2098 Florida medical school for the direct costs of providing
2099 graduate medical education in community-based clinical settings
2100 on a competitive grant or formula basis to achieve state health
2101 care workforce policy objectives, including, but not limited to:
2102 1. Increasing the number of residents in primary care and
2103 other high demand specialties or fellowships;
2104 2. Enhancing retention of primary care physicians in
2105 Florida practice;
2106 3. Promoting practice in medically underserved areas of the
2107 state;
2108 4. Encouraging racial and ethnic diversity within the
2109 state’s physician workforce; and
2110 5. Encouraging increased production of geriatricians.
2111 (b) Participating hospitals or consortia of participating
2112 hospitals and Florida medical schools or a Florida medical
2113 school providing graduate medical education in community-based
2114 clinical settings may apply to the Community Hospital Education
2115 Council for funding under this innovations program, except when

2116 such innovations directly compete with services or programs
2117 provided by participating hospitals or consortia of
2118 participating hospitals, or by both hospitals and consortia.
2119 Innovations program funding shall be allocated ~~provide funding~~
2120 based on recommendations of ~~policies recommended and approved by~~
2121 the Community Hospital Education Council and the Department of
2122 Health, as authorized by the General Appropriations Act.
2123 (c) Participating hospitals or consortia of participating
2124 hospitals and Florida medical schools or Florida medical schools
2125 awarded an innovations grant shall provide the Community
2126 Hospital Education Council and Department of Health with an
2127 annual report on their project.
2128 Section 39. Subsection (7) of section 381.0405, Florida
2129 Statutes, is amended to read:
2130 381.0405 Office of Rural Health.—
2131 ~~(7) APPROPRIATION.—The Legislature shall appropriate such~~
2132 ~~sums as are necessary to support the Office of Rural Health.~~
2133 Section 40. Subsection (3) of section 381.0406, Florida
2134 Statutes, is amended to read:
2135 381.0406 Rural health networks.—
2136 (3) ~~Because each rural area is unique, with a different~~
2137 ~~health care provider mix,~~ Health care provider membership may
2138 vary, but all networks shall include members that provide public
2139 health, comprehensive primary care, emergency medical care, and
2140 acute inpatient care.
2141 Section 41. Section 381.045, Florida Statutes, is repealed.
2142 Section 42. Subsection (7) of section 381.06015, Florida
2143 Statutes, is amended to read:
2144 381.06015 Public Cord Blood Tissue Bank.—

2145 ~~(7) In order to fund the provisions of this section the~~
2146 ~~consortium participants, the Agency for Health Care~~
2147 ~~Administration, and the Department of Health shall seek private~~
2148 ~~or federal funds to initiate program actions for fiscal year~~
2149 ~~2000-2001.~~
2150 Section 43. Section 381.0605, Florida Statutes, is
2151 repealed.
2152 Section 44. Section 381.102, Florida Statutes, is repealed.
2153 Section 45. Section 381.103, Florida Statutes, is repealed.
2154 Section 46. Subsections (3) through (5) of section
2155 381.4018, Florida Statutes, are renumbered as subsections (2)
2156 through (4), respectively, and present subsection (2) and
2157 paragraph (f) of present subsection (4) of that section are
2158 amended to read:
2159 381.4018 Physician workforce assessment and development.—
2160 ~~(2) LEGISLATIVE INTENT.—The Legislature recognizes that~~
2161 ~~physician workforce planning is an essential component of~~
2162 ~~ensuring that there is an adequate and appropriate supply of~~
2163 ~~well-trained physicians to meet this state's future health care~~
2164 ~~service needs as the general population and elderly population~~
2165 ~~of the state increase. The Legislature finds that items to~~
2166 ~~consider relative to assessing the physician workforce may~~
2167 ~~include physician practice status; specialty mix; geographic~~
2168 ~~distribution; demographic information, including, but not~~
2169 ~~limited to, age, gender, race, and cultural considerations; and~~
2170 ~~needs of current or projected medically underserved areas in the~~
2171 ~~state. Long-term strategic planning is essential as the period~~
2172 ~~from the time a medical student enters medical school to~~
2173 ~~completion of graduate medical education may range from 7 to 10~~

2174 ~~years or longer. The Legislature recognizes that strategies to~~
2175 ~~provide for a well-trained supply of physicians must include~~
2176 ~~ensuring the availability and capacity of quality medical~~
2177 ~~schools and graduate medical education programs in this state,~~
2178 ~~as well as using new or existing state and federal programs~~
2179 ~~providing incentives for physicians to practice in needed~~
2180 ~~specialties and in underserved areas in a manner that addresses~~
2181 ~~projected needs for physician manpower.~~
2182 (3) ~~(4)~~ GENERAL FUNCTIONS.—The department shall maximize the
2183 use of existing programs under the jurisdiction of the
2184 department and other state agencies and coordinate governmental
2185 and nongovernmental stakeholders and resources in order to
2186 develop a state strategic plan and assess the implementation of
2187 such strategic plan. In developing the state strategic plan, the
2188 department shall:
2189 (f) Develop strategies to maximize federal and state
2190 programs that provide for the use of incentives to attract
2191 physicians to this state or retain physicians within the state.
2192 Such strategies should explore and maximize federal-state
2193 partnerships that provide incentives for physicians to practice
2194 in federally designated shortage areas. Strategies shall also
2195 consider the use of state programs, such as the ~~Florida Health~~
2196 ~~Service Corps established pursuant to s. 381.0302 and~~ the
2197 Medical Education Reimbursement and Loan Repayment Program
2198 pursuant to s. 1009.65, which provide for education loan
2199 repayment or loan forgiveness and provide monetary incentives
2200 for physicians to relocate to underserved areas of the state.
2201 Section 47. Section 381.60225, Florida Statutes, is
2202 repealed.

661060

HR.HR.03324

2203 Section 48. Section 381.7352, Florida Statutes, is amended
2204 to read:
2205 381.7352 Legislative findings and intent.—
2206 ~~(1) The Legislature finds that despite state investments in~~
2207 ~~health care programs, certain racial and ethnic populations in~~
2208 ~~Florida continue to have significantly poorer health outcomes~~
2209 ~~when compared to non-Hispanic whites. The Legislature finds that~~
2210 ~~local solutions to health care problems can have a dramatic and~~
2211 ~~positive effect on the health status of these populations. Local~~
2212 ~~governments and communities are best equipped to identify the~~
2213 ~~health education, health promotion, and disease prevention needs~~
2214 ~~of the racial and ethnic populations in their communities,~~
2215 ~~mobilize the community to address health outcome disparities,~~
2216 ~~enlist and organize local public and private resources, and~~
2217 ~~faith-based organizations to address these disparities, and~~
2218 ~~evaluate the effectiveness of interventions.~~
2219 ~~(2)~~ It is ~~therefore~~ the intent of the Legislature to
2220 provide funds within Florida counties and Front Porch Florida
2221 Communities, in the form of Reducing Racial and Ethnic Health
2222 Disparities: Closing the Gap grants, to stimulate the
2223 development of community-based and neighborhood-based projects
2224 which will improve the health outcomes of racial and ethnic
2225 populations. Further, it is the intent of the Legislature that
2226 these programs foster the development of coordinated,
2227 collaborative, and broad-based participation by public and
2228 private entities, and faith-based organizations. Finally, it is
2229 the intent of the Legislature that the grant program function as
2230 a partnership between state and local governments, faith-based
2231 organizations, and private sector health care providers,

661060

HR.HR.03324

2232 including managed care, voluntary health care resources, social
2233 service providers, and nontraditional partners.
2234 Section 49. Subsection (3) of section 381.7353, Florida
2235 Statutes, is amended to read:
2236 381.7353 Reducing Racial and Ethnic Health Disparities:
2237 Closing the Gap grant program; administration; department
2238 duties.—
2239 ~~(3) Pursuant to s. 20.43(6), the State Surgeon General may~~
2240 ~~appoint an ad hoc advisory committee to: examine areas where~~
2241 ~~public awareness, public education, research, and coordination~~
2242 ~~regarding racial and ethnic health outcome disparities are~~
2243 ~~lacking; consider access and transportation issues which~~
2244 ~~contribute to health status disparities; and make~~
2245 ~~recommendations for closing gaps in health outcomes and~~
2246 ~~increasing the public's awareness and understanding of health~~
2247 ~~disparities that exist between racial and ethnic populations.~~
2248 Section 50. Subsections (5) and (6) of section 381.7356,
2249 Florida Statutes, are renumbered as subsections (4) and (5),
2250 respectively, and present subsection (4) of that section is
2251 amended to read:
2252 381.7356 Local matching funds; grant awards.—
2253 ~~(4) Dissemination of grant awards shall begin no later than~~
2254 ~~January 1, 2001.~~
2255 Section 51. Subsection (3) of section 381.765, Florida
2256 Statutes, is amended to read:
2257 381.765 Retention of title to and disposal of equipment.—
2258 ~~(3) The department may adopt rules relating to records and~~
2259 ~~recordkeeping for department-owned property referenced in~~
2260 ~~subsections (1) and (2).~~

661060

HR.HR.03324

2261 Section 52. Section 381.77, Florida Statutes, is repealed.
2262 Section 53. Section 381.795, Florida Statutes, is repealed.
2263 Section 54. Subsections (2) through (5) of section 381.853,
2264 Florida Statutes, are renumbered as subsections (1) through (4),
2265 respectively, and present subsection (1) of that section is
2266 amended to read:
2267 381.853 Florida Center for Brain Tumor Research.—
2268 ~~(1) The Legislature finds that each year an estimated~~
2269 ~~190,000 citizens of the United States are diagnosed with~~
2270 ~~cancerous and noncancerous brain tumors and that biomedical~~
2271 ~~research is the key to finding cures for these tumors. The~~
2272 ~~Legislature further finds that, although brain tumor research is~~
2273 ~~being conducted throughout the state, there is a lack of~~
2274 ~~coordinated efforts among researchers and health care providers.~~
2275 ~~Therefore, the Legislature finds that there is a significant~~
2276 ~~need for a coordinated effort to achieve the goal of curing~~
2277 ~~brain tumors. The Legislature further finds that the biomedical~~
2278 ~~technology sector meets the criteria of a high-impact sector,~~
2279 ~~pursuant to s. 288.108(6), having a high importance to the~~
2280 ~~state's economy with a significant potential for growth and~~
2281 ~~contribution to our universities and quality of life.~~
2282 Section 55. Section 381.855, Florida Statutes, is repealed.
2283 Section 56. Section 381.87, Florida Statutes, is repealed.
2284 Section 57. Section 381.895, Florida Statutes, is amended
2285 to read:
2286 381.895 Standards for compressed air used for recreational
2287 diving.—
2288 (1) A person selling compressed air for recreational sport
2289 diving must:

661060

HR.HR.03324

2290 (a) maintain certification or membership in at least one of
2291 the following organizations:
2292 1. Professional Association of Diving Instructors (PADI);
2293 2. National Association of Underwater Instructors (NAUI);
2294 3. Scuba Schools International (SSI);
2295 (b) post in a conspicuous place on the premises, a copy of
2296 the certification or documentation of membership in the
2297 organization; and
2298 (c) maintain Compressed Gas Association, Grade "E"
2299 Recreational Diving Compressed Air Standards, provide medical
2300 grade compressed air, or use constant air quality monitoring
2301 devices which are calibrated at least every 90 days.
2302 ~~The Department of Health shall establish maximum allowable~~
2303 ~~levels for contaminants in compressed air used for recreational~~
2304 ~~sport diving in this state. In developing the standards, the~~
2305 ~~department must take into consideration the levels of~~
2306 ~~contaminants allowed by the Grade "E" Recreational Diving~~
2307 ~~Standards of the Compressed Gas Association.~~
2308 (2) The Department of Health may adopt rules to revise or
2309 add to the list of organizations authorized in subsection (1),
2310 or to recognize additional standards that are nationally
2311 recognized for ensuring compressed air is safe for recreation
2312 sport diving.
2313 ~~The standards prescribed under this section do not apply~~
2314 ~~to:~~
2315 ~~(a) Any person providing compressed air for his or her own~~
2316 ~~use.~~
2317 ~~(b) Any governmental entity using a governmentally owned~~
2318 ~~compressed air source for work related to the governmental~~

2319 ~~entity.~~
2320 ~~(c) Foreign registered vessels upon which a compressor is~~
2321 ~~used to provide compressed air for work related to the operation~~
2322 ~~of the vessel.~~
2323 (3) A person who does not comply with the requirements in
2324 subsection (1) or the rules adopted pursuant to subsection (2)
2325 commits a misdemeanor of the first degree, punishable as
2326 provided in s. 775.082 and s. 775.083, Florida Statutes.
2327 ~~A person or entity that, for compensation, provides~~
2328 ~~compressed air for recreational sport diving in this state,~~
2329 ~~including compressed air provided as part of a dive package of~~
2330 ~~equipment rental, dive boat rental, or dive boat charter, must~~
2331 ~~ensure that the compressed air is tested quarterly by a~~
2332 ~~laboratory that is accredited by either the American Industrial~~
2333 ~~Hygiene Association or the American Association for Laboratory~~
2334 ~~Accreditation and that the results of such tests are provided~~
2335 ~~quarterly to the Department of Health. In addition, the person~~
2336 ~~or entity must post the certificate issued by the laboratory~~
2337 ~~accredited by the American Industrial Hygiene Association or the~~
2338 ~~American Association for Laboratory Accreditation in a~~
2339 ~~conspicuous location where it can readily be seen by any person~~
2340 ~~purchasing compressed air.~~
2341 ~~(4) The Department of Health shall maintain a record of all~~
2342 ~~quarterly test results provided under this section.~~
2343 ~~(5) It is a misdemeanor of the second degree for any person~~
2344 ~~or entity to provide, for compensation, compressed air for~~
2345 ~~recreational sport diving in this state, including compressed~~
2346 ~~air provided as part of a dive package of equipment rental, dive~~
2347 ~~boat rental, or dive boat charter, without:~~

661060

HR.HR.03324

2348 ~~(a) Having received a valid certificate issued by a~~
2349 ~~laboratory accredited by the American Industrial Hygiene~~
2350 ~~Association or the American Association for Laboratory~~
2351 ~~Accreditation which certifies that the compressed air meets the~~
2352 ~~standards for contaminant levels established by the Department~~
2353 ~~of Health.~~
2354 ~~(b) Posting the certificate issued by a laboratory~~
2355 ~~accredited by the American Industrial Hygiene Association or the~~
2356 ~~American Association for Laboratory Accreditation in a~~
2357 ~~conspicuous location where it can readily be seen by persons~~
2358 ~~purchasing compressed air.~~
2359 ~~(6) The department shall adopt rules necessary to carry out~~
2360 ~~the provisions of this section, which must include:~~
2361 ~~(a) Maximum allowable levels of contaminants in compressed~~
2362 ~~air used for sport diving.~~
2363 ~~(b) Procedures for the submission of test results to the~~
2364 ~~department.~~
2365 Section 58. Section 381.90, Florida Statutes, is repealed.
2366 Section 59. Subsection (1) of section 381.91, Florida
2367 Statutes, is amended to read:
2368 381.91 Jessie Trice Cancer Prevention Program.—
2369 (1) It is the intent of the Legislature to~~:~~
2370 ~~(a) Reduce the rates of illness and death from lung cancer~~
2371 ~~and other cancers and improve the quality of life among low-~~
2372 ~~income African-American and Hispanic populations through~~
2373 ~~increased access to early, effective screening and diagnosis,~~
2374 ~~education, and treatment programs.~~
2375 ~~(b)~~ create a community faith-based disease-prevention
2376 program in conjunction with the Health Choice Network and other

2377 community health centers to build upon the natural referral and
2378 education networks in place within minority communities and to
2379 increase access to health service delivery in Florida and~~.~~
2380 ~~(c)~~ establish a funding source to build upon local private
2381 participation to sustain the operation of the program.
2382 Section 60. Subsection (5) of section 381.922, Florida
2383 Statutes, is amended to read:
2384 381.922 William G. "Bill" Bankhead, Jr., and David Coley
2385 Cancer Research Program.—
2386 (5) The William G. "Bill" Bankhead, Jr., and David Coley
2387 Cancer Research Program is funded pursuant to s. 215.5602(12).
2388 Funds appropriated for the William G. "Bill" Bankhead, Jr., and
2389 David Coley Cancer Research Program shall be distributed
2390 pursuant to this section to provide grants to researchers
2391 seeking cures for cancer and cancer-related illnesses, with
2392 emphasis given to the goals enumerated in this section. From the
2393 total funds appropriated, an amount of up to 10 percent may be
2394 used for administrative expenses. ~~From funds appropriated to~~
2395 ~~accomplish the goals of this section, up to $250,000 shall be~~
2396 ~~available for the operating costs of the Florida Center for~~
2397 ~~Universal Research to Eradicate Disease.~~
2398 Section 61. Effective January 1, 2013, section 392.51,
2399 Florida Statutes, is amended to read:
2400 392.51 Tuberculosis control ~~Findings and intent.—~~A
2401 statewide system is established to control tuberculosis
2402 infection and mitigate its effects. The system consists ~~The~~
2403 ~~Legislature finds and declares that active tuberculosis is a~~
2404 ~~highly contagious infection that is sometimes fatal and~~
2405 ~~constitutes a serious threat to the public health. The~~

2406 ~~Legislature finds that there is a significant reservoir of~~
2407 ~~tuberculosis infection in this state and that there is a need to~~
2408 ~~develop community programs to identify tuberculosis and to~~
2409 ~~respond quickly with appropriate measures. The Legislature finds~~
2410 ~~that some patients who have active tuberculosis have complex~~
2411 ~~medical, social, and economic problems that make outpatient~~
2412 ~~control of the disease difficult, if not impossible, without~~
2413 ~~posing a threat to the public health. The Legislature finds that~~
2414 ~~in order to protect the citizenry from those few persons who~~
2415 ~~pose a threat to the public, it is necessary to establish a~~
2416 ~~system~~ of mandatory contact identification, treatment to cure,
2417 hospitalization, ~~and~~ isolation for contagious cases, and ~~to~~
2418 ~~provide a system of~~ voluntary, community-oriented care and
2419 surveillance in all other cases. ~~The Legislature finds that the~~
2420 ~~delivery of~~ Tuberculosis control services shall be provided ~~is~~
2421 ~~best accomplished~~ by the coordinated efforts of the respective
2422 county health departments and contracted or other private health
2423 care providers~~, the A.G. Holley State Hospital, and the private~~
2424 ~~health care delivery system~~.
2425 Section 62. Effective January 1, 2013, subsection (4) of
2426 section 392.61, Florida Statutes, is amended to read:
2427 392.61 Community tuberculosis control programs.—
2428 ~~(4) The department shall develop, by rule, a methodology~~
2429 ~~for distributing funds appropriated for tuberculosis control~~
2430 ~~programs. Criteria to be considered in this methodology include,~~
2431 ~~but are not limited to, the basic infrastructure available for~~
2432 ~~tuberculosis control, caseload requirements, laboratory support~~
2433 ~~services needed, and epidemiologic factors.~~
2434 Section 63. Effective January 1, 2013, section 392.62,

661060

HR.HR.03324

2435 Florida Statutes, is amended to read:
2436 392.62 Hospitalization and placement programs.—
2437 (1) The department shall contract for operation of ~~operate~~
2438 a program for the treatment ~~hospitalization~~ of persons who have
2439 active tuberculosis in hospitals licensed under chapter 395 and
2440 may provide for appropriate placement of persons who have active
2441 tuberculosis in other health care facilities or residential
2442 facilities. The department shall require the contractor to use
2443 existing licensed community hospitals and other facilities for
2444 the care and treatment to cure persons who have active
2445 tuberculosis or a history of noncompliance with prescribed drug
2446 regimens and require inpatient or other residential services.
2447 ~~(2) The department may operate a licensed hospital for the~~
2448 ~~care and treatment to cure of persons who have active~~
2449 ~~tuberculosis. The hospital may have a forensic unit where, under~~
2450 ~~medical protocol, a patient can be held in a secure or~~
2451 ~~protective setting. The department shall also seek to maximize~~
2452 ~~use of existing licensed community hospitals for the care and~~
2453 ~~treatment to cure of persons who have active tuberculosis.~~
2454 (2) ~~(3)~~ The program for control of tuberculosis shall
2455 provide funding for participating facilities and require any
2456 such facilities to meet the following conditions ~~Any licensed~~
2457 ~~hospital operated by the department, any licensed hospital under~~
2458 ~~contract with the department, and any other health care facility~~
2459 ~~or residential facility operated by or under contract with the~~
2460 ~~department for the care and treatment of patients who have~~
2461 ~~active tuberculosis shall~~:
2462 (a) Admit patients voluntarily and under court order as
2463 appropriate for each particular facility;

2464 (b) Require that each patient pay the actual cost of care
2465 provided whether the patient is admitted voluntarily or by court
2466 order;
2467 (c) Provide for ~~a method of paying for~~ the care of patients
2468 in the program regardless of ability to pay ~~who cannot afford to~~
2469 ~~do so~~;
2470 (d) Require a primary clinical diagnosis of active
2471 tuberculosis by a physician licensed under chapter 458 or
2472 chapter 459 before admitting the patient; provided that there
2473 may be more than one primary diagnosis;
2474 (e) Provide a method of notification to the county health
2475 department and to the patient's family, if any, before
2476 discharging the patient from the hospital or other facility;
2477 (f) Provide for the necessary exchange of medical
2478 information to assure adequate community treatment to cure and
2479 followup of discharged patients, as appropriate; and
2480 (g) Provide for a method of medical care and counseling and
2481 for housing, social service, and employment referrals, if
2482 appropriate, for ~~all~~ patients discharged from the hospital.
2483 (3) ~~(4)~~ A hospital may, pursuant to court order, place a
2484 patient in temporary isolation for a period of no more than 72
2485 continuous hours. The department shall obtain a court order in
2486 the same manner as prescribed in s. 392.57. Nothing in this
2487 subsection precludes a hospital from isolating an infectious
2488 patient for medical reasons.
2489 (4) ~~(5)~~ Any person committed under s. 392.57 who leaves the
2490 tuberculosis hospital or residential facility without having
2491 been discharged by the designated medical authority, except as
2492 provided in s. 392.63, shall be apprehended by the sheriff of

661060

HR.HR.03324

2493 the county in which the person is found and immediately
2494 delivered to the facility from which he or she left.
2495 Section 64. The Department of Health shall develop and
2496 implement a transition plan for the closure of A.G. Holley State
2497 Hospital. The plan shall include specific steps to end voluntary
2498 admissions; transfer patients to alternate facilities;
2499 communicate with families, providers, other affected parties,
2500 and the general public; enter into any necessary contracts with
2501 providers; coordinate with the Department of Management Services
2502 regarding the disposition of equipment and supplies and the
2503 closure of the facility; and seek federal approval, if needed,
2504 to continue Medicaid funding throughout the treatment period in
2505 community hospitals and other facilities. The plan shall be
2506 submitted to the Governor, the Speaker of the House of
2507 Representatives, and the President of the Senate by May 31,
2508 2012. The department shall fully implement the plan by January
2509 1, 2013.
2510 Section 65. Subsections (1) and (4) of section 395.1027,
2511 Florida Statutes, are amended to read:
2512 395.1027 Regional poison control centers.—
2513 (1) There shall be created three certified regional poison
2514 control centers, one each in the north, central, and southern
2515 regions of the state. Each regional poison control center shall
2516 be affiliated with and physically located in a certified Level I
2517 trauma center. Each regional poison control center shall be
2518 affiliated with an accredited medical school or college of
2519 pharmacy. The regional poison control centers shall be
2520 coordinated under the aegis of the Division of Children's
2521 Medical Services ~~Prevention and Intervention~~ in the department.

2522 (4) The Legislature hereby finds and declares that it is in
2523 the public interest to shorten the time required for a citizen
2524 to request and receive directly from designated regional poison
2525 control centers telephonic management advice for acute poisoning
2526 emergencies. To facilitate rapid and direct access, telephone
2527 numbers for designated regional poison control centers shall be
2528 given special prominence. The local exchange telecommunications
2529 companies shall print immediately below "911" or other emergency
2530 calling instructions on the inside front cover of the telephone
2531 directory the words "Poison Information Center," the logo of the
2532 American Association of Poison Control Centers, and the
2533 telephone number of the local, if applicable, or, if not local,
2534 other toll-free telephone number of the Florida Poison
2535 Information Center Network. This information shall be outlined
2536 and be no less than 1 inch in height by 2 inches in width. Only
2537 those facilities satisfying criteria established in the current
2538 "Criteria for Certification of a Regional Poison Center" set by
2539 the American Association of Poison Control Centers, and the
2540 "Standards of the Poison Information Center Program" initiated
2541 by the Division of Children's Medical Services ~~Prevention and~~
2542 ~~Intervention~~ of the Department of Health shall be permitted to
2543 list such facility as a poison information center, poison
2544 control center, or poison center. Those centers under a
2545 developmental phase-in plan shall be given 2 years from the date
2546 of initial 24-hour service implementation to comply with the
2547 aforementioned criteria and, as such, will be permitted to be
2548 listed as a poison information center, poison control center, or
2549 poison center during that allotted time period.
2550 Section 66. Subsection (4) of section 401.243, Florida

661060

HR.HR.03324

2551 Statutes, is amended to read:
2552 401.243 Injury prevention.—The department shall establish
2553 an injury-prevention program with responsibility for the
2554 statewide coordination and expansion of injury-prevention
2555 activities. The duties of the department under the program may
2556 include, but are not limited to, data collection, surveillance,
2557 education, and the promotion of interventions. In addition, the
2558 department may:
2559 ~~(4) Adopt rules governing the implementation of grant~~
2560 ~~programs. The rules may include, but need not be limited to,~~
2561 ~~criteria regarding the application process, the selection of~~
2562 ~~grantees, the implementation of injury-prevention activities,~~
2563 ~~data collection, surveillance, education, and the promotion of~~
2564 ~~interventions.~~
2565 Section 67. Subsection (6) of section 401.245, Florida
2566 Statutes, is renumbered as subsection (5), and present
2567 subsection (5) of that section is amended to read:
2568 401.245 Emergency Medical Services Advisory Council.—
2569 ~~(5) The department shall adopt rules to implement this~~
2570 ~~section, which rules shall serve as formal operating procedures~~
2571 ~~for the Emergency Medical Services Advisory Council.~~
2572 Section 68. Section 401.271, Florida Statutes, is amended
2573 to read:
2574 401.271 Certification of emergency medical technicians and
2575 paramedics who are on active duty with the Armed Forces of the
2576 United States; spouses of members of the Armed Forces.—
2577 ~~(1)~~ Any member of the Armed Forces of the United States on
2578 active duty who, at the time he or she became a member, was in
2579 good standing with the department and was entitled to practice

2580 as an emergency medical technician or paramedic in the state
2581 remains in good standing without registering, paying dues or
2582 fees, or performing any other act, as long as he or she is a
2583 member of the Armed Forces of the United States on active duty
2584 and for a period of 6 months after his or her discharge from
2585 active duty as a member of the Armed Forces of the United
2586 States.
2587 ~~(2) The department may adopt rules exempting the spouse of~~
2588 ~~a member of the Armed Forces of the United States on active duty~~
2589 ~~from certification renewal provisions while the spouse is absent~~
2590 ~~from the state because of the member's active duty with the~~
2591 ~~Armed Forces.~~
2592 Section 69. Section 402.45, Florida Statutes, is repealed.
2593 Section 70. Subsection (1) of section 400.914, Florida
2594 Statutes, is amended to read:
2595 400.914 Rules establishing standards.—
2596 (1) Pursuant to the intention of the Legislature to provide
2597 safe and sanitary facilities and healthful programs, the agency
2598 in conjunction with the Division of Children's Medical Services
2599 ~~Prevention and Intervention~~ of the Department of Health shall
2600 adopt and publish rules to implement the provisions of this part
2601 and part II of chapter 408, which shall include reasonable and
2602 fair standards. Any conflict between these standards and those
2603 that may be set forth in local, county, or city ordinances shall
2604 be resolved in favor of those having statewide effect. Such
2605 standards shall relate to:
2606 (a) The assurance that PPEC services are family centered
2607 and provide individualized medical, developmental, and family
2608 training services.

661060

HR.HR.03324

2609 (b) The maintenance of PPEC centers, not in conflict with
2610 the provisions of chapter 553 and based upon the size of the
2611 structure and number of children, relating to plumbing, heating,
2612 lighting, ventilation, and other building conditions, including
2613 adequate space, which will ensure the health, safety, comfort,
2614 and protection from fire of the children served.
2615 (c) The appropriate provisions of the most recent edition
2616 of the "Life Safety Code" (NFPA-101) shall be applied.
2617 (d) The number and qualifications of all personnel who have
2618 responsibility for the care of the children served.
2619 (e) All sanitary conditions within the PPEC center and its
2620 surroundings, including water supply, sewage disposal, food
2621 handling, and general hygiene, and maintenance thereof, which
2622 will ensure the health and comfort of children served.
2623 (f) Programs and basic services promoting and maintaining
2624 the health and development of the children served and meeting
2625 the training needs of the children's legal guardians.
2626 (g) Supportive, contracted, other operational, and
2627 transportation services.
2628 (h) Maintenance of appropriate medical records, data, and
2629 information relative to the children and programs. Such records
2630 shall be maintained in the facility for inspection by the
2631 agency.
2632 Section 71. Paragraph (d) of subsection (11) of section
2633 409.256, Florida Statutes, is amended to read:
2634 409.256 Administrative proceeding to establish paternity or
2635 paternity and child support; order to appear for genetic
2636 testing.—
2637 (11) FINAL ORDER ESTABLISHING PATERNITY OR PATERNITY AND

661060

HR.HR.03324

2638 CHILD SUPPORT; CONSENT ORDER; NOTICE TO OFFICE OF VITAL
2639 STATISTICS.—
2640 (d) Upon rendering a final order of paternity or a final
2641 order of paternity and child support, the department shall
2642 notify the Office ~~Division~~ of Vital Statistics of the Department
2643 of Health that the paternity of the child has been established.
2644 Section 72. Section 458.346, Florida Statutes, is repealed.
2645 Section 73. Subsection (3) of section 462.19, Florida
2646 Statutes, is renumbered as subsection (2), and present
2647 subsection (2) of that section is amended to read:
2648 462.19 Renewal of license; inactive status.—
2649 ~~(2) The department shall adopt rules establishing a~~
2650 ~~procedure for the biennial renewal of licenses.~~
2651 Section 74. Section 464.0197, Florida Statutes, is
2652 repealed.
2653 Section 75. Subsection (4) of section 464.208, Florida
2654 Statutes, is amended to read:
2655 464.208 Background screening information; rulemaking
2656 authority.—
2657 ~~(4) The board shall adopt rules to administer this part.~~
2658 Section 76. Subsections (1) and (2) of section 633.115,
2659 Florida Statutes, are amended to read:
2660 633.115 Fire and Emergency Incident Information Reporting
2661 Program; duties; fire reports.—
2662 (1)(a) The Fire and Emergency Incident Information
2663 Reporting Program is created within the Division of State Fire
2664 Marshal. The program shall:
2665 1. Establish and maintain an electronic communication
2666 system capable of transmitting fire and emergency incident

661060

HR.HR.03324

2667 information to and between fire protection agencies.
2668 2. Initiate a Fire and Emergency Incident Information
2669 Reporting System that shall be responsible for:
2670 a. Receiving fire and emergency incident information from
2671 fire protection agencies.
2672 b. Preparing and disseminating annual reports to the
2673 Governor, the President of the Senate, the Speaker of the House
2674 of Representatives, fire protection agencies, and, upon request,
2675 the public. Each report shall include, but not be limited to,
2676 the information listed in the National Fire Incident Reporting
2677 System.
2678 c. Upon request, providing other states and federal
2679 agencies with fire and emergency incident data of this state.
2680 3. Adopt rules to effectively and efficiently implement,
2681 administer, manage, maintain, and use the Fire and Emergency
2682 Incident Information Reporting Program. The rules shall be
2683 considered minimum requirements and shall not preclude a fire
2684 protection agency from implementing its own requirements which
2685 shall not conflict with the rules of the Division of State Fire
2686 Marshal.
2687 4. By rule, establish procedures and a format for each fire
2688 protection agency to voluntarily monitor its records and submit
2689 reports to the program.
2690 5. Establish an electronic information database which is
2691 accessible and searchable by fire protection agencies.
2692 (b) The Division of State Fire Marshal shall consult with
2693 the Division of Forestry of the Department of Agriculture and
2694 Consumer Services and the Bureau of Emergency Preparedness and
2695 Community Support ~~Medical Services~~ of the Department of Health

661060

HR.HR.03324

2696 to coordinate data, ensure accuracy of the data, and limit
2697 duplication of efforts in data collection, analysis, and
2698 reporting.
2699 (2) The Fire and Emergency Incident Information System
2700 Technical Advisory Panel is created within the Division of State
2701 Fire Marshal. The panel shall advise, review, and recommend to
2702 the State Fire Marshal with respect to the requirements of this
2703 section. The membership of the panel shall consist of the
2704 following 15 members:
2705 (a) The current 13 members of the Firefighters Employment,
2706 Standards, and Training Council as established in s. 633.31.
2707 (b) One member from the Division of Forestry of the
2708 Department of Agriculture and Consumer Services, appointed by
2709 the division director.
2710 (c) One member from the Bureau of Emergency Preparedness
2711 and Community Support ~~Medical Services~~ of the Department of
2712 Health, appointed by the bureau chief.
2713 Section 77. Paragraph (b) of subsection (9) and paragraph
2714 (c) of subsection (10) of section 768.28, Florida Statutes, are
2715 amended to read:
2716 768.28 Waiver of sovereign immunity in tort actions;
2717 recovery limits; limitation on attorney fees; statute of
2718 limitations; exclusions; indemnification; risk management
2719 programs.—
2720 (9)
2721 (b) As used in this subsection, the term:
2722 1. “Employee” includes any volunteer firefighter.
2723 2. “Officer, employee, or agent” includes, but is not
2724 limited to, any health care provider when providing services

661060

HR.HR.03324

2725 pursuant to s. 766.1115; ~~any member of the Florida Health~~
2726 ~~Services Corps, as defined in s. 381.0302, who provides~~
2727 ~~uncompensated care to medically indigent persons referred by the~~
2728 ~~Department of Health;~~ any nonprofit independent college or
2729 university located and chartered in this state which owns or
2730 operates an accredited medical school, and its employees or
2731 agents, when providing patient services pursuant to paragraph
2732 (10)(f); and any public defender or her or his employee or
2733 agent, including, among others, an assistant public defender and
2734 an investigator.
2735 (10)
2736 (c) For purposes of this section, regional poison control
2737 centers created in accordance with s. 395.1027 and coordinated
2738 and supervised under the Division of Children's Medical Services
2739 ~~Prevention and Intervention~~ of the Department of Health, or any
2740 of their employees or agents, shall be considered agents of the
2741 State of Florida, Department of Health. Any contracts with
2742 poison control centers must provide, to the extent permitted by
2743 law, for the indemnification of the state by the agency for any
2744 liabilities incurred up to the limits set out in this chapter.
2745 Section 78. Subsections (4), (5), (6), (8), (9), (10),
2746 (11), and (12) of section 1009.66, Florida Statutes, are amended
2747 to read:
2748 1009.66 Nursing Student Loan Forgiveness Program.—
2749 (4) From the funds available, the Department of Education
2750 ~~Health~~ may make loan principal repayments of up to $4,000 a year
2751 for up to 4 years on behalf of selected graduates of an
2752 accredited or approved nursing program. All repayments shall be
2753 contingent upon continued proof of employment in the designated

2754 facilities in this state and shall be made directly to the
2755 holder of the loan. The state shall bear no responsibility for
2756 the collection of any interest charges or other remaining
2757 balance. In the event that the designated facilities are
2758 changed, a nurse shall continue to be eligible for loan
2759 forgiveness as long as he or she continues to work in the
2760 facility for which the original loan repayment was made and
2761 otherwise meets all conditions of eligibility.
2762 (5) There is created the Nursing Student Loan Forgiveness
2763 Trust Fund to be administered by the Department of Education
2764 ~~Health~~ pursuant to this section and s. 1009.67 and department
2765 rules. The Chief Financial Officer shall authorize expenditures
2766 from the trust fund upon receipt of vouchers approved by the
2767 Department of Education ~~Health~~. All moneys collected from the
2768 private health care industry and other private sources for the
2769 purposes of this section shall be deposited into the Nursing
2770 Student Loan Forgiveness Trust Fund. Any balance in the trust
2771 fund at the end of any fiscal year shall remain therein and
2772 shall be available for carrying out the purposes of this section
2773 and s. 1009.67.
2774 (6) In addition to licensing fees imposed under part I of
2775 chapter 464, there is hereby levied and imposed an additional
2776 fee of $5, which fee shall be paid upon licensure or renewal of
2777 nursing licensure. Revenues collected from the fee imposed in
2778 this subsection shall be deposited in the Nursing Student Loan
2779 Forgiveness Trust Fund of the Department of Education ~~Health~~ and
2780 will be used solely for the purpose of carrying out the
2781 provisions of this section and s. 1009.67. Up to 50 percent of
2782 the revenues appropriated to implement this subsection may be

2783 used for the nursing scholarship program established pursuant to
2784 s. 1009.67.
2785 ~~(8) The Department of Health may solicit technical~~
2786 ~~assistance relating to the conduct of this program from the~~
2787 ~~Department of Education.~~
2788 (8) ~~(9)~~ The Department of Education ~~Health~~ is authorized to
2789 recover from the Nursing Student Loan Forgiveness Trust Fund its
2790 costs for administering the Nursing Student Loan Forgiveness
2791 Program.
2792 (9) ~~(10)~~ The Department of Education ~~Health~~ may adopt rules
2793 necessary to administer this program.
2794 (10) ~~(11)~~ This section shall be implemented only as
2795 specifically funded.
2796 (11) ~~(12)~~ Students receiving a nursing scholarship pursuant
2797 to s. 1009.67 are not eligible to participate in the Nursing
2798 Student Loan Forgiveness Program.
2799 Section 79. Section 1009.67, Florida Statutes, is amended
2800 to read:
2801 1009.67 Nursing scholarship program.—
2802 (1) There is established within the Department of Education
2803 ~~Health~~ a scholarship program for the purpose of attracting
2804 capable and promising students to the nursing profession.
2805 (2) A scholarship applicant shall be enrolled in an
2806 approved nursing program leading to the award of an associate
2807 degree, a baccalaureate degree, or a graduate degree in nursing.
2808 (3) A scholarship may be awarded for no more than 2 years,
2809 in an amount not to exceed $8,000 per year. However, registered
2810 nurses pursuing a graduate degree for a faculty position or to
2811 practice as an advanced registered nurse practitioner may

2812 receive up to $12,000 per year. These amounts shall be adjusted
2813 by the amount of increase or decrease in the consumer price
2814 index for urban consumers published by the United States
2815 Department of Commerce.
2816 (4) Credit for repayment of a scholarship shall be as
2817 follows:
2818 (a) For each full year of scholarship assistance, the
2819 recipient agrees to work for 12 months in a faculty position in
2820 a college of nursing or Florida College System institution
2821 nursing program in this state or at a health care facility in a
2822 medically underserved area as designated ~~approved~~ by the
2823 Department of Health. Scholarship recipients who attend school
2824 on a part-time basis shall have their employment service
2825 obligation prorated in proportion to the amount of scholarship
2826 payments received.
2827 (b) Eligible health care facilities include nursing homes
2828 and hospitals in this state, state-operated medical or health
2829 care facilities, public schools, county health departments,
2830 federally sponsored community health centers, colleges of
2831 nursing in universities in this state, and Florida College
2832 System institution nursing programs in this state, family
2833 practice teaching hospitals as defined in s. 395.805, or
2834 specialty children’s hospitals as described in s. 409.9119. The
2835 recipient shall be encouraged to complete the service obligation
2836 at a single employment site. If continuous employment at the
2837 same site is not feasible, the recipient may apply to the
2838 department for a transfer to another approved health care
2839 facility.
2840 (c) Any recipient who does not complete an appropriate

2841 program of studies, who does not become licensed, who does not
2842 accept employment as a nurse at an approved health care
2843 facility, or who does not complete 12 months of approved
2844 employment for each year of scholarship assistance received
2845 shall repay to the Department of Education ~~Health~~, on a schedule
2846 to be determined by the department, the entire amount of the
2847 scholarship plus 18 percent interest accruing from the date of
2848 the scholarship payment. Moneys repaid shall be deposited into
2849 the Nursing Student Loan Forgiveness Trust Fund established in
2850 s. 1009.66. However, the department may provide additional time
2851 for repayment if the department finds that circumstances beyond
2852 the control of the recipient caused or contributed to the
2853 default.
2854 (5) Scholarship payments shall be transmitted to the
2855 recipient upon receipt of documentation that the recipient is
2856 enrolled in an approved nursing program. The Department of
2857 Education ~~Health~~ shall develop a formula to prorate payments to
2858 scholarship recipients so as not to exceed the maximum amount
2859 per academic year.
2860 (6) The Department of Education ~~Health~~ shall adopt rules,
2861 including rules to address extraordinary circumstances that may
2862 cause a recipient to default on either the school enrollment or
2863 employment contractual agreement, to implement this section.
2864 (7) The Department of Education ~~Health~~ may recover from the
2865 Nursing Student Loan Forgiveness Trust Fund its costs for
2866 administering the nursing scholarship program.
2867 Section 80. Department of Health; type two transfer.—
2868 (1) All powers, duties, functions, records, offices,
2869 personnel, associated administrative support positions,

661060

HR.HR.03324

2870 property, pending issues, existing contracts, administrative
2871 authority, administrative rules, and unexpended balances of
2872 appropriations, allocations, and other funds relating to the
2873 Nursing Student Loan Forgiveness Program and the nursing
2874 scholarship program in the Department of Health are transferred
2875 by a type two transfer, as defined in s. 20.06(2), Florida
2876 Statutes, to the Department of Education.
2877 (2) The Nursing Student Loan Forgiveness Trust Fund is
2878 transferred from the Department of Health to the Department of
2879 Education.
2880 (3) Any binding contract or interagency agreement related
2881 to the Nursing Student Loan Forgiveness Program existing before
2882 July 1, 2012, between the Department of Health, or an entity or
2883 agent of the agency, and any other agency, entity, or person
2884 shall continue as a binding contract or agreement for the
2885 remainder of the term of such contract or agreement on the
2886 successor department, agency, or entity responsible for the
2887 program, activity, or functions relative to the contract or
2888 agreement.
2889 (4) Notwithstanding s. 216.292 and pursuant to s. 216.351,
2890 Florida Statutes, upon approval by the Legislative Budget
2891 Commission, the Executive Office of the Governor may transfer
2892 funds and positions between agencies to implement this act.
2893 (5) The transfer of any program, activity, duty, or
2894 function under this act includes the transfer of any records and
2895 unexpended balances of appropriations, allocations, or other
2896 funds related to such program, activity, duty, or function.
2897 Unless otherwise provided, the successor organization to any
2898 program, activity, duty, or function transferred under this act

2899 shall become the custodian of any property of the organization
2900 that was responsible for the program, activity, duty, or
2901 function immediately before the transfer.
2902 Section 81. The Division of Medical Quality Assurance shall
2903 develop a plan to improve the efficiency of its functions.
2904 Specifically, the plan shall delineate methods to: reduce the
2905 average length of time for a qualified applicant to receive
2906 initial and renewal licensure, certification, or registration,
2907 by one-third; improve the agenda process for board meetings to
2908 increase transparency, timeliness, and usefulness for board
2909 decisionmaking; and improve the cost-effectiveness and
2910 efficiency of the joint functions of the division and the
2911 regulatory boards. In developing the plan, the division shall
2912 identify and analyze best practices found within the division
2913 and other state agencies with similar functions, options for
2914 information technology improvements, options for contracting
2915 with outside entities, and any other option the division deems
2916 useful. The division shall consult with and solicit
2917 recommendations from the regulatory boards in developing the
2918 plan. The division shall submit the plan to the Governor, the
2919 Speaker of the House of Representatives, and the President of
2920 the Senate by November 1, 2012. All executive branch agencies
2921 are instructed, and all other state agencies are requested, to
2922 assist the division in accomplishing its purposes under this
2923 section.
2924 Section 82. Subsection (1), paragraph (c) of subsection
2925 (3), and subsection (9) of section 381.0041, Florida Statutes,
2926 are amended to read:
2927 381.0041 Donation and transfer of human tissue; testing

2928 requirements.—
2929 (1) Every donation of blood, plasma, organs, skin, or other
2930 human tissue for transfusion or transplantation to another shall
2931 be tested prior to transfusion or other use for human
2932 immunodeficiency virus infection and other communicable diseases
2933 specified by rule of the Department of Health. Tests for the
2934 human immunodeficiency virus infection shall be performed only
2935 after obtaining written, informed consent from the potential
2936 donor or the donor's legal representative. Such consent may be
2937 given by a minor pursuant to s. 743.06. Obtaining consent shall
2938 include a fair explanation of the procedures to be followed and
2939 the meaning and use of the test results. Such explanation shall
2940 include a description of the confidential nature of the test as
2941 described in s. 381.004(2) ~~381.004(3)~~. If consent for testing is
2942 not given, then the person shall not be accepted as a donor
2943 except as otherwise provided in subsection (3).
2944 (3) No person shall collect any blood, organ, skin, or
2945 other human tissue from one human being and hold it for, or
2946 actually perform, any implantation, transplantation,
2947 transfusion, grafting, or any other method of transfer to
2948 another human being without first testing such tissue for the
2949 human immunodeficiency virus and other communicable diseases
2950 specified by rule of the Department of Health, or without
2951 performing another process approved by rule of the Department of
2952 Health capable of killing the causative agent of those diseases
2953 specified by rule. Such testing shall not be required:
2954 (c) When there is insufficient time to obtain the results
2955 of a confirmatory test for any tissue or organ which is to be
2956 transplanted, notwithstanding the provisions of s. 381.004(2)(d)

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HR.HR.03324

2957 ~~381.004(3)(d)~~. In such circumstances, the results of preliminary
2958 screening tests may be released to the potential recipient's
2959 treating physician for use in determining organ or tissue
2960 suitability.
2961 (9) All blood banks shall be governed by the
2962 confidentiality provisions of s. 381.004(2) ~~381.004(3)~~.
2963 Section 83. Paragraph (b) of subsection (3) of section
2964 384.25, Florida Statutes, is amended to read:
2965 384.25 Reporting required.—
2966 (3) To ensure the confidentiality of persons infected with
2967 the human immunodeficiency virus (HIV), reporting of HIV
2968 infection and AIDS must be conducted using a system developed by
2969 the Centers for Disease Control and Prevention of the United
2970 States Public Health Service or an equivalent system.
2971 (b) The reporting may not affect or relate to anonymous HIV
2972 testing programs conducted pursuant to s. 381.004(3) ~~381.004(4)~~.
2973 Section 84. Subsection (5) of section 392.56, Florida
2974 Statutes, is amended to read:
2975 392.56 Hospitalization, placement, and residential
2976 isolation.—
2977 (5) If the department petitions the circuit court to order
2978 that a person who has active tuberculosis be hospitalized in a
2979 facility operated under s. 392.62~~(2)~~, the department shall
2980 notify the facility of the potential court order.
2981 Section 85. Subsection (2) of section 456.032, Florida
2982 Statutes, is amended to read:
2983 456.032 Hepatitis B or HIV carriers.—
2984 (2) Any person licensed by the department and any other
2985 person employed by a health care facility who contracts a blood-

2986 borne infection shall have a rebuttable presumption that the
2987 illness was contracted in the course and scope of his or her
2988 employment, provided that the person, as soon as practicable,
2989 reports to the person's supervisor or the facility's risk
2990 manager any significant exposure, as that term is defined in s.
2991 381.004(1)(c) ~~381.004(2)(c)~~, to blood or body fluids. The
2992 employer may test the blood or body fluid to determine if it is
2993 infected with the same disease contracted by the employee. The
2994 employer may rebut the presumption by the preponderance of the
2995 evidence. Except as expressly provided in this subsection, there
2996 shall be no presumption that a blood-borne infection is a job-
2997 related injury or illness.
2998 Section 86. Subsection (1) of section 775.0877, Florida
2999 Statutes, is amended to read:
3000 775.0877 Criminal transmission of HIV; procedures;
3001 penalties.—
3002 (1) In any case in which a person has been convicted of or
3003 has pled nolo contendere or guilty to, regardless of whether
3004 adjudication is withheld, any of the following offenses, or the
3005 attempt thereof, which offense or attempted offense involves the
3006 transmission of body fluids from one person to another:
3007 (a) Section 794.011, relating to sexual battery;
3008 (b) Section 826.04, relating to incest;
3009 (c) Section 800.04, relating to lewd or lascivious offenses
3010 committed upon or in the presence of persons less than 16 years
3011 of age;
3012 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
3013 relating to assault;
3014 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),

3015 relating to aggravated assault;
3016 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
3017 relating to battery;
3018 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
3019 relating to aggravated battery;
3020 (h) Section 827.03(1), relating to child abuse;
3021 (i) Section 827.03(2), relating to aggravated child abuse;
3022 (j) Section 825.102(1), relating to abuse of an elderly
3023 person or disabled adult;
3024 (k) Section 825.102(2), relating to aggravated abuse of an
3025 elderly person or disabled adult;
3026 (l) Section 827.071, relating to sexual performance by
3027 person less than 18 years of age;
3028 (m) Sections 796.03, 796.07, and 796.08, relating to
3029 prostitution; or
3030 (n) Section 381.0041(11)(b), relating to donation of blood,
3031 plasma, organs, skin, or other human tissue,
3032
3033 The court shall order the offender to undergo HIV testing,
3034 to be performed under the direction of the Department of Health
3035 in accordance with s. 381.004, unless the offender has undergone
3036 HIV testing voluntarily or pursuant to procedures established in
3037 s. 381.004(2)(h)6. ~~381.004(3)(h)6.~~ or s. 951.27, or any other
3038 applicable law or rule providing for HIV testing of criminal
3039 offenders or inmates, subsequent to her or his arrest for an
3040 offense enumerated in paragraphs (a)-(n) for which she or he was
3041 convicted or to which she or he pled nolo contendere or guilty.
3042 The results of an HIV test performed on an offender pursuant to
3043 this subsection are not admissible in any criminal proceeding

3044 arising out of the alleged offense.

3045 Section 87. Except as otherwise provided herein, this act

3046 shall take effect upon becoming law.

THE FLORIDA SENATE

APPEARANCE RECORD

Spoke

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic _____

Bill Number 1824 *(if applicable)*

Name Chris Nuland

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1000 Riverside Ave #115
Street

City *State* *Zip*

Phone 904-355-1555

E-mail nulandlaw@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Public Health Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

spoke

2/16/12
Meeting Date

Topic: FL CURED

Bill Number: SB 1824 *(if applicable)*

Name: Col. MICHAEL P. SMITH

Amendment Barcode: *(if applicable)*

Job Title: PRINCIPAL INVESTIGATOR, FL CURED

Address: FL STATE UNIV College of MEDICINE
Street

TALLAHASSEE FL 32306
City *State* *Zip*

Phone: 850-645-7151

E-mail: mike.smith@med.fsu.edu

Speaking: [ ] For [X] Against [ ] Information

Representing: SELF

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Department of Health

Bill Number: 1824 *(if applicable)*

Name: Kristina Wiggins

Amendment Barcode: *(if applicable)*

Job Title: Deputy Secretary

Address: 4052 Bald Cypress Way Bin A-100
Street

Tallahassee FL 32399
City *State* *Zip*

Phone:

E-mail:

Speaking: ☐ For ☐ Against ☑ Information

Representing: FL DOH (if needed)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1646

INTRODUCER: Senator Flores

SUBJECT: Medicaid Hospital Rates

DATE: February 15, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	**Favorable**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill changes dates relating to the establishment of Medicaid reimbursement rates for hospital inpatient services. The date after which adjustments may not be made to the rates is changed from September 30 to October 31 of the state fiscal year in which the rates take effect. Also, errors in cost reporting or calculation of rates discovered after October 31, rather than September 30, must be reconciled in a subsequent rate period.

This bill substantially amends section 409.905 of the Florida Statutes.

II. Present Situation:

Medicaid

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. The Agency for Health Care Administration (AHCA) is responsible for administering the Medicaid program. Medicaid serves approximately 3.19 million people in Florida. Estimated Medicaid expenditures for FY 2011-2012 are approximately $20.3 billion.

Medicaid reimburses health care providers that have a provider agreement with the AHCA only for goods and services that are covered by the Medicaid program and only for individuals who are eligible for medical assistance from Medicaid. Section 409.905, F.S., identifies those services for which the Medicaid program is required to make payments. Under subsection 409.905(5), F.S., the AHCA must pay for all covered services provided for the medical care and treatment of

a recipient who is admitted as an inpatient by a licensed physician or dentist to a hospital licensed under part I of chapter 395, F.S.

Medicaid Hospital Reimbursement Rates

The law currently requires the AHCA to establish base reimbursement rates for each hospital based on allowable costs. Rates are calculated annually and take effect July 1 of each year based on the most recent complete and accurate cost report submitted by each hospital. Adjustments may not be made to the rates after September 30 of the state fiscal year in which the rates take effect. Errors in cost reporting or calculation of rates discovered after September 30 must be reconciled in a subsequent rate period.

The September 30 final hospital rates are used in the Medicaid capitation rate setting process for health plans (health maintenance organizations and provider service networks). Their rates are effective September 1.

In 2011, the Legislature enacted a requirement for the AHCA to develop a plan to convert inpatient hospital rates to a prospective payment system that categorizes each case into diagnosis-related groups (DRG) and assigns a payment weight based on the average resources used to treat Medicaid patients in that DRG.[1] The AHCA must submit the Medicaid DRG plan, identifying all steps necessary for the transition and any costs associated with plan implementation to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2013.

Intergovernmental Transfers

Intergovernmental transfers are the transfer of public funds from different levels of government or governmental entities/taxing districts to the state government. These transfers are commonly referred to as IGTs. The use of IGTs is a common mechanism for states to fund the non-federal share of certain Medicaid payments. Once used as part of the state share of Medicaid funding, the transferred funds are matched with federal Medicaid dollars and then paid to qualifying Medicaid providers.[2]

Currently, IGTs are primarily used in hospital fee-for-service rates for the purpose of funding the exempt portion and authorized buybacks of inpatient and outpatient hospital rates. The General Appropriations Act (GAA) each year authorizes specifically qualifying hospitals to be exempt from specific limitations within the rate setting process. To be exempt from the limitations, hospitals must meet specific thresholds such as Medicaid and charity care volume benchmarks provided in the GAA. In addition, beginning July 2008, the Legislature authorized the use of IGTs to fund buybacks. Buybacks are the process of receiving local government funded match to fund the state portion of specific rate reductions that had been adopted to reduce the hospital rates.[3]

---

[1] *See* s. 9 of ch. 2011-135, L.O.F.
[2] *Florida Medicaid Intergovernmental Transfer Technical Advisory Panel Report*, Agency for Health Care Administration, January 2011, page10. Found at: <http://ahca.myflorida.com/Medicaid/igt/docs/Final%20_IGT_TAP_Report_010611.pdf> (Last visited on February 15, 2012).
[3] *Id.*, page 2.

III. Effect of Proposed Changes:

The bill amends s. 409.905(5), F.S., relating to Medicaid hospital inpatient services, to prohibit adjustments to hospital reimbursement rates after October 31, rather than September 30, of the state fiscal year in which the rates take effect. Also, errors in cost reporting or calculation of rates discovered after October 31, rather than September 30, must be reconciled in a subsequent rate period. The effective date of the bill is July 1, 2012.

The effect of this date change is that health maintenance organization and provider service network rates will not become final for plan payment until possibly December or January. Health plans will have to be paid the previous rates from the beginning of their contract year in September to the month in which the rates are deemed final. Once final, the new rates would be paid retroactive back to September.[4]

Proponents of the change in the date for adjustments to hospital reimbursement rates point out that the September 30 date coincides with the beginning of local governments' fiscal year (October 1- September 30) and creates significant difficulty in the management of IGTs. Moving the date to October 31 will allow the local government fiscal year to begin and 30 days to arrange for transfer of IGTs to the state.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[4] *See* Agency for Health Care Administration 2012 Bill Analysis and Economic Impact Statement for SB 1646 – on file with the Senate Health Regulation Committee.

C. Government Sector Impact:

There is no fiscal impact on the Medicaid program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Budget
Budget - Subcommittee on Education Pre-K - 12 Appropriations
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Reapportionment
Rules

SENATOR ANITERE FLORES
Majority Whip
38th District

February 9, 2012

The Honorable Rene Garcia
Chair of Committee on Health Regulation
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Garcia:

I respectfully request that you place SB 1646, Medicaid hospital rates, on the next Committee on Health Regulation agenda. This proposed legislation revises the date for adjusting hospital inpatient rates.

I look forward to presenting this bill before your committee.

Please do not hesitate to contact me should you have any questions. Thank you for your consideration.

Sincerely,

Anitere Flores

Anitere Flores

CC: Ms. Sandra R. Stovall, Committee on Health Regulation, 530 Knott Building

ENTERED

REPLY TO:
☐ 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5130

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Medicaid Rate Setting

Bill Number: 1646 (if applicable)

Name: JAN GORRIE

Amendment Barcode: (if applicable)

Job Title: ATTORNEY

Address: 4221 Boy Scout Blvd.
Street

Tampa 33607
City State Zip

Phone: 813-334-5288

E-mail: jgorrie@coultrafields.com

Speaking: [x] For [ ] Against [ ] Information

Representing: Safety Net Hospital Alliance

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02/16/12
Meeting Date

Topic: Medicaid Hospital Rates

Bill Number: SB 1646 (if applicable)

Name: Michael Garner

Amendment Barcode: (if applicable)

Job Title: Pres + CEO

Address: 200 W. College Ave, Suite 104
Street

Tallahassee, FL 32301
City, State, Zip

Phone: (850) 386-2904

E-mail: michael@fahp.net

Speaking: [x] For [ ] Against [ ] Information

Representing: Florida Association of Health Plans

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 1292

INTRODUCER: Health Regulation Committee and Senator Bogdanoff

SUBJECT: Health Care Facilities

DATE: February 16, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	**Fav/CS**
2.			CF	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill revises certain definitions relating to nursing homes and deletes certain requirements relating to sharing programming and staff between nursing homes, continuing care facilities, and retirement communities offering home health, assisted living, or adult day care services. The bill provides various criteria for respite care in nursing home facilities. The bill allows any licensed nursing home to provide services, including respite care, therapeutic spa, and adult day care services to nonresidents, with certain requirements relating to adult day care services provided.

The bill provides clarification for the meaning of "day" as it relates to monitoring of adult day care center programs co-located with licensed nursing homes. The bill allows a continuing care facility to petition the agency to designate a certain number of its sheltered nursing home beds to provide assisted living, rather than extended congregate care, if the beds are in a distinct area of the facility which can be adapted to meet the requirements for an assisted living facility. The bill creates an exemption from the moratorium on issuing certificates of need to nursing homes to allow construction of a training nursing home meeting certain conditions. The bill simplifies the types of entities who may not give kickbacks to ALFs to include any person, health care provider, or health care facility and provides certain exceptions.

The bill excludes pain related to sickle-cell anemia from the definition of chronic nonmalignant pain in chs. 458 and 459, F.S., and allows clinics owned by certain types of physicians to be exempt from registration as pain management clinics under these chapters.

This bill amends ss. 400.021, 400.141, 408.036, 429.195, 429.905, 458.3265, 459.0137, 651.118, and 817.505, F.S. The bill creates s. 400.172, F.S.

II. Present Situation:

Licensed Practical Nurses

Licensed practical nurses are practitioners who perform selected acts— including the administration of treatments and medications in the care of the ill, injured, or infirm and the promotion of wellness, maintenance of health, and prevention of illness in others— under the direction of a registered nurse, licensed physician, licensed podiatrist, or licensed dentist. A practical nurse is responsible and accountable for making decisions that are based upon his or her educational preparation and experience in nursing.[1]

Resident Care Plans

Each resident in a nursing home[2] must have a resident care plan which includes a comprehensive assessment of his or her needs; the type and frequency of services required to attain or maintain his or her highest practicable physical, mental, and psychosocial well-being; a list of services required within or outside the facility to meet those needs; and an explanation of service goals. The resident care plan must be developed by a registered nurse with participation from other facility staff, the resident, or the resident's designee and signed by the director of nursing or another registered nurse[3] and the resident or his or her designee.

The care plan must be reviewed by a registered nurse at least quarterly and updated as appropriate. Agency or temporary registered nurses may not serve as registered nurses for purposes of formulating, signing, or maintaining resident care plans.[4]

Services Provided by Nursing Homes[5]

A nursing home that has had no class I or class II deficiencies[6] during the past 2 years or has been awarded a Gold Seal[7] is permitted to provide services, including, but not limited to, respite

[1] Section 464.003(16) and (19), F.S.
[2] As defined in s. 400.021(7) and (12), F.S., a nursing home facility is any institution, building, residence, private home, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide for a period exceeding 24-hour nursing care, personal care, or custodial care for three or more persons not related to the owner or manager by blood or marriage, who by reasons of illness, physical infirmity, or advanced age require such services, but does not include any place providing care and treatment primarily for the acutely ill. A facility offering services for fewer than three persons is within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services. A nursing home is licensed to offer services as defined in part I of ch. 464, F.S., the Nurse Practice Act.
[3] Such a nurse must be employed by the facility and have been delegated institutional responsibilities by the facility. The nature of any delegated responsibilities must be documented as part of the resident care plan.
[4] Section 400.021(16), F.S.
[5] Sections 400.141(1), F.S.

and adult day care services, which enable individuals to move in and out of the facility and may provide such services without meeting any requirements beyond those for standard licensing. Respite care means admission to a nursing home for the purpose of providing a short period of rest, relief, or emergency alternative care for the primary caregiver of an individual receiving care at home who, without home-based care, would otherwise require institutional care.[8] Adult day care means providing basic services— including providing a protective setting that is as non-institutional as possible, therapeutic programs of social and health activities and services, leisure activities, self-care training, rest, nutritional services, and respite care— for a part of a day to three or more adults who require such services and who are not related to the owner or operator of an adult day care center by blood or marriage.[9]

The agency must by rule adopt modified requirements for resident assessment, resident care plans, resident contracts, physician orders, and other provisions, as appropriate, for short-term or temporary nursing home services.[10] Staff and programming may be shared between normal nursing home residents and short-term or temporary residents unless the facility is cited for deficiencies in patient care. A person receiving either respite care for 24 hours or longer or adult day care services must be included when calculating minimum staffing for the facility.

Any licensed assisted living facility, hospital, or nursing home may provide services during the day which include, but are not limited to, social, health, therapeutic, recreational, nutritional, and respite services to adults who are not residents. Such a facility need not be licensed as an adult day care center unless it publicly advertises to be such a center.[11]

If the facility has a standard license or is a Gold Seal facility, exceeds the minimum required hours of licensed nursing and certified nursing assistant direct care per resident per day, and is part of a licensed continuing care[12] facility or a retirement community that offers home health,[13]

[6] There are four classes of deficiencies for which nursing homes may be cited under ch. 400.23(8), F.S. A class I deficiency presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility. A class II deficiency compromises a resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. A class III deficiency results in no more than minimal physical, mental, or psychosocial discomfort to the resident or has the potential to compromise a resident's ability to maintain or reach his or her highest practical physical, mental, or psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. A class IV deficiency has the potential for causing no more than a minor negative impact on the resident.
[7] To be given the Gold Seal award, a facility must demonstrate excellence in long-term care over a sustained period. Criteria for the award include no class I or class II deficiencies within the past 30 months; evidence of financial stability; demonstration of consumer satisfaction with the facility as collected from residents and family members; evidence of workforce stability, such as low rate of turnover among registered nurses and certified nursing assistants during the previous 30 months; and an outstanding record regarding the number and types of substantiated complaints made to the State Long-Term Care Ombudsman Council within the previous 30 months. Gold Seal facilities are subject to less frequent surveys and relicensure visits by the agency. *See* s. 400.235, F.S.
[8] Section 400.021(15), F.S.
[9] Section 429.901, F.S.
[10] No such rules currently exist in the Florida Administrative Code.
[11] Section 429.905(2), F.S.
[12] According to s. 651.011(2), F.S., continuing care means, pursuant to a contract, furnishing shelter and nursing or personal services to a resident of a facility, whether such nursing care or personal services are provided in the facility or in another setting designated in the contract for continuing care, by an individual not related by consanguinity or affinity to the resident, upon payment of an entrance fee.

assisted living,[14] or adult day care services on a single campus, such facilities are allowed to share programming and staff. At the time of inspection and in semiannual reports required to be submitted to the agency related to licensure renewal, any continuing care facility or retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements were met.

All licensed nursing homes must submit reports to the agency, at least semiannually, but more often if requested by the agency, containing information regarding facility staff-to-resident ratios, staff turnover, and staff stability. A nursing home that has failed to comply with the state minimum-staffing requirements for 2 consecutive days is prohibited from accepting new admissions until the facility has achieved the minimum-staffing requirements for a period of 6 consecutive days, and failure to impose such an admissions moratorium constitutes a class II deficiency. A nursing home may be cited for violation of minimum staffing requirements in s. 400.23(3)(a)1.b. and c., F.S.,[15] if it has failed to meet those standards on 2 consecutive days or has failed to meet at least 97 percent of those standards on any one day. Additionally, the agency may take action against any nursing home which meets the minimum staffing requirements but does not have enough staff to meet its residents' needs.

Residents' Rights

All residents of nursing homes have certain rights listed in statute.[16] Such rights include:

- The right to civil and religious liberties, including knowledge of available choices and the right to make independent personal decisions;
- The right to private and uncensored communication;
- The right to reasonable access to legal, social, health, or other services;
- The right to present grievances to nursing home staff, government officials, or any other entity. Such grievances must be promptly addressed by nursing home staff;
- The right to participate in social, religious, and community activities that do not interfere with the rights of other residents;
- The right to examine the results of the most recent inspection of the nursing home;
- The right to manage personal financial affairs or to delegate such responsibility to the nursing home, but only to the extent of the funds held in trust by the nursing home or the resident. The facility may not require a resident to deposit personal funds with the facility;
- The right to be fully informed of services available in the facility and of any related charges for such services;

[13] According to s. 400.462(14), F.S., home health services are health and medical services and medical supplies furnished by an organization to an individual in the individual's home or place of residence.
[14] According to s. 429.02(5), F.S., an assisted living facility is a residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.
[15] These provisions give minimum staffing requirements for certified nursing assistants and licensed nurses in nursing homes. For certified nursing assistants, there must be a minimum of 2.5 hours of direct care per resident, per day and at least one certified nursing assistant per 20 residents. For licensed nurses, a minimum of one hour of direct care per resident, per day is required, and there must be at least one licensed nurse per 40 residents.
[16] Section 400.022, F.S.

- The right to be adequately informed of the resident's own medical conditions and proposed treatments and to participate in treatment planning, unless the resident is determined to be unable to provide informed consent under Florida law;
- The right to have privacy in treatment and in caring for personal needs;
- The right to security in storing and using personal possessions;
- The right to be treated courteously, fairly, and with the fullest measure of dignity and to be free from mental and physical abuse;
- The right to be transferred or discharged from a nursing home only for medical reasons or for the welfare of other residents and the right to be given at least 30 days' notice before any involuntary transfer or discharge, except in case of emergency. Nursing homes which provide services under Medicaid may not transfer or discharge a resident solely because the source of payment for care changes;
- The right to freedom of choice in selecting a personal physician and pharmacy and to participate in community-based activities programs;
- The right to receive notice before the resident's room in the nursing home is changed; and
- The right to be informed of the nursing home's bed reservation policy relating to resident hospitalization. Nursing home beds must be reserved during resident hospitalizations of up to 30 days for privately insured residents or 15 days for residents under Medicaid, provided that the nursing home receives reimbursement during this time.

The nursing home must provide a copy of such rights to each resident, his or her designee, and all facility staff. This statement of rights must also inform residents of their right to file a complaint with the agency or the local ombudsman council and must include contact information for the nearest ombudsman council and the central abuse hotline. Any violation of resident rights is grounds for disciplinary action by the agency.

Certificate of Need

Before construction may begin on any health care-related project, including the addition of beds to a nursing home, a facility must apply for and be awarded a certificate of need from the agency.[17] A certificate of need is a written statement which provides evidence that the community needs a new, converted, expanded, or otherwise significantly modified health care facility.[18] An application for a certificate of need must contain a detailed description of the proposed project and statement of its purpose, a statement of the financial resources needed by and available to the applicant to accomplish the proposed project, and an audited financial statement of the applicant.[19] In addition, the application *may* contain a statement of intent that a certain percentage of the annual patient days at the facility will be used by patients eligible for care under Medicaid; nursing homes may be issued certificates of need on the condition that they fulfill this requirement.[20] Preference for granting certificates of need will be given to nursing homes who have been awarded a Gold Seal.[21]

[17] Section 408.036(1), F.S.
[18] Section 408.032, F.S.
[19] Section 408.037(1), F.S.
[20] Section 408.040, F.S.
[21] Section 400.171(3), F.S.

The agency may also issue a certificate of need for the construction of nursing home beds in a continuing care facility for the exclusive use of the facility; such beds are known as sheltered nursing home beds.[22] The agency may approve one sheltered nursing home bed for every four proposed residential units in the facility, unless the facility owner demonstrates the need for additional beds based on actual utilization and demand by current residents. A facility owner may petition the agency to use a designated number of sheltered nursing home beds to provide extended congregate care[23] if the beds are in a distinct area of the nursing home which can be adapted to meet the requirements of extended congregate care. Such converted beds may not qualify for funding under the Medicaid waiver and may share common areas, services, and staff with beds designated for nursing home care. Construction may not begin until the facility has been issued a certificate of need from the agency and a certificate of authority[24] from the Office of Insurance Regulation. However, a continuing care facility may also apply for a certificate of need to construct regular nursing home beds which may be used by residents or non-residents of the continuing care facility.[25]

Certificates of need expire 18 months after they are granted unless construction for the project has begun, and a certificate may be revoked if construction has begun but is not proceeding along the timetable specified in the application.[26]

As of July 1, 2011,[27] certificates of need for additional nursing home beds may not be approved until Medicaid managed care is implemented statewide or until after October 1, 2016, whichever occurs earlier. This is because the Legislature has found that the continued growth in the Medicaid budget for nursing home care has constrained the ability of the state to meet the needs of its elderly residents through the use of less restrictive and less institutional methods of long-term care; fewer state funds will be appropriated to nursing home care during this time so that more home- and community-based methods of long-term care may be explored. This moratorium on certificates does not apply to:

- Sheltered nursing home beds in a continuing care retirement community;
- Counties with no community nursing home beds because all nursing homes in the county licensed on July 1, 2001, have since closed; or
- Nursing homes wishing to add ten total beds or ten percent of the number of total beds in the facility, whichever is greater. Such beds may be added provided that the facility meets certain occupancy rates and has no class I or II deficiencies.[28]

[22] Sheltered nursing home beds in continuing care facilities may be used for persons who are not residents of the continuing care facility and who are not parties to a continuing care contract for up to 5 years after the date of issuance of the initial nursing home license. This 5-year period may be extended by the agency under certain conditions. *See* s. 651.118(7), F.S.
[23] According to s. 429.02(11), F.S., extended congregate care means acts beyond personal services that may be performed under part I of ch. 464, F.S., the Nurse Practice Act, by persons licensed thereunder while carrying out their professional duties, and other supportive services which may be specified by rule. The purpose of such services is to enable residents to age in place in a residential environment despite mental or physical limitations that might otherwise disqualify them from residency in an assisted living facility.
[24] A certificate of authority is required before any business may provide continuing care or construct any facility related to continuing care. Requirements for certificates of authority are listed in s. 651.023, F.S.
[25] Section 651.118, F.S.
[26] Section 408.040, F.S.
[27] Chapter 2011-135, L.O.F.
[28] Section 408.0435, F.S.

Physician Specialties

Physiatrists, or rehabilitation physicians, are medical doctors who specialize in nerve, muscle, and bone injuries and illnesses which affect the way patients move. Physiatrists focus on treating the whole patient, not just symptoms, and aim to restore maximum function after strokes, limb amputations, and other conditions. Physiatrists also treat patients with chronic pain and do not perform surgery.[29] To practice as a physiatrist, a physician must complete at least 3 years of residency training in physical medicine and rehabilitation.[30]

Rheumatologists are physicians who focus on diseases of the joints, muscles, and bones.[31] Rheumatologists mainly diagnose and manage the progress of immune-mediated or degenerative diseases, as opposed to physiatrists, who emphasize rehabilitation of patients following injuries. Common conditions treated by rheumatologists include osteoarthritis, rheumatoid arthritis, and lupus. Rheumatologists must complete 3 years of residency training in either pediatrics or internal medicine as well as a 2- to 3-year fellowship in rheumatology.[32]

Psychiatrists are physicians who specialize in the prevention, diagnosis, and treatment of mental, addictive, and emotional disorders. Psychiatrists are trained in the medical, psychological, and social components of mental, emotional, and behavioral disorders and utilize a broad range of treatment modalities to treat such disorders, including medication, psychotherapy, and support services for helping patients and their families cope with stress and crises.[33] Disorders managed by psychiatrists include autism, schizophrenia, and attention-deficit hyperactive disorder (ADHD). Residency training programs for psychiatry are 4 years in length.[34]

Pain Management Clinics

A pain management clinic is any facility that advertises pain management services or where a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain. Until January 1, 2016, all pain management clinics must register as such with the Department of Health (the department) and meet certain provisions concerning staffing, sanitation, recordkeeping, and quality assurance.[35] Clinics are exempt from these provisions if they are:

- Licensed under ch. 395, F.S., as a hospital, ambulatory surgical center, or mobile surgical facility;
- Staffed primarily by surgeons;

[29] American Academy of Physical Medicine and Rehabilitation, *What is a Physiatrist?*, available at: http://www.aapmr.org/patients/aboutpmr/pages/physiatrist.aspx (last visited on January 27, 2012).
[30] American Medical Association, *FREIDA Online Program Information*, available at: https://freida.ama-assn.org/Freida/user/programSearchDispatch.do (last visited on January 27, 2012).
[31] American College of Rheumatology, *What is a Rheumatologist?*, available at: http://www.rheumatology.org/practice/clinical/patients/rheumatologist.asp (last visited on January 27, 2012).
[32] *Supra* fn. 2.
[33] Michigan Psychiatric Society, *What is a Psychiatrist?*, available at: http://www.mpsonline.org/psychiatry/Pages/WhatisaPsychiatrist.aspx (last visited on January 27, 2012).
[34] *Supra* fn. 2.
[35] *See* ss. 458.3265 and 459.0137, F.S.

- Owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded $50 million;
- Affiliated with an accredited medical school at which training is provided for medical student, residents, or fellows;
- Not involved in prescribing controlled substances for the treatment of pain;
- Owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3); or
- Wholly owned and operated by anesthesiologists, physiatrists, or neurologists, or physicians holding certain credentials in pain medicine.

All clinics must be owned by at least one licensed physician or be licensed as a health care clinic under part X or ch. 400, F.S., to be eligible for registration. Physicians connected with a pain management clinic must be free of past disciplinary action against their medical licenses and DEA numbers in any jurisdiction as well as any convictions or pleas for illicit drug felonies within the past 10 years.

Pain management clinics are inspected annually by the department unless they hold current certification from a department-approved national accrediting agency. The department may suspend or revoke clinic registration or impose administrative fines of up to $5,000 per violation for any offenses against state pain management clinic provisions or related federal laws and rules.

If the registration for a pain management clinic is revoked for any reason, the clinic must cease to operate immediately, remove all signs or symbols identifying the facility as a pain management clinic, and dispose of any medication on the premises. No owner or operator of the clinic may own or operate another pain clinic for 5 years after revocation of registration.[36]

Board Certification Organizations

The gold standard for certification of a physician in a medical subspecialty is certification by the American Board of Medical Specialties (ABMS). ABMS member boards certify physicians in more than 150 different specialties and subspecialties. Major national healthcare organizations such as The Joint Commission, the National Committee for Quality Assurance, hospitals, and insurance companies use ABMS board certification as an essential tool to assess physician specialty credentials, and numerous studies have demonstrated that physicians who are board-certified by an ABMS member board deliver higher-quality care and have better patient outcomes than those certified by other organizations.[37] ABMS board certification is available to both allopathic and osteopathic physicians. Another gold standard of certification for osteopathic physicians is receiving a certificate of added qualification through the American Osteopathic Association (AOA).

[36] Section 458.3265, F.S. Similar language is found in s. 459.0137, F.S. Related rules are found in Rules 64B8-9 and 64B15-14, F.A.C.
[37] ABMS, *The Highest Standard*, available at: http://www.certificationmatters.org/about-board-certified-doctors/the-highest-standard.aspx (last visited on February 2, 2012).

III. Effect of Proposed Changes:

Section 1 amends s. 400.021, F.S. The definition of "geriatric outpatient clinic" is revised to allow such clinics to be staffed by licensed practical nurses working under the direct supervision of registered nurses, advanced registered nurse practitioners, physicians, or physician assistants. The definition of "resident care plan" is amended to remove the requirement that the plan be signed by the director of nursing or another registered nurse employed by the facility and the resident or his or her designee. The definition of "therapeutic spa services" is created to mean bathing, nail, and hair care services and other similar services related to personal hygiene.

Section 2 amends s. 400.141, F.S., to delete a reference to Gold Seal facilities from s. 400.141(1)(g), F.S. This paragraph currently allows a facility that has a standard license or is a Gold Star facility and meets certain other requirements to share programming and staff with a continuing care facility or a retirement community offering assisted living or adult day care services of which the nursing home is a part or with which it shares a campus. The reference to Gold Seal facilities is unnecessary as any facility with a standard license who meets the other requirements may share such programming.

The bill also deletes the requirements for facilities sharing programming and staff under this section to demonstrate in semiannual reports to the agency that minimum staffing requirements were met. Such compliance to minimum staffing requirements must still be demonstrated during agency inspections, however.

Section 3 creates s. 400.172, F.S., concerning criteria for providing respite care in nursing home facilities. For each person admitted for respite care, a nursing home facility must:

- Have a written abbreviated plan of care that, at a minimum, includes nutritional requirements, medication orders, physician orders, nursing assessments, and dietary preferences. The nursing or physician assessments may take the place of all other assessments required for full-time residents;
- Have a contract that, at a minimum, specifies the services to be provided to a resident receiving respite care and charges for such services. If multiple admissions for respite care are anticipated, this contract is valid for 1 year after it is executed; and
- Ensure that each resident is released to his or her caregiver or to an individual designated in writing by the caregiver.

Residents admitted under the respite care program will be exempt from Department of Children and Families rules relating to the discharge planning process. They will be entitled to resident rights under s. 400.022(1)(a)-(o) and (r)-(t), F.S.,[38] except that nursing homes are not permitted to manage the funds of any respite care resident until he or she has been in the facility for at least 14 consecutive days. They will reside in licensed nursing home beds and will be allowed to use

[38] Respite care residents do not have the right to be transferred or discharged only for medical reasons or for the welfare of other residents, the right to be given at least 30 days' notice before any involuntary transfer or discharge, the right to freedom of choice in selecting a personal physician or pharmacy, the right to participate in community-based activities programs unless medically contraindicated, the right to be informed of the bed reservation policy of the nursing home as it relates to resident hospitalization, or the right to challenge a resident discharge or transfer decision made by the facility. *See:* s. 400.022(1)(p), (q), (u), and (v), F.S.

personal medications during the stay, as long as a physician's order is obtained. Medications will be released with the resident upon discharge in accordance with the physician's orders.

A respite care resident may reside in a nursing home for a total of 60 days per year, with each separate stay lasting less than 14 days. If a person stays in respite care for longer than 14 days, the facility must comply with all assessment and care planning requirements applicable to nursing home residents.

Medical information from a physician, physician assistant, or nurse practitioner and any other information required by the facility must be submitted to the nursing home before any respite care resident may be admitted to a nursing home. Such medical information must include a physician's order for respite care and proof of a physical examination by a licensed physician, physician assistant, or nurse practitioner; such order and examination are valid for 1 year. Once a resident is admitted, the nursing home will assume primary caregiver duties for him or her, including arranging for the continuation of medically necessary services as needed.

Section 4 amends s. 400.141, F.S., to allow any licensed nursing home to provide services, including respite, therapeutic spa, and adult day care services to nonresidents. Currently, only licensed nursing homes with no class I or class II deficiencies during the last 2 years or with Gold Seal status are permitted to provide such services. Adult day care services must be administered according to s. 429.905(2), F.S., which states that all nursing homes providing adult day services must be monitored by the agency at least biennially to ensure adequate space and sufficient staff, unless the nursing home holds itself out to be an adult day care center, in which case it must meet all standards set in rule and law for such centers.

The bill also eliminates the requirement that the agency adopt rules related to short-term or temporary nursing home services.

Section 5 amends s. 408.036, F.S., to create a pilot project in a specific area of Jacksonville which involves the construction of a nursing home with 150 or fewer beds. The nursing home must be affiliated with a nursing school which offers bachelor's, master's, and doctorate degrees at a private university in Jacksonville,[39] be constructed on or near the property of such a university, and make positions available for the education and training of nursing students in the field of long-term care or geriatric nursing. The pilot project is exempt from the moratorium on issuance of certificates of need to nursing homes; construction must begin within 11 months after this exemption becomes law, and the exemption expires on June 30, 2014.

Section 6 amends s. 429.195, F.S., to prohibit any assisted living facility to provide any kickback, commission, or any other split-fee arrangement with any person, healthcare provider, or health care facility, as provided under s. 817.505, F.S.[40] These provisions do not apply to:

- An individual employed or contracted by the assisted living facility, if he or she clearly indicates such work status;
- Payments by an assisted living facility to a referral service for consumers, as long as the referred consumers are not Medicaid recipients; and

[39] Functionally, this refers to Jacksonville University.
[40] This section prohibits patient brokering.

- Residents of assisted living facilities who refer their personal contacts.

Current law authorizes a person to provide placement or referral services; however, the fee must be paid by the individual looking for a facility. This bill authorizes a facility to pay the referral fee.

Section 7 amends s. 429.905(2), F.S., relating to monitoring of adult day care center programs co-located with licensed nursing homes. The bill clarifies that, for purposes of this subsection, the term "day" means any portion of a 24-hour day.

Section 8 amends s. 458.3265, F.S., to amend the definition of "chronic nonmalignant pain" to exclude pain related to sickle-cell anemia. The following clinics are exempted from registration as pain-management clinics:

- Clinics wholly owned by one or more board-eligible or board-certified anesthesiologists, physiatrists, psychiatrists, rheumatologists, or neurologists. The requirement that the clinics must also be operated by one or more of these physicians is removed;
- Clinics wholly owned by one or more board-eligible medical specialists in areas already listed in statute. The requirement that the clinics must also be operated by one or more of these physicians is removed, and the American Board of Pain Medicine is added as an approved board for certification of pain medicine specialists;
- Clinics organized as physician-owned group practices as defined in 42 C.F.R. 411.352; and
- Clinics which, before June 1, 2011, were wholly owned by physicians who are not board-eligible or board-certified but who successfully completed residency programs in anesthesiology, physiatry, psychiatry, rheumatology, or neurology and who have 7 years of documented, full-time practice in pain medicine in this state. "Full-time" is defined as practicing an average of 20 hours per week each year in pain medicine.

Section 9 amends s. 459.0137, F.S., to amend the definition of "chronic nonmalignant pain" to exclude pain related to sickle-cell anemia. The following clinics are exempted from registration as pain-management clinics:

- Clinics wholly owned by one or more board-eligible or board-certified anesthesiologists, physiatrists, psychiatrists, rheumatologists, or neurologists. The requirement that the clinics must also be operated by one or more of these physicians is removed; and
- Clinics wholly owned by one or more board-eligible medical specialists who hold certain qualifications relating to pain medicine. The requirement that the clinics must also be operated by one or more of these physicians is removed, and the American Association of Physician Specialties and the American Board of Pain Medicine are added as approved boards for certification of pain medicine specialists.

Section 10 amends s. 651.118, F.S., to allow a continuing care facility to petition the agency to designate a certain number of its sheltered nursing home beds to provide assisted living, rather than extended congregate care, if the beds are in a distinct area of the facility which can be adapted to meet the requirements for an assisted living facility as defined in s. 429.02, F.S. Any sheltered beds used to provide assisted living may not qualify for funding under the Medicaid waiver and may share common areas, services, and staff with beds designated for nursing home care, as long as all of the beds are under common ownership.

Section 11 amends s. 817.505, F.S., to provide exceptions to prohibitions on patient brokering to conform to changes made by section 6 of this bill.

Section 12 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Certain nursing homes would be able to provide additional services to residents and the public. Certain individuals will be able to receive monetary compensation from assisted living facilities for resident referrals. Certain physicians will be exempt from pain management clinic registration provisions.

C. Government Sector Impact:

The department may experience a decrease in workload related to applications for pain management clinic certifications from physician offices newly exempt from statutory requirements, although this will be offset by a corresponding decrease in fees related to these services. The department will also lose some oversight over the controlled substance prescribing activity of these physicians.

VI. Technical Deficiencies:

Lines 32-42 of the bill's title state that physicians fulfilling certain qualities are not required to register their clinics as pain management clinics under chs. 458 or 459, F.S. The title lists the

criteria for exemption as being the same for both allopathic and osteopathic physicians, although, as stated in the bill, such criteria are different.

Sections 2 and 4 of the bill both amend s. 400.141, F.S. It might be more concise to merge these two sections into one.

Lines 344-345 and 404-405 state that physicians who are board-certified in pain medicine by a board approved by the American Board of Pain Medicine may be exempt from registering their clinics as pain-management clinics under ch. 458, F.S. However, the American Board of Pain Medicine is itself a certifying board; it does not approve other boards for certification.

"Physiatry" as mentioned in line 354 is not the name of any residency program. Physiatrists complete their residency training in Physical Medicine and Rehabilitation.

Lines 403-404 state that certain physicians certified by the American Association of Physician Specialties are exempt from registering their clinics as pain management clinics under ch. 459, F.S. No such organization exists; perhaps this is intended to be the American Association of Physician Specialists. If this is the intention, this association also is not responsible for board certification of physicians; this is conducted by the American Board of Physician Specialists.

The definitions of "chronic nonmalignant pain" in chs. 458, and 459, F.S., are amended to read "pain unrelated to cancer, rheumatoid arthritis, or sickle cell anemia which persists beyond the usual course of disease or beyond the injury that is the cause of the pain or which persists more than 90 days after surgery." The second "beyond" in that definition should be deleted for clarity.

VII. Related Issues:

Lines 58-60 allow a licensed practical nurse working under the direct supervision of a registered nurse, advanced registered nurse practitioner, physician assistant, or physician to staff a geriatric outpatient clinic. However, the definition of "licensed practical nurse" in ch. 464, F.S., the Nurse Practice Act, only allows such practitioners to work under the supervision of registered nurses, physicians, podiatrists, or dentists.

Lines 140-141 state that respite care residents are exempt from department rules related to the discharge planning process. The Department of Children and Families, the department which has authority under ch. 400, F.S., applies, does not have any such rules. However, the agency does have rules related to patient discharge from health care facilities.

Lines 223-247 provide an exemption from the moratorium on issuing certificates of need for construction of nursing homes to allow a certain nursing home to be built in Jacksonville. This nursing home is exempt from the moratorium, but any entity wishing to construct it must still apply and be granted a certificate of need from the agency.

The bill allows certain board-certified or board-eligible physicians to be exempted from registering their offices as pain-management clinics under chs. 458 or 459, F.S. Board certification in a medical specialty is an industry-recognized standard for expertise in that specialty. To become board-certified, physicians must complete residency and sometimes

fellowship training in specialty areas, pass a rigorous examination, hold a valid medical license in a state, and meet certain practice requirements. It is unclear how many of these criteria a physician must fulfill to be considered "board-eligible" by statute.

Language in sections 1, 2, and 3 of the bill references board-certified physicians, although the specifications for which boards must certify them are inconsistent or sometimes absent. For example, line 337 exempts board-certified anesthesiologists, physiatrists, psychiatrists, and rheumatologists from registering their offices as pain management clinics under ch. 458, F.S., but there is no mention of what board must certify such individuals. This language is in current statute, and a similar problem exists in lines 394.

Furthermore, criteria for exempting physicians from registering their clinics as pain-management clinics are inconsistent between allopathic and osteopathic physicians. Clinics organized as physician-group practices, owned by physicians board-eligible or board-certified in pain medicine by a board approved by the American Board of Pain Medicine, or owned by certain anesthesiologists, physiatrists, rheumatologists, or neurologists prior to June 1, 2011, are exempt from registration as pain-management clinics under ch. 458, F.S. However, such clinics are not eligible for exemption from registration under ch. 459, F.S. Clinics owned by physicians board-eligible or board-certified in pain medicine by a board approved by the American Association of Physician Specialties are eligible for exemption, although these are not eligible for exemption under ch. 458, F.S.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on February 16, 2012:
The CS:

- Amends ss. 458.3265 and 459.0137, F.S., to exclude pain related to sickle-cell anemia from the definition of chronic nonmalignant pain and allows clinics owned by certain types of physicians to be exempt from registration as pain management clinics;
- Adds the American Association of Physician Specialties to the boards which may certify certain physicians in provisions related to the exemption of certain clinics from registration as pain management clinics under ch. 459, F.S.;
- Simplifies the types of entities who may not give kickbacks to ALFs to include any person, health care provider, or health care facility and provides certain exceptions;
- Deletes language relating to the moratorium on nursing home certificates of need from the bill; and
- Creates an exemption from the moratorium on issuing certificates of need to nursing homes to allow for construction of a nursing home meeting certain conditions.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

591198

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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The Committee on Health Regulation (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Between lines 218 and 219
insert:
Section 5. Paragraph (t) is added to subsection (3) of section 408.036, Florida Statutes, to read:
408.036 Projects subject to review; exemptions.—
(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):
(t)1. There shall be a pilot project in the agency-planning subdistrict 4-1, 4-2, or 4-3 for the construction of a nursing home that has 150 or fewer beds. In order to qualify for the

591198

13 pilot project, the nursing home must:
14 a. Be affiliated with an accredited nursing school offering
15 a bachelor of science, master of science, and doctorate of
16 science degree program within a private accredited university;
17 b. Be constructed on or abutting property of the private
18 accredited university;
19 c. Once licensed, have at all times an affiliation with the
20 private accredited university; and
21 d. Employ or otherwise make positions available for the
22 education and training of nursing students in the field of long-
23 term care or geriatric nursing.
24 2. Notwithstanding any moratorium, existing or planned, on
25 new construction of nursing home beds, a pilot project meeting
26 the provisions of this paragraph may proceed with construction,
27 licensure, and operation. Construction must begin within 11
28 months after this exemption becomes law. This exemption expires
29 June 30, 2014.
30
31 ========== T I T L E A M E N D M E N T ==========
32 And the title is amended as follows:
33 Delete line 20
34 and insert:
35 services; amending s. 408.036, F.S.; adding to the
36 exemptions from agency review and from the requirement
37 of a certificate of need a pilot project to construct
38 a nursing home that is affiliated with an accredited
39 nursing school in a private accredited university and
40 that meets certain criteria; providing an exception to
41 a moratorium on new construction of nursing home beds;

591198

42 providing for expiration of the provision; amending s.
43 408.0435, F.S.; revising the

471116

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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The Committee on Health Regulation (Diaz de la Portilla) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 219 - 227.
4
5 ========== T I T L E A M E N D M E N T ==========
6 And the title is amended as follows:
7 Delete lines 20 - 23
8 and insert:
9 services; amending s.

374500

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Norman) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 227 and 228
4 insert:
5 Section 6. Section 429.195, Florida Statutes, is amended to
6 read:
7 429.195 Rebates prohibited; penalties.—
8 (1) It is unlawful for an ~~any~~ assisted living facility
9 licensed under this part to contract or promise to pay or
10 receive any commission, bonus, kickback, or rebate or engage in
11 any split-fee arrangement in any form whatsoever with any
12 person, health care provider, or health care facility as

374500

13 provided under s. 817.505 ~~physician, surgeon, organization,~~
14 ~~agency, or person, either directly or indirectly, for residents~~
15 ~~referred to an assisted living facility licensed under this~~
16 ~~part~~. ~~A facility may employ or contract with persons to market~~
17 ~~the facility, provided the employee or contract provider clearly~~
18 ~~indicates that he or she represents the facility. A person or~~
19 ~~agency independent of the facility may provide placement or~~
20 ~~referral services for a fee to individuals seeking assistance in~~
21 ~~finding a suitable facility; however, any fee paid for placement~~
22 ~~or referral services must be paid by the individual looking for~~
23 ~~a facility, not by the facility.~~
24 (2) This section does not apply to:
25 (a) An individual employed by the assisted living facility,
26 or with whom the facility contracts to provide marketing
27 services for the facility, if the individual clearly indicates
28 that he or she works with or for the facility.
29 (b) Payments by an assisted living facility to a referral
30 service that provides information, consultation, or referrals to
31 consumers to assist them in finding appropriate care or housing
32 options for seniors or disabled adults if the referred consumers
33 are not Medicaid recipients.
34 (c) A resident of an assisted living facility who refers a
35 friend, family members, or other individuals with whom the
36 resident has a personal relationship to the assisted living
37 facility, in which case the assisted living facility may provide
38 a monetary reward to the resident for making such referral.
39 (3) ~~(2)~~ A violation of this section is ~~shall be considered~~
40 patient brokering and is punishable as provided in s. 817.505.
41

374500

42 Between lines 266 and 267
43 insert:
44 Section 8. Paragraph (j) is added to subsection (3) of
45 section 817.505, Florida Statutes, to read:
46 817.505 Patient brokering prohibited; exceptions;
47 penalties.—
48 (3) This section shall not apply to:
49 (j) Any exemptions relating to assisted living facilities
50 provided under s. 429.195(2).
51
52 ========== T I T L E A M E N D M E N T ==========
53 And the title is amended as follows:
54 Delete line 2
55 and insert:
56 An act relating to health care facilities; amending
57
58 Delete line 24
59 and insert:
60 429.195, F.S.; revising provisions prohibiting certain
61 rebates relating to assisted living facilities;
62 amending s. 429.905, F.S.; defining the term “day” for
63 purposes of
64
65 Delete lines 32 - 46
66 and insert:
67 amending s. 817.505, F.S.; conforming provisions to
68 changes made by the act; providing an effective date.

322386

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Diaz de la Portilla) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 245 and 246
4 insert:
5 Section 7. Paragraph (a) of subsection (1) of section
6 458.3265, Florida Statutes, is amended to read:
7 458.3265 Pain-management clinics.—
8 (1) REGISTRATION.—
9 (a)1. As used in this section, the term:
10 a. "Chronic nonmalignant pain" means pain unrelated to
11 cancer, ~~or~~ rheumatoid arthritis, or sickle cell anemia which
12 persists beyond the usual course of disease or beyond the injury

322386

13 that is the cause of the pain or which persists more than 90
14 days after surgery.
15 b. “Pain-management clinic” or “clinic” means any publicly
16 or privately owned facility:
17 (I) That advertises in any medium for any type of pain-
18 management services; or
19 (II) Where in any month a majority of patients are
20 prescribed opioids, benzodiazepines, barbiturates, or
21 carisoprodol for the treatment of chronic nonmalignant pain.
22 2. Each pain-management clinic must register with the
23 department unless:
24 a. The ~~That~~ clinic is licensed as a facility pursuant to
25 chapter 395;
26 b. The majority of the physicians who provide services in
27 the clinic ~~primarily~~ provide primarily surgical services;
28 c. The clinic is owned by a publicly held corporation whose
29 shares are traded on a national exchange or on the over-the-
30 counter market and whose total assets at the end of the
31 corporation’s most recent fiscal quarter exceeded $50 million;
32 d. The clinic is affiliated with an accredited medical
33 school at which training is provided for medical students,
34 residents, or fellows;
35 e. The clinic does not prescribe controlled substances for
36 the treatment of pain;
37 f. The clinic is owned by a corporate entity exempt from
38 federal taxation under 26 U.S.C. s. 501(c)(3);
39 g. The clinic is wholly owned ~~and operated~~ by one or more
40 board-eligible or board-certified anesthesiologists,
41 physiatrists, psychiatrists, rheumatologists, or neurologists;

322386

42 ~~or~~
43 h. The clinic is wholly owned ~~and operated~~ by one or more
44 board-eligible or board-certified medical specialists who have
45 also completed fellowships in pain medicine approved by the
46 Accreditation Council for Graduate Medical Education, or who are
47 also board-eligible or board-certified in pain medicine by a
48 board approved by the American Board of Pain Medicine or the
49 American Board of Medical Specialties and perform interventional
50 pain procedures of the type routinely billed using surgical
51 codes; ~~.~~
52 i. The clinic is organized as a physician-owned group
53 practice as defined in 42 C.F.R. 411,352; or
54 j. Before June 1, 2011, the clinic was wholly owned by
55 physicians who are not board eligible or board certified but who
56 successfully completed a residency program in anesthesiology,
57 physiatry, psychiatry, rheumatology, or neurology and who have 7
58 years of documented, full-time practice in pain medicine in this
59 state. For purposes of this paragraph, the term "full-time" is
60 defined as practicing an average of 20 hours per week each year
61 in pain medicine.
62 Section 8. Paragraph (a) of subsection (1) of section
63 459.0137, Florida Statutes, is amended to read:
64 459.0137 Pain-management clinics.—
65 (1) REGISTRATION.—
66 (a)1. As used in this section, the term:
67 a. "Chronic nonmalignant pain" means pain unrelated to
68 cancer, ~~or~~ rheumatoid arthritis, or sickle cell anemia which
69 persists beyond the usual course of disease or beyond the injury
70 that is the cause of the pain or which persists more than 90

322386

71 days after surgery.
72 b. “Pain-management clinic” or “clinic” means any publicly
73 or privately owned facility:
74 (I) That advertises in any medium for any type of pain-
75 management services; or
76 (II) Where in any month a majority of patients are
77 prescribed opioids, benzodiazepines, barbiturates, or
78 carisoprodol for the treatment of chronic nonmalignant pain.
79 2. Each pain-management clinic must register with the
80 department unless:
81 a. The ~~That~~ clinic is licensed as a facility pursuant to
82 chapter 395;
83 b. The majority of the physicians who provide services in
84 the clinic ~~primarily~~ provide primarily surgical services;
85 c. The clinic is owned by a publicly held corporation whose
86 shares are traded on a national exchange or on the over-the-
87 counter market and whose total assets at the end of the
88 corporation’s most recent fiscal quarter exceeded $50 million;
89 d. The clinic is affiliated with an accredited medical
90 school at which training is provided for medical students,
91 residents, or fellows;
92 e. The clinic does not prescribe controlled substances for
93 the treatment of pain;
94 f. The clinic is owned by a corporate entity exempt from
95 federal taxation under 26 U.S.C. s. 501(c)(3);
96 g. The clinic is wholly owned ~~and operated~~ by one or more
97 board-eligible or board-certified anesthesiologists,
98 physiatrists, psychiatrists, rheumatologists, or neurologists;
99 or

322386

100 h. The clinic is wholly owned ~~and operated~~ by one or more
101 board-eligible or board-certified medical specialists who have
102 also completed fellowships in pain medicine approved by the
103 Accreditation Council for Graduate Medical Education or the
104 American Osteopathic Association, or who are also board-eligible
105 or board-certified in pain medicine by a board approved by the
106 American Board of Medical Specialties, the American Board of
107 Pain Medicine, or the American Osteopathic Association and
108 perform interventional pain procedures of the type routinely
109 billed using surgical codes.
110
111 ========== T I T L E A M E N D M E N T ==========
112 And the title is amended as follows:
113 Delete line 2
114 and insert:
115 An act relating to health care facilities; amending
116
117 Delete line 26
118 and insert:
119 residents; amending ss. 458.3265 and 459.0137, F.S.;
120 revising the definition of the term "chronic
121 nonmalignant pain"; requiring that a pain-management
122 clinic register with the Department of Health unless
123 the clinic is wholly owned by certain board-eligible
124 or board-certified physicians or medical specialists,
125 organized as a physician-owned group practice, or
126 wholly owned by physicians who are not board eligible
127 or board certified but who have completed specified
128 residency programs and have a specified number of

322386

129 years of full-time practice in pain medicine; amending
130 s. 651.118, F.S.; providing a

286862

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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	.	

The Committee on Health Regulation (Diaz de la Portilla) recommended the following:

1 **Senate Amendment to Amendment (322386)**
2
3 Delete line 106
4 and insert:
5 American Board of Medical Specialties, the American Association
6 of Physician Specialties, or the American Board of

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget - Subcommittee on Finance and Tax, *Chair*
Budget
Budget - Subcommittee on Transportation, Tourism, and Economic Development
Appropriations
Communications, Energy, and Public Utilities
Education Pre-K - 12
Governmental Oversight and Accountability
Regulated Industries

JOINT COMMITTEE:
Administrative Procedures, *Alternating Chair*

SENATOR ELLYN SETNOR BOGDANOFF
25th District

January 17, 2012

Senator Rene Garcia, Chair
Senate Committee on Health Regulation
530 Knott Building
Tallahassee, FL 32399

Re: SB 1292, Relating to Nursing Home Facilities

Chair Garcia:

I am writing to request that you place **SB 1292, Relating to Nursing Home Facilities** on the agenda of your Committee on Health Regulation at your earliest convenience.

Feel free to contact me with any questions or concerns about this legislation.

Sincerely,

Senator Ellyn Setnor Bogdanoff
Florida Senate –District 25

cc: Sandra R. Stovall, Staff Director

ENTERED

REPLY TO:
- 312 Clematis Street, Suite 403, West Palm Beach, FL 33401 (561) 650-6833
- 1845 Cordova Road, Suite 202, Fort Lauderdale, Florida 33316 (954) 467-4205
- 212 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5100

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

Spoke

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Nursing Home Alternative

Bill Number: SB 1292 (if applicable)

Name: Jacqueline Boyd,

Amendment Barcode: 591198 (if applicable)

Job Title: Pres/CEO

Address: 1812 Riggins Rd.
Street

Tallah., FL
City State Zip

Phone: 671-3700

E-mail: JBoyd@LeadingAgeFlorida.org

Speaking: [✓] For [✓] Against [ ] Information

Representing: SB1292 Amendment LeadingAge FL.

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

Spoke

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: SB 1292 favor bill oppose amendment

Bill Number: SB 1292 *(if applicable)*

Name: Elliott Palevsky

Amendment Barcode: 591198 *(if applicable)*

Job Title: Senior Executive, River Garden Senior Services

Address: 11401 OLD ST AUGUSTINE RD
Street

Jax FL 32258
City *State* *Zip*

Phone: 904 260 1818

E-mail: epalevsky@rivergarden.org

Speaking: [X] For bill [Y] Against amendment [ ] Information

Representing: River Garden Hebrew Home

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 362

INTRODUCER: Health Regulation Committee and Senators Lynn and Garcia

SUBJECT: Surgical Technology

DATE: February 16, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	**Fav/CS**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill provides a definition for surgical technologist and requires hospitals, ambulatory surgical centers, and mobile surgical facilities to hire surgical technologists who fulfill certain educational and national certification requirements, with some exceptions.

This bill amends s. 395.0191, F.S.

II. Present Situation:

Role of Surgical Technologists

Surgical technologists, also called scrubs or operating room technicians,[1] work under the supervision of surgeons to ensure that the operating room environment is safe, that equipment functions properly, and that the operative procedure is conducted under conditions that maximize patient safety. Surgical technologists are trained in aseptic technique and combine the knowledge of human anatomy, surgical procedures, and implementation tools and technologies to facilitate a

[1] United States Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2010-11 Edition: Surgical Technologists*, available at: http://www.bls.gov/oco/ocos106.htm (last visited on November 10, 2011).

physician's performance of invasive therapeutic and diagnostic procedures.[2] Currently, no statutes or rules are in place to regulate the practice of surgical technology in Florida.

The Association of Surgical Technology (AST) is the oldest and most recognized professional organization for surgical technologists and surgical assistants. The AST was established in 1969 by members of the American College of Surgeons, the American Hospital Association, and the Association of Perioperative Registered Nurses to ensure that surgical technologists and surgical assistants have the knowledge and skills to administer patient care of the highest quality. Some of the AST's duties include creating and administering national certification procedures for surgical technologists, providing continuing education for such certification, working with national accrediting committees to establish standards for training programs, and advocating the interests of surgical technologists to government entities.[3]

The AST has published national guidelines for the scope of practice of surgical technologists.[4] It designates three different categories of technologist, each with different functions. A scrub technologist maintains sterility and handles necessary instruments, supplies, and equipment during a surgical procedure. A circulating technologist assists the circulating nurse in obtaining additional instruments, supplies, and equipment during the procedure. A second assisting technologist maintains sterility and assists the surgeon and the surgeon's first assistant during the procedure. More detailed duties are as follows:

- Scrub technologist
  - Check supplies and equipment needed for the surgical procedure.
  - Scrub, gown, and glove.
  - Set up the sterile table with instruments, supplies, equipment, and medications needed for the procedure.
  - Perform appropriate counts with the circulator prior to the operation and before the incision is closed.
  - Gown and glove the surgeon and assistants.
  - Help in draping the sterile field.
  - Pass instruments to the surgeon during the procedure.
  - Prepare sterile dressings.
  - Clean and prepare instruments for terminal sterilization.
  - Assist other members of the surgical team with terminal cleaning of the operating room.
  - Assist in preparing the operating room for the next patient.
- Circulating technologist
  - Obtain appropriate sterile and unsterile items needed for the procedure.
  - Open sterile supplies.
  - Check the patient's chart, identify the patient, verify the surgery to be performed with consent forms, and bring the patient to the assigned operating room.
  - Transfer the patient to the operating table.
  - Assess the patient's comfort and safety and provide verbal and tactile reassurance.
  - Assist anesthesia personnel.

[2] AST, *Job Description: Surgical Technologist*, available at: http://www.ast.org/professionals/documents/2009_Surgical_Technologist_Job_Description_10.6_Final.pdf (last visited on November 10, 2011).
[3] AST, *About Us*, available at : http://www.ast.org/aboutus/about_ast.aspx (last visited on November 10, 2011).
[4] *Supra* fn. 2.

- Position the patient, using appropriate equipment.
- Apply electrosurgical grounding pads, tourniquets, monitors, etc., before the procedure begins.
- Prepare the patient's skin prior to draping by the surgical team.
- Perform appropriate counts with the scrub nurse or technologist prior to the operation and before the incision is closed.
- Anticipate additional supplies needed during the procedure.
- Keep accurate records throughout the procedure.
- Properly care for specimens.
- Secure dressings after incision closure.
- Help transport the patient to the recovery room.
- Assist in cleaning the operating room and in preparing for the next patient.

- Second assisting technologist
  - Hold retractors or instruments as directed by the surgeon.
  - Sponge or suction the operative site.
  - Apply electrocautery to clamps on bleeding blood vessels.
  - Cut suture material as directed by the surgeon.
  - Connect drains to suction apparatus.
  - Apply dressings to the closed wound.

Education and Certification

Surgical technologists must have a high school degree or equivalent and complete a training program accredited by the Commission on Accreditation of Allied Health Education Programs or the Accrediting Bureau of Health Education Schools. The training program includes classroom education in anatomy, microbiology, pharmacology, ethics, medical terminology, and other topics as well as supervised clinical experience. Surgical technologist training lasts from 9-24 months and culminates in a certificate, diploma, or associate's degree.

Professional certification is not required for employment as a surgical technologist, although most employers prefer to hire only certified individuals. Professional certification is available through the AST as a Certified Surgical Technologist (CST).[5] Requirements for CST designation include graduation from an accredited surgical technology program (with special exceptions for military-trained technologists), payment of fees, and passage of an examination offered by the National Board of Surgical Technology and Surgical Assisting (NBSTSA).[6] CST certification is valid for 4 years; to renew, an individual must either retake and pass the NBSTSA examination required for initial certification or complete 60 hours of continuing education. A renewal fee is also required.[7]

National certification may also be obtained from the National Center for Competency Testing (NCCT),[8] which awards the "Tech in Surgery-Certified (NCCT)" designation. Applicants must

[5] *Supra* fn. 1.
[6] NBSTSA, *CST Examinations*, available at: http://nbstsa.org/examinations-cst.html (last visited on November 10, 2011).
[7] NBSTSA, *Renewal Options*, available at: http://nbstsa.org/renewal/index.html (last visited on November 10, 2011).
[8] The NCCT is an independent entity which provides competency examinations and certifications for a variety of allied health professions, including medical assistants, phlebotomy technicians, patient care technicians, surgical technologists, and

graduate from an NCCT-approved surgical technology program, complete required practical experience, and pass the organization's certification exam. Applicants who did not graduate from an approved surgical technology program may also qualify for certification if they have accrued some amount of practical experience, which varies depending on the situation. Passage of the examination and payment of fees is still required, however.[9] NCCT certification must be renewed annually by completing 14 hours of continuing education and paying a recertification fee.[10]

Currently, there are approximately 4,800 surgical technologists employed in Florida. Of these, 3,450 are CSTs, and a few dozen hold the Tech in Surgery-Certified (NCCT) designation.[11]

III. Effect of Proposed Changes:

Section 1 amends s. 395.0191, F.S., to require each licensed hospital, ambulatory surgical center, and mobile surgical facility to establish policies and procedures for the employment of surgical technologists. A definition of "surgical technologist" is also given.

Each licensed facility may only consider for such employment a person who has successfully completed a surgical technologist training program accredited by the Accrediting Bureau of Health Education Schools or the Commission on Accreditation of Allied Health Education Programs and holds certification as a surgical technologist from an organization recognized by the National Commission for Certifying Agencies (such certification must be maintained throughout employment at the facility. Licensed facilities may continue to employ persons who do not meet these requirements but were working as surgical technologists on October 1, 2012. Licensed practitioners subject to ch. 456, F.S., or students may also be used as surgical technologists if they are appropriately trained and only perform duties within their scope of practice.

Section 2 provides an effective date of October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

medical office assistants. It is not a professional organization. (Source: NCCT, *National Center for Competency Testing (NCCT)*, http://www.ncctinc.com/General/, last visited November 10, 2011).
[9] NCCT, *Certification Information*, available at: http://www.ncctinc.com/Certifications/ (last visited on November 10, 2011).
[10] NCCT, *Recertification/CE*, available at http://www.ncctinc.com/CE/ (last visited on November 10, 2011).
[11] Email correspondence with the Florida State Assembly of the Association of Surgical Technologists. A copy of this correspondence is on file with the Senate Health Regulation Committee.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Surgical technologists who do not meet any of the eligibility requirements in this bill will be unable to practice in Florida.

C. Government Sector Impact:

None.[12]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Regulation on February 16, 2012:
The CS provides a definition for surgical technologist and requires hospitals, ambulatory surgical centers, and mobile surgical facilities to hire surgical technologists who fulfill certain educational and national certification requirements, with some exceptions.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[12] Per correspondence with the Department of Health. A copy of the email is on file with the Senate Health Regulation Committee.

390668

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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	.	

The Committee on Health Regulation (Jones) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Paragraph (e) is added to subsection (2) of
6 section 395.0191, Florida Statutes, to read:
7 (e) Each licensed facility shall establish policies and
8 procedures for the employment of surgical technologists.
9 1. For purposes of this paragraph, "surgical technologist"
10 means a person who assists and practices under the supervision
11 of a surgeon to ensure that the operating room environment is
12 safe, that proper equipment is available, and that the operative

390668

13 procedure is conducted efficiently. Surgical technologist duties
14 include, but are not limited to, maintaining sterility during a
15 surgical procedure, handling and ensuring the availability of
16 necessary equipment and supplies, and maintaining visibility of
17 the operative site.
18 2. The licensed facility may consider for such employment
19 only a person who:
20 a. Has successfully completed a surgical technologist
21 training program accredited by the Accrediting Bureau of Health
22 Education Schools or the Commission on Accreditation of Allied
23 Health Education Programs; and
24 b. Holds certification as a surgical technologist from an
25 organization recognized by the National Commission for
26 Certifying Agencies. Such certification must be maintained
27 throughout employment at the facility;
28
29 unless the licensed facility continuously employs a person who
30 is working as a surgical technologist on October 1, 2012; or
31 uses a licensed practitioner subject to ch. 456 or a student as
32 a surgical technologist, and such practitioner or student is
33 appropriately trained and only performs duties within his or her
34 scope of practice.
35 Section 2. This act shall take effect October 1, 2012.
36
37 ========== T I T L E A M E N D M E N T ==========
38 And the title is amended as follows:
39 Delete everything before the enacting clause
40 and insert:
41 A bill to be entitled

390668

42 An act relating to surgical technology; amending s.
43 395.0191, F.S.; requiring licensed facilities to
44 establish policies and procedures for the employment
45 of surgical technologists; providing a definition;
46 providing educational and credentialing requirements;
47 providing exceptions; providing an effective date.

Spoke

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/12
Meeting Date

Topic: Surgical Technology

Bill Number: SB 362

Name: Shannon E. Smith

Amendment Barcode: 390668 *(if applicable)*

Job Title: Board of Director Florida State Assembly of the Assoc. of Surgical Technologists *(if applicable)*

Address: 4296 Four Oaks Blvd
Street

Tallahassee FL 32311
City *State* *Zip*

Phone:

E-mail:

Speaking: ☐ For ☐ Against ☐ Information

Representing: Florida State Assembly of AST / Association of Surgical Assistants

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Surgical Technology

Bill Number: SB 362 (if applicable)

Name: Larry Gonzalez

Amendment Barcode: 390668 (if applicable)

Job Title: Lobbyist

Address: 223 S. Gadsden St., 2nd Floor
Street

Tallahassee, FL 32301
City State Zip

Phone: 850-570-6307

E-mail: lawgonz@earthlink.net

Speaking: [x] For [ ] Against [ ] Information

Representing: Association of Surgical Technologists

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

Spoke

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Surgical Technology

Bill Number: SB 362 (if applicable)

Name: Libby McNaron

Amendment Barcode: 390668 (if applicable)

Job Title: President, Association of Surgical Technologists Florida Assembly

Address: 2004A Firetower Rd.
Street

Panama City, FL
City, State, Zip

Phone: 850-773-8350

E-mail: lmcnaron@gulfcoast.edu

Speaking: [x] For [ ] Against [ ] Information

Representing: Association of Surgical Technologists Florida State Assembly

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic _____

Bill Number 362 *(if applicable)*

Name Chris Nuland

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1000 Riverside Ave #115
Street

Jacksonville, FL 32204
City *State* *Zip*

Phone 904-355-1555

E-mail nulandlaw@aol.com

Speaking: [✓] For [ ] Against [ ] Information

Representing Florida Chapter, American College of Surgeons

Appearing at request of Chair: [ ] Yes [✓] No

Lobbyist registered with Legislature: [✓] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 668

INTRODUCER: Senator Hays

SUBJECT: Workers' Compensation Medical Services

DATE: February 14, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Fav/1 amendment**
2.	Wilson	Stovall	HR	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [ ] Statement of Substantial Changes
B. AMENDMENTS..... [ ] Technical amendments were recommended
[ ] Amendments were recommended
[X] Significant amendments were recommended

I. Summary:

Chapter 440, F.S., generally requires employers and carriers to provide medical and indemnity benefits to workers who are injured due to an accident arising out of and during the course of employment. Medical benefits can include, but are not limited to, medically necessary care and treatment, and prescription medications. In Florida, the prescription reimbursement rate for dispensing physicians and pharmacies is the average wholesale price (AWP) plus a $4.18 dispensing fee, or the contracted rate, whichever is lower.

Prescription drug repackagers are licensed by the Department of Business and Professional Regulation. Drug repackagers purchase pharmaceuticals in bulk from the manufacturer and repackage the drugs into individual prescription sizes. The repackaged drugs are assigned a new National Drug Code and can be assigned a new, higher AWP than the original manufacturer's AWP.

The bill revises requirements for determining the amount of reimbursement for prescription medications of workers' compensation claimants by providing that the reimbursement amount is the same for repackaged or relabeled drugs as for non-repackaged drugs. Reimbursement for repackaged or relabeled drugs would be determined by multiplying the number of units of the drug dispensed by the per-unit AWP set by the original manufacturer of the drug (which may not be the manufacturer of the repackaged or relabeled drug), plus a $4.18 dispensing fee, unless the carrier has contracted for a lower amount. The bill expressly prohibits the price of repackaged or relabeled drugs from exceeding the amount that would otherwise be payable had the drug not been repackaged or relabeled.

It is estimated that the bill would reduce workers' compensation costs overall by 2.5 percent.

This bill substantially amends the following section of the Florida Statutes: 440.13.

II. Present Situation:

State and Federal Regulation of Prescription Drugs

Section 510 of the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. s. 360, requires registered drug establishments to provide the Food and Drug Administration (FDA) with a current list of all drugs manufactured, prepared, propagated, compounded, or processed by it for commercial distribution. Drug products are identified and reported to the FDA using a unique, three-segment number, called the National Drug Code (NDC), which is a universal product identifier for human drugs. The current edition of the NDC Directory is limited to prescription drugs and insulin products that have been manufactured, prepared, propagated, compounded, or processed by registered establishments for commercial distribution.[1]

The term "repackaged" drugs refers to drugs that have been purchased in bulk by a wholesaler/repackager from a manufacturer, relabeled, and repackaged into individual prescription sizes that can be dispensed directly by physicians or pharmacies to patients. Repackagers of drugs are required to register and list all such drug products repackaged and relabeled with the FDA.

In Florida, the Department of Business and Professional Regulation (DBPR) regulates prescription drug repackagers. A permit as a prescription drug repackager is required for any person that repackages a prescription drug in Florida. The permit authorizes the wholesale distribution of prescription drugs repackaged at the establishment.

Rule 64F-12, F.A.C., defines "repackaging or otherwise changing the container, wrapper, or labeling to further the distribution" to mean:

- Altering a packaging component that is or may be in direct contact with the drug, device, or cosmetic. For example, repackaging from bottles of 1,000 to bottles of 100.
- Altering a manufacturer's package for sale under a label different from the manufacturer. For example: a kit that contains an injectable vaccine from manufacturer A; a syringe from manufacturer B; alcohol from manufacturer C; and sterile gauze from manufacturer D; packaged together and marketed as an immunization kit under a label of manufacturer Z.
- Altering a package of multiple-units, which the manufacturer intended to be distributed as one unit, for sale or transfer to a person engaged in the further distribution of the product.[2]

[1] *National Drug Code Database Background Information*, U.S. Food and Drug Administration. Found at: <http://www.fda.gov/drugs/developmentapprovalprocess/ucm070829> (Last visited on February 14, 2012).
[2] The Rule provides that repackaging does not include:

Dispensing Practitioners

According to the Workers' Compensation Research Institute, some states, such as Massachusetts, New York, and Texas prohibit physicians from dispensing drugs.[3] In Florida, s. 465.0276(1), F.S., authorizes physicians and pharmacies to dispense, as provided below:

> A person may not dispense medicinal drugs unless licensed as a pharmacist or otherwise authorized under this chapter to do so, except that a practitioner authorized by law to prescribe drugs may dispense such drugs to her or his patients in the regular course of her or his practice in compliance with this section.

To become a dispensing practitioner in Florida, a practitioner is required to register under s. 465.0276, F.S., with the applicable professional licensing board as a dispensing practitioner and pay a $100 fee.[4] Dispensing practitioners must comply with all laws and rules applicable to pharmacists and pharmacies including undergoing inspections. A practitioner registered under this section may not dispense a controlled substance listed in Schedule II or Schedule III in s. 893.03, F.S.[5]

Section 458.347, F.S., allows a supervising physician to delegate dispensing authority to his or her physician assistant (PA). No registration is required for a PA to dispense. The PA may prescribe under his or her supervising physician; however, a PA cannot prescribe controlled substances.

According to advocates of physician dispensers, there are some advantages for patients from physicians dispensing drugs. These benefits may include greater compliance by the patient in taking a drug dispensed directly by the physician, more convenience for patients residing in remote areas, and the benefit of prompt treatment.

A health care provider rendering medical treatment and care to an injured employee must be certified pursuant to Rule 69L-29.002, F.A.C., by the Department of Financial Services (DFS) or deemed certified, pursuant to s. 440.13(1)(d), F.S., as a provider within a managed care organization licensed through the Agency for Health Care Administration. Section 440.13(1) (d), F.S., provides that a "certified health care provider" is a provider approved to receive reimbursement through the Florida workers' compensation system. A certified provider may be a physician, a licensed practitioner, or a facility approved by the DFS or a provider who has entered an agreement with a licensed managed care organization to provide treatment to injured employees. Generally, a certified health care provider must receive authorization from the insurer before providing treatment.

a. Selling or transferring an individual unit which is a fully labeled self-contained package that is shipped by the manufacturer in multiple units, or
b. Selling or transferring a fully labeled individual unit, by adding the package insert, by a person authorized to distribute prescription drugs to an institutional pharmacy permit, health care practitioner, or emergency medical service provider for the purpose of administration and not for dispensing or further distribution.

[3] *Prescription Benchmarks for Massachusetts* by the Workers' Compensation Research Institute, March 2010.
[4] If the practitioner is dispensing complimentary packages of medicinal drugs, the practitioner is not required to register.
[5] *See* s. 465.0276(1)(b), F.S.

Section 440.13(14), F.S., provides that fees charged for remedial treatment, care, and attendance, except for independent medical examinations and consensus independent medical examinations, may not exceed the applicable fee schedules adopted under ch. 440, F.S., and department rule. However, if a physician or health care provider specifically agrees in writing to follow identified procedures aimed at providing quality medical care to injured workers at reasonable costs, deviations from established fee schedules are allowed.

Reimbursement for Prescription Drugs in Workers' Compensation

Chapter 440, F.S., is Florida's workers' compensation law. The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. Generally, employers/carriers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment. For such compensable injuries, an employer/carrier is responsible for providing medical treatment, which includes, but is not limited to, medically necessary care and treatment and prescription drugs.[6]

The reimbursement method for a prescription medication to pharmacies and dispensing physicians is found in s. 440.13(12)(c), F.S. The reimbursement amount is the average wholesale price (AWP) of the drug plus $4.18 for the dispensing fee, unless the carrier has contracted for a lower amount. The AWP is comparable to a wholesaler's suggested price and the term, AWP, is not defined in ch. 440, FS. Current law does not provide caps on reimbursements for repackaged or relabeled prescription drugs.

An NDC is assigned to each drug and used to identify the medication and the manufacturer or repackager of the medication. The original drug manufacturer creates an AWP for each drug. Drug repackagers purchase pharmaceuticals in bulk from the manufacturer, then relabel, and repackage the drugs into individual prescription sizes. Although drug repackagers do not alter the drugs, they do sell them in different quantities. By repackaging a drug, a new NDC is created and a new AWP is assigned to the repackaged drug.

Costs of Prescription Drugs in the Workers' Compensation System

Workers Compensation Research Institute (WCRI) Findings
According to a recent WCRI[7] report, the average payment per claim for prescription drugs in Florida was $536, which was the second highest average prescription cost per claim among the 17 states in the study.[8] [9] Between 2005/2006 and 2007/2008, the average prescription cost per claim increased 14 percent in Florida. Over the same period, prices per pill paid to physicians grew more rapidly than prices paid to pharmacies for the same prescription. In 2007/2008, the

[6] Section 440.13(2)(a), F.S.
[7] The Workers Compensation Research Institute is an independent, not-for-profit research organization providing information about public policy issues involving workers' compensation systems. Organized in late 1983, the WCRI does not take positions on the issues it researches.
[8] *Prescription Benchmarks for Florida, 2ND Edition*, by Workers' Compensation Research Institute, July 2011.
[9] The following states were included in the WCRI study: Florida, California, Tennessee, Indiana, Texas, Louisiana, Michigan, Minnesota, North Carolina, Iowa, Pennsylvania, Illinois, Maryland, Wisconsin, New Jersey, New York, and Massachusetts.

prices paid to physician dispensers for many common drugs were 40-80 percent higher than what was paid to pharmacies for the same drugs. For generic drugs, physicians were paid much higher prices per pill than pharmacies for the same prescription. According to the WCRI, this suggests that if physicians stop dispensing prescription drugs in response to a large price drop, more pharmacies would dispense the same prescriptions at a lower price, resulting in a decline in prescription costs.

National Council on Compensation Insurance
In Florida, the National Council on Compensation Insurance ("NCCI") is the rating and statistical organization that files rates on behalf of worker's compensation insurers in the state. The NCCI is licensed by the Office of Insurance Regulation. The NCCI provided the following data related to drug repackaging costs:[10]

- Markup on Florida repackaged drugs ranges up to 679 percent above the same drug in a non-repackaged format.
- Physician dispensed drugs have grown from 9 percent of the drug costs in 2003 to 50 percent of the drug costs in 2009.
- Florida has the highest rate of physician-dispensed drugs of 46 states studied.
- Most repackaged drugs are dispensed by physicians.

Division of Risk Management, Department of Financial Services
The Division of Risk Management within the Department of Financial Services administers the State of Florida's self-insurance program for property and casualty risk, which includes workers' compensation coverage.[11] The program covers executive, legislative, and judicial branches of Florida government and state universities and is funded by yearly assessments to participating state agencies. In 2011, the division identified medical costs, including pharmacy, as a claims cost driver.[12] A recent study by the division identified total repackaged drug costs of $1.2 million for the 2010 fiscal year.[13]

III. Effect of Proposed Changes:

The bill amends s. 440.13, F.S., to require the same reimbursement rate for repackaged or relabeled drugs that currently exists for non-repackaged drugs in Florida. The bill provides that regardless of the location or the provider of a prescription to a claimant, the reimbursement amount is the average wholesale price, plus the $4.18 for the dispensing fee, unless the carrier has contracted for a lower amount.

If a drug has been repackaged or relabeled, the reimbursement amount is calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug, which may not be the manufacturer of the repackaged or relabeled drug, plus a $4.18 dispensing fee, unless the carrier has contracted for a

[10] NCCI presentation to the Three Member Panel, November 16, 2011.
[11] Ch. 284, F.S.
[12] *Florida's Risk Management Program Initiatives to Address Program Cost Drivers,* Presentation by staff of the Department of Financial Services to the House Subcommittee on General Government Appropriations, February 8, 2011.
[13] Fiscal Analysis of SB 910 by the Department of Financial Services, November 21, 2011. (On file with the Senate Banking and Insurance Committee).

lower amount. The bill also provides that the price of the repackaged or relabeled drug may not exceed the amount otherwise payable if the drug had not been repackaged or relabeled.

The act takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The NCCI estimates that the implementation of SB 668 would result in an impact of minus 2.5 percent, or approximately $62 million in savings, on the overall workers' compensation costs in Florida. In order to estimate the cost impact of this proposal, the NCCI compared the cost of repackaged or relabeled drugs to the cost of drugs dispensed in its original packaging from the manufacturer (not repackaged or relabeled). A repackaged or relabeled indicator field from First Databank's *National Drug Data FileTM (NDDF), Descriptive and Pricing Data*, was used to distinguish repackaged or relabeled drugs from the drugs dispensed in its original packaging from the manufacturer within the Florida Workers' Compensation Data licensed to NCCI.

The NCCI looked at generic and non-generic drugs separately. As an example, acetaminophen is the generic medication for the brand name drug Tylenol. The NCCI looked at the reimbursement amounts for acetaminophen in physician's offices and in pharmacies, and determined the average markup for acetaminophen. Then, the NCCI looked at the reimbursement amounts for Tylenol in physicians' offices and in pharmacies, and determined the average markup for Tylenol.

If the bill were enacted, the NCCI estimated percentage reduction in physician dispensed drugs would be 57 percent. According to the 2011 Annual Report of the Division of Workers' Compensation, physician dispensed drug costs were $63.2 million for service year 2010. Using the $63.2 million figure provided by the division, the total dollar savings in physician dispensed drugs would be $36 million ($63.2 million x -57 percent). In the Florida January 1, 2012 workers' compensation rate filing, total benefit costs represented 57.8 percent of the premium dollar. Therefore, the reduction in physician dispensed drugs would result in a premium savings of $62 million ($36 million/.578).

The overall decrease in costs attributable to the reduction in the costs of repackaged and relabeled drugs would benefit employers securing workers' compensation coverage. The Office of Insurance Regulation anticipates issuing a rate reduction order prospectively from the effective date of the new law, July 1, 2012.

The bill would continue to allow the repackaging of prescription drugs, but it would limit and reduce the reimbursement amount to the AWP of the original manufacturer, plus the $4.18 dispensing fee.

C. Government Sector Impact:

According to the Division of Risk Management of the Department of Financial Services, implementation of this bill would result in an estimated recurring cost savings of $1 million per fiscal year for the state.

The bill would also result in an indeterminate amount of annual savings to local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 2010, HB 5603 was vetoed by Governor Crist. That bill would have continued to allow the repackaging and relabeling of drugs, but it would have limited the reimbursement amount to the AWP of the original manufacturer, plus the $4.18 dispensing fee.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 666350 by Banking and Insurance on January 19, 2012:
The amendment provides that a sick or injured employee is entitled to the choice in the selection of a dispensing practitioner to fill prescriptions for medicines required under

ch. 440, F.S. Current law provides that a sick or injured employee has a choice in the selection of the pharmacy or pharmacist.
(WITH TITLE AMENDMENT)

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

766998

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Health Regulation (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (3) and paragraph (c) of subsection (12) of section 440.13, Florida Statutes, are amended, and paragraph (k) is added to subsection (3) of that section, to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(3) PROVIDER ELIGIBILITY; AUTHORIZATION.—

(a) As a condition for ~~to~~ eligibility for payment under

766998

13 this chapter, a health care provider who renders services must
14 be a certified health care provider and must receive
15 authorization from the carrier before providing treatment. This
16 paragraph does not apply to emergency care. An employer or a
17 carrier may not refuse to authorize a physician to treat an
18 injured employee solely because the physician is a dispensing
19 practitioner, as defined in s. 465.0276. The department shall
20 adopt rules to implement the certification of health care
21 providers.
22 (k) If a physician who is a dispensing practitioner as
23 defined in s. 465.0276 receives authorization from an employer
24 or a carrier to treat a claimant pursuant to paragraph (a), the
25 physician may dispense and fill prescriptions for medicines
26 under this chapter. For the purposes of dispensing and filling
27 prescriptions for medicines, the department, the employer or
28 carrier, or an agent or representative of the department, the
29 employer, or the carrier may not select the pharmacy,
30 pharmacist, or dispensing practitioner, as defined in s.
31 465.0276, that the claimant must use.
32 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
33 REIMBURSEMENT ALLOWANCES.—
34 (c) As to reimbursement for a prescription medication,
35 regardless of the location from which or the provider from whom
36 the claimant receives the prescription medication, the
37 reimbursement amount ~~for a prescription~~ shall be the average
38 wholesale price plus $4.18 for the dispensing fee, unless ~~except~~
39 ~~where~~ the carrier has contracted for a lower amount. If the drug
40 has been repackaged or relabeled, the reimbursement amount is
41 calculated by multiplying the number of units dispensed times

766998

42 the per-unit average wholesale price set by the original
43 manufacturer of the underlying drug, which may not be the
44 manufacturer of the repackaged or relabeled drug, plus a $4.18
45 dispensing fee, unless the carrier has contracted for a lower
46 amount. The repackaged or relabeled drug price may not exceed
47 the amount otherwise payable had the drug not been repackaged or
48 relabeled. Fees for pharmaceuticals and pharmaceutical services
49 shall be reimbursable at the applicable fee schedule amount. If
50 ~~Where~~ the employer or carrier has contracted for such services
51 and the employee elects to obtain them through a provider not a
52 party to the contract, the carrier must ~~shall~~ reimburse at the
53 schedule, negotiated, or contract price, whichever is lower.
54 However, if the employee elects to fill a prescription for
55 medicines with a dispensing practitioner as defined in s.
56 465.0276 who is not a party to such contract, reimbursement
57 shall be at the applicable fee schedule amount. ~~No~~ Such contract
58 may not ~~shall~~ rely on a provider that is not reasonably
59 accessible to the employee.
60 Section 2. This act shall take effect July 1, 2012.
61
62 ========== T I T L E A M E N D M E N T ==========
63 And the title is amended as follows:
64 Delete everything before the enacting clause
65 and insert:
66 A bill to be entitled
67 An act relating to workers' compensation; amending s.
68 440.13, F.S.; authorizing an authorized physician who
69 is also a dispensing physician to dispense and fill
70 prescriptions; prohibiting the Department of Financial

766998

71 Services, an employer, or a carrier from selecting the
72 pharmacy, pharmacist, or dispensing practitioner a
73 claimant must use in certain circumstances; revising
74 requirements for determining the amount of a
75 reimbursement for repackaged or relabeled prescription
76 medication; providing limitations; providing an
77 effective date.

409686

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Health Regulation (Garcia) recommended the following:

Senate Substitute for Amendment (766998) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (3) and paragraph (c) of subsection (12) of section 440.13, Florida Statutes, are amended, paragraph (k) is added to subsection (3), paragraphs (d) and (e) of subsection (12) are redesignated as paragraphs (c) and (d), respectively, present subsections (15) through (17) are renumbered as subsections (16) through (18), respectively, and a new subsection (15) is added to that section, to read:

409686

13 440.13 Medical services and supplies; penalty for
14 violations; limitations.—
15 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.—
16 (a) As a condition for ~~to~~ eligibility for payment under
17 this chapter, a health care provider who renders services must
18 be a certified health care provider and must receive
19 authorization from the carrier before providing treatment. This
20 paragraph does not apply to emergency care. An employer or a
21 carrier may not refuse to authorize a physician to treat an
22 injured employee solely because the physician is a dispensing
23 practitioner, as defined in s. 465.0276. The department shall
24 adopt rules to administer ~~implement~~ the certification of health
25 care providers.
26 (k) If a physician who is a dispensing practitioner as
27 defined in s. 465.0276 receives authorization from an employer
28 or a carrier to treat a claimant pursuant to paragraph (a), the
29 physician may dispense and fill prescriptions for medicines
30 under this chapter. For purposes of dispensing and filling
31 prescriptions for medicines, the department, employer, or
32 carrier, or an agent or representative of the department,
33 employer, or carrier, may not select the pharmacy, pharmacist,
34 or dispensing practitioner that the claimant must use.
35 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
36 REIMBURSEMENT ALLOWANCES.—
37 ~~(c) As to reimbursement for a prescription medication, the~~
38 ~~reimbursement amount for a prescription shall be the average~~
39 ~~wholesale price plus $4.18 for the dispensing fee, except where~~
40 ~~the carrier has contracted for a lower amount. Fees for~~
41 ~~pharmaceuticals and pharmaceutical services shall be~~

409686

42 ~~reimbursable at the applicable fee schedule amount. Where the~~
43 ~~employer or carrier has contracted for such services and the~~
44 ~~employee elects to obtain them through a provider not a party to~~
45 ~~the contract, the carrier shall reimburse at the schedule,~~
46 ~~negotiated, or contract price, whichever is lower. No such~~
47 ~~contract shall rely on a provider that is not reasonably~~
48 ~~accessible to the employee.~~
49 (15) REIMBURSEMENT FOR PRESCRIPTION MEDICATION.—The
50 reimbursement amount for prescription medication shall be the
51 average wholesale price plus $4.18 for the dispensing fee,
52 unless the carrier and the provider seeking reimbursement have
53 directly contracted with each other for a lower reimbursement
54 amount.
55 (a) If a prescription has been repackaged or relabeled, the
56 provider shall give a $15 credit to the insurance carrier or
57 self-insured employer for each prescription that costs more than
58 $25. The credit shall be reflected in the Explanation of Bill
59 Review provided by the carrier or employer. The credit does not
60 apply if the carrier and the provider seeking reimbursement have
61 directly contracted with each other for a lower reimbursement
62 amount.
63 (b) A physician or the physician’s assignee may not hold an
64 ownership interest in a licensed pharmaceutical repackaging
65 entity and may not set or cause to be set a repackaged
66 pharmaceutical average wholesale price.
67 (c) An insurance carrier or self-insured employer that
68 improperly denies or delays payment of a valid claim for
69 reimbursement of a prescription medication is subject to an
70 administrative fine of $250 per instance of improper

409686

71 reimbursement. If the department determines that a carrier or
72 employer has improperly denied or delayed reimbursement claims
73 more than 15 times in any one calendar year, the administrative
74 penalty increases to $1,000 per instance of improper
75 reimbursement. If the department determines that a carrier or
76 employer has improperly denied or delayed reimbursement claims
77 more than 100 times in any one calendar year, the insurer or
78 employer must show cause to the department as to why its
79 certificate of authority to underwrite workers' compensation
80 insurance should not be revoked or suspended. The penalties in
81 this paragraph are not exclusive and are in addition to remedies
82 provided under part IX of chapter 626.
83 (d) Pursuant to subsection (7), a provider may challenge a
84 disallowance, denial, or adjustment of payment by filing a
85 petition for dispute resolution with the department within 30
86 days after receiving the final Explanation of Bill Review issued
87 by the insurance carrier or self-insured employer. The carrier
88 or self-insured employer must clearly state on the face of the
89 final Explanation of Bill Review when the 30-day period for
90 filing a petition for dispute resolution with the department
91 commences.
92 Section 2. This act shall take effect July 1, 2012.
93
94 ========== T I T L E A M E N D M E N T ==========
95 And the title is amended as follows:
96 Delete everything before the enacting clause
97 and insert:
98 A bill to be entitled
99 An act relating to workers' compensation medical

409686

100 services; amending s. 440.13, F.S.; prohibiting an
101 employer or carrier from refusing to authorize a
102 physician who is a prescribing physician; prohibiting
103 the Department of Financial Services, the employer, or
104 the carrier from selecting a claimant's pharmacy;
105 revising requirements for determining the amount of a
106 reimbursement for prescription medications;
107 prohibiting a physician from having an ownership
108 interest in a pharmacy repackaging entity or setting
109 pharmaceutical wholesale prices; providing penalties
110 for an employer or carrier's improper delay or denial
111 of payment and procedures for a provider to challenge
112 a disallowance, denial, or adjustment of payment;
113 providing an effective date.

695294

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment to Amendment (409686) (with title amendment)

Delete line 92
and insert:
Section 2. Effective upon this act becoming a law and before July 1, 2012, the Office of Insurance Regulation shall conduct a retrospective review of any rate filing submitted by a rating organization on behalf of workers' compensation or employer's liability insurance carriers during the previous 12 months which resulted in a rate increase. The office's review must determine whether the information, data, and documentation

695294

13 included in the rate filings include cost information
14 demonstrating that 2.5 percent of the overall rate increase that
15 was subsequently approved was directly attributable to the costs
16 of repackaging prescription medications. If the office
17 determines that such documentation or information was not
18 included in the rate filing, the office shall immediately reduce
19 the rates of workers' compensation and employer liability
20 insurance carriers by 2.5 percent. The office shall also make
21 its review available to the Senate and the House of
22 Representatives by October 1, 2012.
23 Section 3. Except as otherwise expressly provided in this
24 act and except for this section, which shall take effect upon
25 this act becoming a law, this act shall take effect July 1,
26 2012.
27
28 ========== T I T L E A M E N D M E N T ==========
29 And the title is amended as follows:
30 Delete line 113
31 and insert:
32 requiring the Office of Insurance Regulation to
33 conduct a retrospective review of certain rate filings
34 to determine if the filings were supported by
35 documentation demonstrating that a certain portion of
36 the approved rate increase was attributable to the
37 costs of repackaging prescription medications and to
38 reduce rates if not so supported; providing effective
39 dates.

928020

LEGISLATIVE ACTION

Senate . House

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The Committee on Health Regulation (Fasano) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete line 39
4 and insert:
5 Section 2. Effective upon this act becoming a law and
6 before July 1, 2012, the Department of Financial Services shall
7 conduct a retrospective review of any rate filing submitted by a
8 rating organization on behalf of workers' compensation or
9 employer's liability insurance carriers during the previous 12
10 months which resulted in a rate increase. The department's
11 review must determine whether the information, data, and
12 documentation included in the rate filings includes cost

928020

13 information demonstrating that 2.5 percent of the overall rate
14 increase that was subsequently approved was directly
15 attributable to the costs of repackaging prescription
16 medications. If the department determines that such
17 documentation or information was not included in the rate
18 filing, the department shall report such information to the
19 Office of Insurance Regulation. The office shall immediately
20 reduce the rates of workers' compensation and employer liability
21 insurance carriers by 2.5 percent. The department shall also
22 make its review available to the Senate and the House of
23 Representatives by October 1, 2012.
24 Section 3. Except as otherwise expressly provided in this
25 act and except for this section, which shall take effect upon
26 this act becoming a law, this act shall take effect July 1,
27 2012.
28
29 ========== T I T L E A M E N D M E N T ==========
30 And the title is amended as follows:
31 Delete lines 6 - 7
32 and insert:
33 medication; providing limitations; requiring the
34 Department of Financial Services to conduct a
35 retrospective review of certain rate filings to
36 determine if the filings were supported by
37 documentation demonstrating that a certain portion of
38 the approved rate increase was attributable to the
39 costs of repackaging prescription medications;
40 providing effective dates.

666350

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/19/2012	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Sobel) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 11 - 14
4 and insert:
5 Section 1. Paragraph (j) of subsection (3) and paragraph
6 (c) of subsection (12) of section 440.13, Florida Statutes, are
7 amended to read:
8 440.13 Medical services and supplies; penalty for
9 violations; limitations.—
10 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.—
11 (j) Notwithstanding <u>any other provision of</u> ~~anything in~~ this
12 chapter ~~to the contrary~~, a sick or injured employee <u>is</u> ~~shall be~~

666350

13 entitled, at all times, to free, full, and absolute choice in
14 the selection of the pharmacy, ~~or~~ pharmacist, or dispensing
15 practitioner to dispense and fill ~~dispensing and filling~~
16 prescriptions for medicines required under this chapter. ~~It is~~
17 ~~expressly forbidden for~~ The department, an employer, or a
18 carrier, or any agent or representative of the department, an
19 employer, or a carrier, may not ~~to~~ select the pharmacy, ~~or~~
20 pharmacist, or dispensing practitioner that ~~which~~ the sick or
21 injured employee must use; condition coverage or payment on the
22 basis of the pharmacy, ~~or~~ pharmacist, or dispensing practitioner
23 used ~~utilized~~; or to otherwise interfere in the selection by the
24 sick or injured employee of a pharmacy, ~~or~~ pharmacist, or
25 dispensing practitioner.
26
27 ========== T I T L E A M E N D M E N T ==========
28 And the title is amended as follows:
29 Delete line 3
30 and insert:
31 services; amending s. 440.13, F.S.; providing that a
32 sick or injured employee is free to select a
33 dispensing practitioner to fill prescriptions as well
34 as a pharmacy or pharmacist; revising

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR D. ALAN HAYS
20th District

COMMITTEES:
Budget - Subcommittee on General Government Appropriations, *Chair*
Agriculture
Banking and Insurance
Budget
Budget - Subcommittee on Higher Education Appropriations
Criminal Justice
Reapportionment

JOINT COMMITTEE:
Administrative Procedures

2nd Ref.

January 19, 2012

Senator Rene Garcia, Chair
Health Regulation Committee
310 Senate Office Building
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: SB 668 Relating to Workers' Compensation Medical Services

Dear Chair Garcia:

I respectfully request my above bill be heard before your committee. I feel this bill would be a benefit to the citizens of this state.

Thank you in advance for your consideration, and please contact me if you have any questions.

Sincerely,

D. Alan Hays, DMD

Senator D. Alan Hays
District 20

CC: **Sandra R. Stovall**, *Staff Director*
Celia Georgiades, *Committee Administrative Assistant*

ENTERED

REPLY TO:
☐ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

Update Regarding NCCI Pricing of Florida Drug Repackaging Bills

(Dated 1/30/2012)

Attached is NCCI's pricing of a drug repackaging bill that was considered in the 2011 session. The estimated impact was 2.5% or $62M. A preliminary look at more recent data suggests that the impact will not exceed 2.5%. Due to the similarity of bills presented for consideration in the 2012 session (original filed versions of SB 668 and HB 511), NCCI has not updated its pricing. We reserve the right however to update our pricing if these bills are amended.

The following are responses to questions received:

1. **Why does NCCI estimated dollar savings of $62M just about equal the annual dollar amount given by the Florida Division of Workers Compensation for physician dispensed drug costs in Florida ($63.2M for SY2010)?**

   NCCI's task is to provide the policymaker with an estimate of how much rates would be reduced if the bill were passed. In order to get the estimated dollar impact of $62M from an estimated rate reduction of 2.5%, one would multiply the rate impact (2.5%) against the total workers compensation premium dollars in the state ($2.5B). Because the breakdown of the premium dollar is part benefits and part expenses, there is an implicit assumption that expenses will be affected proportionally to the change in benefit costs. In other words, because of the reduction in premium related to benefits, expense items such as for example taxes and assessments have to come down. So given the benefit/expense split of the premium dollar in Florida, part of the $62M is savings in drug costs ($36M) and part of the $62M is savings in expenses ($26M).

2. **Isn't NCCI's impact skewed high because it arrives at its markup for each drug by comparing generics to non-generics of the same drug?**

   No. NCCI compared drugs by the same name. For illustration purposes only, please note the following example. Acetaminophen is the generic for Tylenol. NCCI's methodology would look at the reimbursement amounts for acetaminophen in its original packaging compared to its repackaged form, and determine the average markup for acetaminophen. Then NCCI's methodology would look at the reimbursement amounts for Tylenol in its original packaging compared to its repackaged form, and determine the average markup for Tylenol. This approach was followed for all drugs. The overall savings were determined by eliminating the markup.

3. **What would be the impact on workers compensation rates of allowing the free market to determine the price of repackaged drugs? In other words, what would be the impact on workers compensation rates if the only means for carriers to contain costs is by not doing business with dispensing physicians?**

   Fee schedules are the oldest and most widely used device to regulate workers compensation medical payments. Florida already has fee schedules in place to control reimbursements in workers compensation for pharmaceuticals and services provided by physicians, hospitals, and ambulatory surgical centers. NCCI studies show that fee schedules are effective in controlling

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medical costs. States without fee schedules reimburse at a higher markup than states with fee schedules. While Florida currently has a pharmaceutical fee schedule, it is ineffective at controlling reimbursements for repackaged drugs. In other words, there is in effect no control on the markup on repackaged drugs and therefore, it is akin to not having a fee schedule for repackaged drugs. Given its studies on markup in states without fee schedules, NCCI would not expect that a free market approach would be effective in containing the cost of repackaged drugs.

4. **Has NCCI considered in its pricing the impact of physician dispensing on injured worker outcomes? Some argue physician dispensing improves injured worker outcomes and some argue that physician dispensing leads to longer claim durations/longer periods before returning to work.**

   NCCI has not included any impact related to injured worker outcomes within its pricing because NCCI has been unable to find any studies which show correlation of physician dispensing and return to work/claim duration. NCCI believes there is low probability there is a correlation or that any correlation would significantly impact its pricing.

   Those that argue that physician dispensing improves injured worker outcomes often point to a statistic that 30-35% of prescriptions are not filled. The converse is that 65%-70% of prescriptions are filled probably without a significant lapse of time. Even if the 30-35% of prescriptions which were previously unfilled are making it into the hands of injured workers because of physician dispensing, there is no guarantee that physician dispensed drugs are actually taken by injured workers.

   Those that argue that physician dispensing leads to poorer injured worker outcomes often cite studies related to the use of narcotics in treating workers compensation injuries and the fact that narcotics use can persist many years. Particularly after the passage of the Pill Mill Bill in 2011, NCCI believes that the drugs physicians can dispense have a low potential for abuse and therefore are unlikely to extend the length of claims. It is also believed that other factors like the economy (i.e., the availability of jobs) have greater impact on return to work/claim duration.

5. **If the reimbursement for repackaged drugs is set at the original manufacturer's Average Wholesale Price (AWP) plus the dispensing fee of $4.18, is the dispensing physician's profit limited to $4.18?**

   No. The original manufacturers AWP is not the actual purchase price of pharmaceuticals. There is a built in markup within original manufacturers AWP. The gap between what is actually paid by the repackager and the original manufacturer's AWP is profit. A standard spread does not exist, but based on data from one Florida repackager, the spread , or built-in profit, for the top 15 drugs dispensed by physicians in Florida workers compensation is more than 50%. This particular repackager stated that his clients receive a significant portion of the spread, or built-in profit.

6. **Will physicians stop dispensing if the reimbursement is set at the original manufacturer's Average Wholesale Price?**

   When a similar change was enacted in California, physicians continued to dispense at close to the same levels but the dispensing of repackaged drugs tapered off and the dispensing of non-repackaged drugs grew.

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National Council on Compensation Insurance, Inc.

ANALYSIS OF FLORIDA SB 1068 - PROPOSAL TO REVISE REIMBURSEMENT FOR REPACKAGED OR RELABELED PRESCRIPTION DRUGS EFFECTIVE JULY 1, 2011

NCCI estimates that adopting the proposed language in SB 1068 on reimbursement of repackaged or relabeled prescription drugs would result in an impact of -2.5% ($-62M)[1] on overall workers compensation costs in Florida.

Summary of Proposal

Senate Bill (SB) 1068 proposes to introduce a change in reimbursement for drugs that have been repackaged or relabeled. Under SB 1068, reimbursements for such drugs are limited to the number of units dispensed times the per unit Average Wholesale Price (AWP) set by the original manufacturer of the drug, plus a $4.18 dispensing fee. This does not apply in situations where the carrier has contracted for a lower reimbursement amount.

Currently, prescription drugs are reimbursed at the AWP plus a $4.18 dispensing fee. There are no restrictions on reimbursements for repackaged or relabeled prescription drugs.

Actuarial Analysis

In Florida, drug costs represent 16.0[2] of workers compensation (WC) medical costs. Repackaged or relabeled drug costs represent 39.8%[2] of Florida's WC drug costs, or 6.4% (=39.8% x 16.0%) of medical costs.

In order to estimate the cost impact of this proposal, NCCI compared the cost of repackaged or relabeled drugs to the cost of drugs dispensed in its original packaging from the manufacturer (not repackaged or relabeled). A repackaged or relabeled indicator field from First Databank's *National Drug Data File™ (NDDF), Descriptive and Pricing Data*, was used to distinguish repackaged or relabeled drugs from the drugs dispensed in its original packaging from the manufacturer within the Florida Workers Compensation Data licensed to NCCI.

NCCI has assumed the difference between the current reimbursement for repackaged or relabeled drugs and the current reimbursement for the equivalent of these drugs that are not repackaged or relabeled, to be a reasonable estimate of the cost impact due to the proposed rule.

The current and proposed reimbursements for each brand name drug were calculated as follows:

Current Reimbursement = Average observed reimbursement for repackaged or relabeled drug x Total Units of repackaged or relabeled drug

[1] The $62 million in savings is derived as -2.5% x $2.5B (NCCI's estimate of Florida's overall WC system costs). The Florida overall WC system costs is comprised of Private Carrier 2009 direct written premium as reported to the NAIC ($1.7B) plus an estimate of the Self Insured 2009 premium portion ($0.8B) from the Florida Division of Workers Compensation.

[2] Based on Florida WC data licensed to NCCI for service year 2009.

National Council on Compensation Insurance, Inc.

ANALYSIS OF FLORIDA SB 1068 - PROPOSAL TO REVISE REIMBURSEMENT FOR REPACKAGED OR RELABELED PRESCRIPTION DRUGS EFFECTIVE JULY 1, 2011

Proposed Reimbursement = Average observed reimbursement for equivalent drug that is not repackaged or relabeled x Total Units of repackaged or relabeled drug

Where:
Average observed reimbursement = Total Paid divided by Total Units
Units = Total number of pills per prescription

The current and proposed reimbursement is then summed to obtain total current and total proposed costs. The estimated direct impact due to the proposed rule is the ratio of total proposed costs to total current costs.

Note that the AWP is not subject to any law or regulation. Therefore, there are no requirements for the AWP to reflect the price of any actual sale of drugs by a manufacturer. In addition, since there is a lack of control over the AWP, it may be subject to significant upward pricing pressures (much like the "sticker prices" on automobiles). For these reasons, limiting the reimbursement for repackaged drugs to the AWP set by the manufacturer may result in less savings than anticipated.

The direct impact on repackaged or relabeled prescription drugs is estimated to be -57.0%. This impact is then multiplied by the estimated Florida percentage of medical costs that are for repackaged or relabeled prescription drugs (6.4%)[2]. The resulting impact on medical costs is then multiplied by the percentage of Florida benefit costs that are medical (68.3%)[3] to yield the impact on Florida overall workers compensation system costs.

The impact due to the proposed rule is summarized in the following table:

		Impact
(1)	Impact on Repackaged or Relabeled Prescription Drug Costs in Florida	-57.0%
(2)	Repackaged or Relabeled Prescription Drug Costs as a Percentage of Medical Costs in Florida[2]	6.4%
(3)	**Impact on Medical Costs in Florida = (1) x (2)**	**-3.6%**
(4)	Medical Costs as a Percentage of Overall Workers Compensation System Costs in Florida[3]	68.3%
(5)	**Total Impact on Overall Workers Compensation System Costs in Florida = (3) x (4)**	**-2.5%**

[2] Based on Florida WC data licensed to NCCI for service year 2009.
[3] Based on Calendar-Accident Years 2008-2009 NCCI Financial Call data for Florida projected to 7/1/2011. This estimated date is subject to change depending on the date the changes become effective.

National Council on Compensation Insurance, Inc.

ANALYSIS OF FLORIDA SB 1068 - PROPOSAL TO REVISE REIMBURSEMENT FOR REPACKAGED OR RELABELED PRESCRIPTION DRUGS EFFECTIVE JULY 1, 2011

Additional Information

The same language in SB 1068 was contained last year in HB 5603. NCCI prepared a similar analysis last year dated March 15, 2010, which was based on Florida workers compensation data licensed to NCCI for service year 2008. Here is a comparison of the components that have changed from last year's analysis to the current analysis because of updated data:

		Last Year's Analysis	Current Analysis
(1)	Impact on Repackaged or Relabeled Prescription Drugs	-52.8%	-57.0%
(2)	Share of Repackaged or Relabeled Drug Costs to WC Drug Costs	23.5%	39.8%
(3)	Share of WC Drug Costs to WC Medical Costs	12.8%	16.0%
(4)	Impact on Medical Costs = (1) x (2) x (3)	-1.6%	-3.6%
(5)	Medical Costs as a percentage of Overall WC System Costs	68.9%	68.3%
(6)	Impact on Overall WC System Costs = (4) x (5)	-1.1%	-2.5%

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1602

INTRODUCER: Senator Latvala

SUBJECT: Pharmacies

DATE: February 14, 2012 REVISED: 02/16/12

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	**Fav/1 amendment**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....		Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
	X	Significant amendments were recommended

I. Summary:

The bill makes the pharmacy audit requirements contained in s. 465.188, F.S., which currently apply only to audits of Medicaid-related pharmacy records, applicable to third-party payor and third-party administrator audits of pharmacy records. In addition, the bill specifies that a claim is not subject to financial recoupment if the claim, except for typographical, computer, clerical, or recordkeeping errors, is a valid claim. The audit criteria may not subject a claim to financial recoupment except when recoupment is required by law. The audit criteria apply to third-party claims submitted for payment after July 1, 2011.

The bill also prohibits a third-party payor or state agency from requiring the delivery of pharmacy provider services and prescription drugs by mail. However, a third-party payor or state agency may offer an incentive program for the delivery of prescription drugs by mail.

This bill substantially amends s. 465.188, F.S., and creates one undesignated section of law.

II. Present Situation:

Medicaid

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. The Agency for Health Care Administration (AHCA) is responsible for administering the Medicaid program. Medicaid serves approximately 3.19 million people in Florida.

Medicaid reimburses health care providers that have a provider agreement with the AHCA only for goods and services that are covered by the Medicaid program and only for individuals who are eligible for medical assistance from Medicaid. Each provider agreement is a voluntary contract between the AHCA and the provider, in which the provider agrees to comply with all laws and rules pertaining to the Medicaid program.[1] A Medicaid provider has a contractual obligation to comply with Medicaid policy which requires that a claim must be true and correct or payments may be recouped.[2]

Section 409.906, F.S., identifies the services for which Florida has, at its option, decided to make payments under the Medicaid program. Prescribed drug services are optional services under the Medicaid program. Under s. 409.906(20), F.S., the AHCA may pay for medications that are prescribed for a recipient by a physician or other licensed practitioner of the healing arts authorized to prescribe medication and that are dispensed to the recipient by a licensed pharmacist or physician in accordance with applicable state and federal law.

Section 409.908(14), F.S., establishes policies regarding Medicaid reimbursement of providers of prescribed drugs. Section 409.912(37), F.S., requires the AHCA to implement a Medicaid prescribed-drug spending-control program that includes several specified components.

Section 409.913, F.S., provides for the oversight of the integrity of the Medicaid program to ensure that fraudulent and abusive behavior occur to the minimum extent possible, and to recover overpayments and impose sanctions as appropriate. Overpayment is defined to include any amount that is not authorized to be paid by the Medicaid program whether paid as a result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake.[3]

Under s. 409.913(2), F.S., the AHCA is required to conduct, or cause to be conducted by contract or otherwise, reviews, investigations, analyses, audits, or any combination of these, to determine possible fraud, abuse, overpayment, or recipient neglect in the Medicaid program and to report the findings of any overpayments in audit reports as appropriate.

Section 409.913(32), F.S., authorizes agents and employees of the AHCA to inspect, during normal business hours, the records of any pharmacy, wholesale establishment or manufacturer, or any other place in which drugs and medical supplies are manufactured, packed, packaged,

[1] *See* s. 409.907(2), F.S.
[22] *See* s. 409.913(7), F.S.
[3] *See* s. 409.913(1)(e), F.S.

made, stored, sold or kept for sale, for the purpose of verifying the amount of drugs and medical supplies ordered, delivered, or purchased by a Medicaid provider. The AHCA must provide at least 2 business days' prior notice of an inspection. The notice must identify the provider whose records will be inspected, and the inspection shall include only records specifically related to that provider.

Medicaid Pharmacy Audits

Section 465.188, F.S., establishes requirements for the conduct of an audit of the Medicaid-related records of a pharmacy licensed under ch. 465, F.S. The audit must meet the following requirements.

- The agency conducting the audit must give the pharmacist at least 1 week's prior notice of the initial audit for each audit cycle.
- An audit must be conducted by a pharmacist licensed in Florida.
- Any clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error regarding a document or record required under the Medicaid program does not constitute a willful violation and is not subject to criminal penalties without proof of intent to commit fraud.
- A pharmacist may use the physician's record or other order for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug.
- A finding of an overpayment or underpayment must be based on the actual overpayment or underpayment and may not be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs.
- Each pharmacy shall be audited under the same standards and parameters.
- A pharmacist must be allowed at least 10 days in which to produce documentation to address any discrepancy found during an audit.
- The period covered by an audit may not exceed 1 calendar year.
- An audit may not be scheduled during the first 5 days of any month due to the high volume of prescriptions filled during that time.
- The audit report must be delivered to the pharmacist within 90 days after conclusion of the audit. A final audit report must be delivered to the pharmacist within 6 months after receipt of the preliminary audit report or final appeal, whichever is later.
- The agency conducting the audit may not use the accounting practice of extrapolation in calculating penalties for Medicaid audits.

The law requires the AHCA to establish a process that allows a pharmacist to obtain a preliminary review of an audit report and the ability to appeal an unfavorable audit report without the necessity of obtaining legal counsel. The preliminary review and appeal may be conducted by an ad hoc peer review panel, appointed by the AHCA, which consists of pharmacists who maintain an active practice. If, following the preliminary review, the AHCA or the review panel finds that an unfavorable audit report is unsubstantiated, the AHCA must dismiss the audit report without the necessity of any further proceedings.

These requirements do not apply to investigative audits conducted by the Medicaid Fraud Control Unit of the Department of Legal Affairs or to investigative audits conducted by the

AHCA when there is reliable evidence that the claim that is the subject of the audit involves fraud, willful misrepresentation, or abuse under the Medicaid program.

Third-party Payor/Third-party Administrator Pharmacy Audits

Advances in pharmaceuticals have transformed health care over the last several decades. Many health care problems are prevented, cured, or managed effectively for years through the use of prescription drugs. As a result, national expenditures for retail prescription drugs have grown from $120.9 billion in 2000 to $259.1 billion in 2010.[4] This has brought about increased scrutiny of pharmaceutical dispensing and reimbursement processes.

Health insurers, including Medicare and Medicaid, and other third party payers spent $210.3 billion on prescription drugs in 2010 and consumers paid $48.8 billion out of pocket for prescription drugs that year.[5] As expenditures for drugs have increased, insurers have looked for ways to control that spending. Among other things, they have turned to pharmacy benefit managers, which are third party administrators of prescription drug programs. Pharmacy benefit managers process prescriptions for the groups that pay for drugs, usually insurance companies or corporations, and use their size to negotiate with drug makers and pharmacies. They are primarily responsible for processing and paying prescription drug claims. They are also responsible for maintaining the formulary of covered drugs, contracting with pharmacies, and negotiating discounts and rebates with drug manufacturers.

Pharmacy benefit managers build networks of retail pharmacies to provide consumers convenient access to prescriptions at discounted rates. The audit process is one means used by pharmacy benefit managers and third-party payors to review pharmacy programs. The audits ensure that procedures and reimbursement mechanisms are consistent with contractual and regulatory requirements.

Pharmacies have increasingly complained about the onerous and burdensome nature of these audits. Organizations such as the National Community Pharmacists Association[6] and the Independent Pharmacy Cooperative,[7] which both represent independent pharmacies, have been advocating for legislation at the federal and state levels to address what they perceive as predatory practices by pharmacy benefit managers.

III. Effect of Proposed Changes:

Section 1 amends s. 465.188, F.S., relating to Medicaid audits of pharmacies, to make the provisions of the section applicable to an audit of Medicaid-related, third-party payor, or third-

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[4] Centers for Medicare and Medicaid Services, *National Health Expenditures Web Tables, Table 11, Retail Prescription Drugs Aggregate, Percent Change, and Percent Distribution, by Source of Funds: Selected Calendar Years 1970-2010*. Found at: <https://www.cms.gov/NationalHealthExpendData/downloads/tables.pdf> (Last visited on February 14, 2012).
[5] *Id.*
[6] National Community Pharmacists Association, *New Survey Reveals Pharmacists are Increasingly Struggling to Care for Patients Amid Predatory Audits, Unfair Reimbursement Practices*. Found at: < http://www.ncpanet.org/index.php/news-releases/1062-new-survey-reveals-pharmacists-are-increasingly-struggling-to-care-for-patients-amid-predatory-audits-unfair-reimbursement-practices> (Last visited on February 14, 2012).
[7] Independent Pharmacy Cooperative, *IPC Introduces Pharmacy Audit Legislation in Florida*. Found at: <https://www.ipcrx.com/Public/Govt%20Affairs/GA_December_22_2011.aspx> (Last visited on February 14, 2012).

party administrator records of a pharmacy permittee. The bill provides that a claim is not subject to financial recoupment if the claim is a valid claim other than typographical, scrivener's, computer, clerical, or recordkeeping errors. The audit criteria contained in the bill apply to third-party claims submitted for payment after July 1, 2011.

The bill specifies that the audit criteria may not subject a claim to financial recoupment except in those circumstances when recoupment is required by law. The process for appealing audit reports is amended to conform to the addition of third-party payors and third-party administrators to the provisions of s. 465.188, F.S.

Section 2 provides that, notwithstanding any other provision of law, a third-party payor or state agency may not require, by contract, administrative rule, or condition of participation in a pharmacy provider network, the delivery of pharmacy provider services and prescription drugs by mail. A third-party payor or state agency may offer an incentive program for the delivery of drugs by mail.

Section 3 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

The bill may raise concerns due to impairment of contracts.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have an indeterminate fiscal impact on the private insurance sector through requirements for third-party payor auditing methodologies, limitations on financial recoupment of claims, and restrictions on the use of mail order pharmacies.

C. Government Sector Impact:

The bill will limit the AHCA's ability to recoup Medicaid overpayments that result from providers' computer and recordkeeping errors. Also, pharmacy service providers will likely dispute regular fee-for-service audits by Medicaid due to more restrictive language regarding what claims may be subject to financial recoupment, thus leading to more administrative hearings for the AHCA.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The provision of the bill that states that a claim is not subject to financial recoupment if, except for typographical, scrivener's, computer, clerical, or recordkeeping error, the claim is an otherwise valid claim will have a negative impact on the AHCA's ability to combat fraud and abuse in the Florida Medicaid program. Although providers may not be committing fraud, they may be committing abuse and may be collecting overpayments from the Medicaid program through computer and recordkeeping errors. This provision will also affect managed care organizations that currently provide services to Medicaid enrollees.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 795548 by Health Regulation on February 16, 2012:
The amendment removes the section of the bill that prohibits a third-party payor or state agency from requiring the delivery of pharmacy provider services and prescription drugs by mail.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

795548

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/16/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Diaz de la Portilla) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 114 - 120.
4
5 ========== T I T L E A M E N D M E N T ==========
6 And the title is amended as follows:
7 Delete lines 16 - 21
8 and insert:
9 audits; providing an effective date.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JACK LATVALA
16th District

COMMITTEES:
Transportation, *Chair*
Budget - Subcommittee on General Government Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Children, Families, and Elder Affairs
Environmental Preservation and Conservation
Governmental Oversight and Accountability
Reapportionment

JOINT COMMITTEE:
Public Counsel Oversight, *Alternating Chair*

January 19, 2012

The Honorable Rene Garcia
Senate Committee on Health Regulation
404 S. Monroe St., 530 Knott Bldg.
Tallahassee, FL 32399-1100

Dear Chairman Garcia:

I respectfully request that my bill, SB 1602/Pharmacies, be placed on the agenda of the Senate Health Regulation Committee at the earliest possible time.

This bill will regulate third-party payor and third-party auditors of pharmacies in the same manner that the Agency for Health Administration is regulated in conducting its own Medicaid pharmacy audits. The bill prohibits prescription drug plans from mandating that patients get their drugs only through a single mail order pharmacy, while at the same time making clear that mail order pharmaceutical delivery, including incentivized mail order, remains a permissible option under any prescription drug plan.

Please contact me if you have any questions. I appreciate your consideration.

Sincerely,

Jack Latvala
State Senator
District 16

JL:tc

CC: Sandra Stovall

REPLY TO:
❒ 12425 28th Street North, Suite 102, St. Petersburg, Florida 33716 (727) 556-6500
❒ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5075

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date: _____

Topic: Pharmacy Audit

Bill Number: 1602 (if applicable)

Name: Jorge Chamizo

Amendment Barcode: _____ (if applicable)

Job Title: Attorney

Address: 108 S. Monroe St.
Street

Tallahassee FL 32301
City State Zip

Phone: (850) 681-0024

E-mail: jorge@flapartners.com

Speaking: [x] For [ ] Against [ ] Information

Representing: Independent Pharmacy Cooperative

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Pharmacies

Bill Number: 1602 *(if applicable)*

Name: Doug Bell

Amendment Barcode: *(if applicable)*

Job Title:

Address: 215 S. Monroe St.
Street

Tall. FL
City *State* *Zip*

Phone: 222-3533

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: Medco

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: Pharmacy audits

Bill Number: SB 1602 (if applicable)

Name: Larry Gonzalez

Amendment Barcode: 3[redacted] (if applicable)

Job Title: Lobbyist

Address: 223 S. Gadsden St., 2nd Fl
Street

Tallahassee FL 32301
City State Zip

Phone: 850-570-6307

E-mail: lawgonz@earthlink.net

Speaking: [x] For [ ] Against [ ] Information

Representing: Florida Society of Health-System Pharmacists

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-16-12
Meeting Date

Topic: Pharmacy

Bill Number: 1602 *(if applicable)*

Name: Mike Fischer

Amendment Barcode: *(if applicable)*

Job Title:

Address: Po Box 1197
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 222-0344

E-mail: mike@rodfisch.com

Speaking: [x] For [ ] Against [ ] Information

Representing: FLORIDA INDEPENDENT PHARMACY NETWORK

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/16/12
Meeting Date

Topic: PHARMACY AUDITING

Bill Number: SB 1602 *(if applicable)*

Name: JIM POWERS

Amendment Barcode: *(if applicable)*

Job Title: Pharmacist

Address: 1349 OLD VILLAGE RD
Street

TALLAHASSEE, FL 32312
City, State, Zip

Phone: 850-422-0079

E-mail: THEPOWERS@NETTALLY.COM

Speaking: [x] For [ ] Against [ ] Information

Representing: FLORIDA INDEPENDENT PHARMACY NETWORK

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

02-16-2012
Meeting Date

Topic: Pharmacy Audits

Bill Number: 1602 *(if applicable)*

Name: Michael Jackson

Amendment Barcode: _____ *(if applicable)*

Job Title: CEO + Executive V-P

Address: 610 N. Adam St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850-224-7000

E-mail: jackson@pharmview.com

Speaking: [X] For [ ] Against [ ] Information

Representing: Florida Pharmacy Ass'n

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

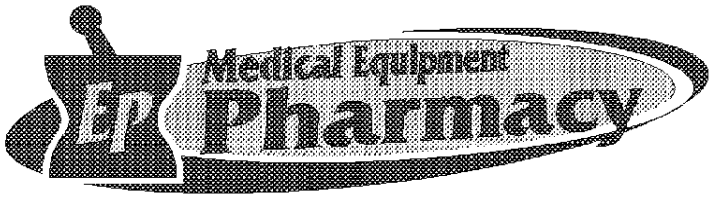
TIME RECEIVED	REMOTE CSID	DURATION	PAGES	STATUS
February 15, 2012 4:39:23 PM EST	3056303414	68	2	Received

EP MEDICAL EQUIPMENT, INC

DATE:	2/15/2012	**PAGES:**	2
TO:	Senate Health Regulation	**FROM:**	SILVIA NUSETTI
COMPANY:		**FAX #:**	3056303414
FAX #:	18504100081	**VOICE #:**	305-630-9307

MESSAGE:

BILL 1602



FACSIMILE TRANSMITTAL SHEET

TO: **Celia**	FROM: **Silvia Nusetti**
COMPANY: **Senate Health Regulation Committee**	DATE: 02/15/2012
FAX NUMBER: 850-410-0081	TOTAL NO. OF PAGES INCLUDING COVER: 1
	SENDER'S REFERENCE NUMBER:
RE:	YOUR REFERENCE NUMBER:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

We at EP Medical Equipment Pharmacy and EP LTC Pharmacy would like to express that we support SB 1602, the Florida Pharmacy Audit Bill

Warning: The Information is intended only for the person or entity to which it is addressed and may contain CONFIDENTIAL material. If you receive this material/information in error please contact the sender and delete or destroy the material/information immediately.**Personal Health** InformationHealth care information is personal information related to patient's health care. It is being faxed to you after appropriate authorization or under circumstances that do not require authorization. You are required to maintain it in safe secure and confidential manner. Re-disclosure without the appropriate patient authorization or as permitted by law is prohibited. Unauthorized re-disclosure or failure to maintain confidentiality could subject you to penalties described in HIPAA, federal and state laws.

PH. (305) 630-9307 , FAX (305) 630-9303
6440 SW 117TH AVENUE
MIAMI, FL 33183

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 290

INTRODUCER: Senator Flores and others

SUBJECT: Abortions

DATE: February 15, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	**Pre-meeting**
2.			CJ	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill consolidates provisions relating to abortion that are currently located in several chapters of the Florida Statutes into chapter 390, F.S. Provisions that have been struck down by the courts are repealed. The bill substitutes the term "abortion," which is defined in s. 390.011(1), F.S., for the term "termination of pregnancy," throughout the chapter.

The bill prohibits abortions from being performed while a woman is in her third trimester of pregnancy or after a fetus has attained viability, unless:

- Two physicians certify that the abortion is necessary to prevent the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the pregnant woman; or
- The physician certifies to the existence of a medical emergency, and another physician is not available for consultation.

The bill requires an abortion clinic to provide conspicuous written notice on its premises and on any advertisement that the clinic is prohibited from performing abortions in the third trimester or after viability and requires the Agency for Health Care Administration (AHCA) to adopt rules to regulate such advertisements. Violation of the advertising requirements is a first-degree misdemeanor.

The bill requires any physician who performs abortions in an abortion clinic to annually complete at least 3 hours of continuing education that relate to ethics, as part of the licensure and renewal process. The bill also provides for restrictions as to where an abortion may be performed.

The bill specifies that consent to an abortion is voluntary and informed only if the statutory requirements for informed consent are completed at least 24 hours before the abortion is performed.

This bill increases the penalty for failure to properly dispose of fetal remains from a second-degree to a first-degree misdemeanor. The Department of Health is required to revoke the license of any licensed health care practitioner who has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, certain felonies relating to the performance of an abortion in violation of s. 390.0111, F.S.

The bill provides certain rights, powers, and privileges to an infant born alive subsequent to an attempted abortion and requires health care practitioners present at the time to exercise diligence to preserve the life and health of the infant. The bill specifies that, in the third trimester or after viability when two physicians determine that an abortion is necessary to prevent the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the pregnant woman, the abortion may only be performed if a physician other than the physician performing the abortion is in attendance to take control of any infant born alive to provide immediate medical care to the infant

This bill also provides that it is a misdemeanor of the first degree if:

- A person establishes, conducts, manages, or operates an abortion clinic without a valid current license.
- An abortion clinic is not wholly owned and operated by a physician who has received certain training during residency, unless the clinic was licensed before July 1, 2012.

It is also a misdemeanor of the first-degree for a person to advertise or facilitate an advertisement of services or drugs for the purpose of performing an abortion in violation of ch. 390, F.S. A licensed health care practitioner who is guilty of a felony for providing unlawful abortion services is subject to licensure revocation. The maximum fine that the AHCA may impose on an abortion clinic for violation of licensure requirements is increased from $1,000 to $5,000.

This bill also requires a director of a hospital, validly licensed abortion clinic, or physician's office where abortions are performed to report to the AHCA specific information, which the AHCA must then submit to the Centers for Disease Control and Prevention (CDC) and make available on the AHCA website prior to each general legislative session. Additionally, the AHCA must provide an annual report to the Governor and Legislature, which contains such information. None of the reported or published information is to contain any personal indentifying information.

This bill substantially amends the following sections of the Florida Statutes: 390.011, 390.0111, 390.01114, 390.0112, 390.012, 390.014, 390.018, 456.013, and 765.113.

This bill repeals the following sections of the Florida Statutes: 782.30, 782.32, 782.34, 782.36, 797.02 and 797.03.

This bill also creates an undesignated section of the Florida Statutes.

II. Present Situation:

Background

Under Florida law the term "abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.[1] "Viability" means that stage of fetal development when the life of the unborn child may, with a reasonable degree of medical probability, be continued indefinitely outside the womb.[2] Induced abortion can be elective (performed for nonmedical indications) or therapeutic (performed for medical indications). An abortion can be performed by surgical or medical means (medicines that induce a miscarriage).[3]

An abortion in Florida must be performed by a physician licensed to practice medicine or osteopathic medicine who is licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.[4] No person who is a member of, or associated with, the staff of a hospital, or any employee of a hospital or physician in which, or by whom, the termination of a pregnancy has been authorized or performed, who states an objection to the procedure on moral or religious grounds is required to participate in the procedure. The refusal to participate may not form the basis for any disciplinary or other recriminatory action.[5]

Currently, abortion clinics, hospitals, and physicians that perform abortions provide a monthly report to the AHCA that provides aggregate data regarding the number of abortions performed, the reason for the abortion, and the gestational age. According to the AHCA, for the calendar year 2009, providers submitted a total of 1,210 monthly reports that reported a total of 81,916 abortions. During calendar year 2010, a total of 1,203 monthly reports were submitted that reported a total of 79,908 abortions.[6]

Abortion provisions are included in ch. 390, F.S., ss. 782.30 – 782.36, F.S., and ch. 797, F.S.

Partial-Birth Abortion

Florida has enacted two prohibitions upon partial-birth abortion.[7] Both have been invalidated by the courts.[8] Section 390.011(6), F.S., defines partial-birth abortion as a termination of pregnancy

[1] Section 390.011(1), F.S.
[2] Section 390.0111(4), F.S.
[3] Suzanne R. Trupin, M.D., *Elective Abortion*, Updated January 31, 2012. Found at: <http://www.emedicine.com/med/TOPIC3312.HTM> (Last visited on February 15, 2012).
[4] Section 390.0111(2) and s. 390.011(7), F.S.
[5] Section 390.0111(8), F.S.
[6] Agency for Health Care Administration, *2012 Bill Analysis & Economic Impact Statement for SB 290*, on file with the Senate Health Regulation Committee.
[7] *See* ss. 782.30-782.36, F.S. (the Partial-Birth Abortion Act) and ss. 390.011(6) and 390.0111(5) and (11), F.S.
[8] *A Choice for Women v. Butterworth*, 2000 WL 34403086 (S.D.Fla. July 11, 2000) invalidated the Partial-Birth Abortion Act (ss. 782.30-782.36, F.S.) and *A Choice for Women v. Butterworth*, 54 F.Supp.2d 1148 (S.D. Fla. December 2, 1998) invalidated the partial-birth abortion provisions of ss. 390.011(6) and 390.0111(5) and (11), F.S.

in which the physician performing the termination of pregnancy partially vaginally delivers a living fetus before killing the fetus and completing the delivery. Section 782.32(1), F.S., defines "partially born" to mean that the living fetus's intact body, with the entire head attached, is presented so that:

(a) There has been delivered past the mother's vaginal opening:
1. The fetus's entire head, in the case of a cephalic presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed; or
2. Any portion of the fetus's torso above the navel, in the case of a breech presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed.

(b) There has been delivered outside the mother's abdominal wall:
1. The fetus's entire head, in the case of a cephalic presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed; or
2. Any portion of the child's torso above the navel, in the case of a breech presentation, up until the point of complete separation from the mother whether or not the placenta has been delivered or the umbilical cord has been severed.

Section 782.34, F.S., provides that, except to save the life of the mother, any person who intentionally kills a living fetus while that fetus is partially born commits the crime of partial-birth abortion, which is a felony of the second degree.

Congress enacted the Partial-Birth Abortion Ban Act of 2003.[9] The United States Supreme Court has upheld the federal ban.[10] Partial-birth abortion is defined to mean an abortion in which the person performing the abortion –

(A) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person know will kill the partially delivered living fetus; and

(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

Abortion Clinics

Abortion clinics are licensed and regulated by the AHCA under ch. 390, F.S., and part II of ch. 408, F.S. The AHCA has adopted rules in Chapter 59A-9, Florida Administrative Code, related to abortion clinics. Section 390.012, F.S., requires these rules to address the physical facility, supplies and equipment standards, personnel, medical screening and evaluation of patients, abortion procedures, recovery room standards, and follow-up care. The rules relating to the medical screening and evaluation of each abortion clinic patient, at a minimum, shall require:

- A medical history, including reported allergies to medications, antiseptic solutions, or latex; past surgeries; and an obstetric and gynecological history;

[9] 18 U.S.C. s. 1531.
[10] *Gonzales v. Carhart*, 550 U.S. 124, 127 S.Ct. 1610 (Decided April 18, 2007).

- A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa;
- The appropriate laboratory tests, including:
  - For an abortion in which an ultrasound examination is not performed before the abortion procedure, urine or blood tests for pregnancy performed before the abortion procedure,
  - A test for anemia,
  - Rh typing, unless reliable written documentation of blood type is available, and
  - Other tests as indicated from the physical examination;
- An ultrasound evaluation for patients who elect to have an abortion after the first trimester. If a person who is not a physician performs the ultrasound examination, that person must have documented evidence that he or she has completed a course in the operation of ultrasound equipment. If a patient requests, the physician, registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant must review the ultrasound evaluation results and the estimate of the probable gestational age of the fetus with the patient before the abortion procedure is performed; and
- The physician to estimate the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age and write the estimate in the patient's medical history. The physician must keep original prints of each ultrasound examination in the patient's medical history file.

Section 390.0111(4), F.S., provides for the standard of medical care to be used during viability. If a termination of pregnancy is performed during viability, a person who performs or induces the termination of pregnancy may not fail to use that degree of professional skill, care, and diligence to preserve the life and health of the fetus which the person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted.

The biennial license fee for an abortion clinic is $514. The administrator responsible for the day to day operations of the abortion clinic and the chief financial officer are required to submit to a level 2 (statewide and nationwide) background screening.[11]

Relevant Case Law

In 1973, the landmark case of *Roe v. Wade* established that restrictions on a woman's access to secure an abortion are subject to a strict scrutiny standard of review.[12] In *Roe*, the U.S. Supreme Court determined that a woman's right to have an abortion is part of the fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, justifying the highest level of review.[13] Specifically, the Court concluded that: (1) during the first trimester, the state may not regulate the right to an abortion; (2) after the first trimester, the state may impose regulations to protect the health of the mother; and (3) after viability, the state may regulate and proscribe abortions, except when it is necessary to preserve

[11] Agency for Health Care Administration, *Abortion Clinic*. Found at: <http://www.fdhc.state.fl.us/mchq/health_facility_regulation/hospital_outpatient/abortion.shtml> (Last visited on February 15, 2012).
[12] 410 U.S. 113 (1973).
[13] 410 U.S. 113, 154 (1973).

the life or health of the mother.[14] Therefore, a state regulation limiting these rights may be justified only by a compelling state interest, and the legislative enactments must be narrowly drawn to express only legitimate state interests at stake.[15]

In 1992, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the U.S. Supreme Court relaxed the standard of review in abortion cases involving adult women from strict scrutiny to unduly burdensome, while still recognizing that the right to an abortion emanates from the constitutional penumbra of privacy rights.[16] In *Planned Parenthood*, the Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference.[17] The Court concluded that the state may regulate the abortion as long as the regulation does not impose an undue burden on a woman's decision to choose an abortion.[18] If the purpose of a provision of law is to place substantial obstacles in the path of a woman seeking an abortion before viability, it is invalid; however, after viability the state may restrict abortions if the law contains exceptions for pregnancies endangering a woman's life or health.[19]

The unduly burdensome standard as applied in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, which is generally considered to be a hybrid between strict scrutiny and intermediate level scrutiny, shifted the Court's focus to whether a restriction creates a substantial obstacle to access. This is the prevailing standard today applied in cases in which abortion access is statutorily restricted.

However, the undue burden standard was held not to apply in Florida. The 1999 Legislature passed a parental notification law, the Parental Notice of Abortion Act, requiring a physician to give at least 48 hours of actual notice to one parent or to the legal guardian of a pregnant minor before terminating the pregnancy of the minor. Although a judicial waiver procedure was included, the act was never enforced.[20] In 2003, the Florida Supreme Court[21] ruled this legislation unconstitutional on the grounds that it violated a minor's right to privacy, as expressly protected under Article I, s. 23 of the Florida Constitution.[22] Citing the principle holding of *In re T.W.*,[23] the Court reiterated that, as the privacy right is a fundamental right in Florida, any restrictions on privacy warrant a strict scrutiny review, rather than that of an undue burden. Here, the Court held that the state failed to show a compelling state interest and therefore, the Court permanently enjoined the enforcement of the Parental Notice of Abortion Act.[24]

[14] 410 U.S. 113, 162-65 (1973).
[15] 410 U.S. 113, 152-56 (1973).
[16] 505 U.S. 833, 876-79 (1992).
[17] *Id.*
[18] *Id*.
[19] *Id.*
[20] *See* s. 390.01115, F.S. (repealed by s. 1, ch. 2005-52, Laws of Florida). Ch. 2005-52, Laws of Florida created s. 390.01114, F.S., the revised Parental Notice of Abortion Act.
[21] *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*, 866 So. 2d 612, 619-20 (Fla. 2003).
[22] The constitutional right of privacy provision reads: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." FLA. CONST. art. I, s. 23.
[23] 551 So. 2d 1186, 1192 (Fla. 1989).
[24] *North Florida Women's Health and Counseling Services, supra* note 21, at 622 and 639-40.

Centers for Disease Control and Prevention (CDC)

The CDC began collecting abortion data (abortion surveillance) in 1969 to document the number and characteristics of women obtaining "legal induced" abortions. The CDC's surveillance system counts legal induced abortions only. For the CDC's surveillance purposes, legal abortion is defined as a procedure performed by a licensed physician, or a licensed advanced practice clinician acting under the supervision of a licensed physician, to induce the termination of a pregnancy.[25]

States and other territories voluntarily report data to the CDC for inclusion in its annual Abortion Surveillance Report.[26] The CDC's Division of Reproductive Health prepares surveillance reports as data becomes available. There is no national requirement for data submission or reporting.[27]

Those states requiring the reporting of information on induced abortions use various methods to collect the data. Some states include induced abortion reporting as a part of their fetal death reporting system, while a majority of states use a separate form, usually called Report of Induced Termination of Pregnancy, for the reporting of induced abortions. Regardless of the reporting system used, all states with reporting systems require the reporting of all induced abortions regardless of length of gestation.[28]

The CDC has developed a Standard Report of Induced Termination of Pregnancy to serve as a model for use by states. The model report suggests that the state's report should include the:[29]

- Facility name where the induced termination of pregnancy occurred.
- City, town, or location where the pregnancy termination occurred.
- County where the pregnancy termination occurred.
- Hospital, clinic, or other patient identification number, which would enable the facility or physician to access the medical file of the patient.
- Age of the patient in years at her last birthday.
- Marital status of the patient.
- Date of the pregnancy termination.
- Place the patient actually and physically lives or resides, which is not necessarily a patient's home state, voting residence, mailing address, or legal residence.
- Name of the state, county, and city where the patient lives.
- Number of the ZIP code where the patient lives.
- Origin of the patient, if Hispanic.
- Ancestry of the patient.
- Race of the patient.
- Highest level of education completed by the patient.

[25] Centers for Disease Control and Prevention, *CDC's Abortion Surveillance System FAQs*. Found at: <http://www.cdc.gov/reproductivehealth/Data_Stats/Abortion.htm> (Last visited on February 15, 2012).
[26] Florida does not report abortion data to the CDC. *Supra* fn. 6.
[27] *Supra* fn. 25.
[28] Centers for Disease Control and Prevention, *Handbook on the Reporting of Induced Termination of Pregnancy*, April 1998. Found at: <http://www.cdc.gov/nchs/data/misc/hb_itop.pdf> (Last visited on March 23, 2011).
[29] *Id.*

- Date the patient's last normal menstrual period began.
- Length of gestation as estimated by the attending physician.
- Number of previous pregnancies, including live births and other terminations.
- Type of termination procedure used.
- Name of the attending physician.
- Name of the person completing the report.

The CDC reports that its surveillance data is used to:[30]

- Identify characteristics of women who are at high risk of unintended pregnancy.
- Evaluate the effectiveness of programs for reducing teen pregnancies and unintended pregnancy among women of all ages.
- Calculate pregnancy rates based on the number of pregnancies ending in abortion in conjunction with birth data and fetal loss estimates.
- Monitor changes in clinical practice patterns related to abortion, such as changes in the types of procedures used, and weeks of gestation at the time of abortion.

Additionally, demographers use information in the report to calculate pregnancy rates, which are combined estimates of births and fetal loss and managers of public health programs use this data to evaluate the programs' effectiveness to prevent unintended pregnancy. There have historically been other data uses; such as, the calculation of the mortality rate of specific abortion procedures.

The CDC reports that in 2008,[31] there were 825,564 legal induced abortions reported to the CDC from 49 reporting areas. This represents essentially no change from the number of abortions reported in 2007. The abortion rate for 2008 was 16.0 abortions per 1,000 women aged 15 through 44 years. This also is also is unchanged from 2007. The abortion ratio was 234 abortions per 1,000 live births in 2008. This is a 1 percent increase from 2007. During 1999 through 2008, the reported abortion numbers, rates, and ratios decreased 3 percent, 4 percent, and 10 percent, respectively. During 1999 through 2008, women aged 20 to 29 years accounted for the majority of abortions. The majority (62.8 percent) of abortions in 2008 were performed at 8 weeks' gestation or less and 91.4 percent were performed at 13 weeks' gestation or less; 14.6 percent of all abortions were medical abortions.[32]

Health Care Practitioner Licensure Authority of the Department of Health

The Department of Health is responsible for the licensure of most health care practitioners in the state. Chapter 456, F.S., provides general provisions for the regulation of health care professions in addition to the regulatory authority in specific practice acts for each profession or occupation. Section 456.001(4), F.S., defines "health care practitioner" as any person licensed under:

- Chapter 457 (acupuncture),
- Chapter 458 (medical practice),
- Chapter 459 (osteopathic medicine),

[30] *Supra* fn. 25.
[31] This is the most recent data available on the CDC website, which is available at: <http://www.cdc.gov/reproductivehealth/Data_Stats/Abortion.htm> (Last visited on February 15, 2012).
[32] *Supra* fn. 25.

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

III. Effect of Proposed Changes:

Section 1 amends s. 390.011, F.S., to define the terms "born alive," "health care practitioner," "medical emergency," and "viability." These definitions apply to all of ch. 390, F.S. The definition of "health care practitioner" is identical to the definition of the same term in s. 456.001(4), F.S., relating to health professions and occupations. The definition of "medical emergency" is being moved from s. 390.01114(2)(d), F.S., to this section. The definition of "viability" is being moved from s. 390.0111(4), F.S., to this section.

The bill also significantly modifies the definition of "partial-birth abortion" to conform to the federal ban on partial-birth abortion[33] which the United States Supreme Court has upheld.[34]

Section 2 amends s. 390.0111, F.S., to prohibit abortions from being performed after the period at which, in the physician's best medical judgment, the fetus has attained viability or during the third trimester of pregnancy. However, an abortion may be performed after viability or during the third trimester of pregnancy if two physicians certify in writing to the fact that, to a reasonable degree of medical probability, the abortion is necessary to prevent the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the pregnant woman, or if one physician certifies in writing to the existence of a medical emergency[35] and another physician is not available for consultation.

[33] *Supra*, fn. 9.
[34] *Supra* fn.10.
[35] Section 390.011(8), F.S., in the bill, defines a "medical emergency" as a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.

This section also requires:

- An abortion clinic that advertises its services to provide conspicuous notice on its premises and on advertisements that it is prohibited from performing abortions in the third trimester or after viability.
- Physicians who offer to perform or perform abortions in abortion clinics to annually complete at least 3 hours of continuing education that relate to ethics.
- Abortions to be performed in a hospital, validly licensed abortion clinic, or physician's office, unless the law specifically requires the abortion to be performed in a hospital or an emergency care situation exists.

The bill specifies that consent to an abortion is voluntary and informed only if the statutory requirements for informed consent are completed at least 24 hours before the abortion is performed. The bill provides that, if noncompliance by a physician with the consent requirements is necessary to prevent the death or irreversible impairment of a major bodily function of the pregnant woman, it is a defense to a disciplinary action under the physician's licensing statute.

The Department of Health is required to permanently revoke the license of a licensed health care practitioner who has been convicted or found guilty of, or entered a plea of guilty or nolo contendre to, regardless of adjudication, a felony criminal act for willfully performing an unlawful abortion.

The bill creates a new subsection regarding the rights of infants born alive subsequent to an attempted abortion. Such infants are entitled to the same rights, powers, and privileges as are granted to any other child born alive in the course of birth that is not subsequent to an attempted abortion. If an infant is born alive subsequent to an attempted abortion, any health care practitioner present at the time must humanely exercise the same degree of professional skill, care, and diligence to preserve the life and health of the infant as a reasonably diligent and conscientious health care practitioner would render to an infant born alive in the course of birth that is not subsequent to an attempted abortion. This provision is similar to the standard of medical care to be used during viability in subsection (4) of this section.

The bill specifies that, in the third trimester or after viability when two physicians determine that an abortion is necessary to prevent the death of the pregnant woman or the substantial and irreversible impairment of a major bodily function of the pregnant woman, the abortion may only be performed if a physician other than the physician performing the abortion is in attendance to take control of any infant born alive to provide immediate medical care to the infant. The physician who performs the abortion must take all reasonable steps consistent with the abortion procedure to preserve the life and health of the unborn child.

This section increases the penalty for a person who fails to dispose of fetal remains in an appropriate manner. The penalty is increased from a misdemeanor of a second degree to a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. (maximum imprisonment of 1 year or maximum fine of $1,000). In addition, it is a misdemeanor of the first degree for a person to advertise or facilitate an advertisement of services or drugs for the purpose of performing an abortion in violation of ch. 390, F.S. This is the existing statutory

prohibition contained in s. 797.02, F.S., which is being repealed in s. 14 of the bill. It is also a first degree misdemeanor to fail to provide notice in advertisements that the abortion clinic is prohibited from performing abortions in the third trimester or after the fetus has attained viability.

The AHCA is required to report, prior to each regular legislative session, aggregate statistical data that relates to abortions and does not contain any personal identifying information, which has been reported to the Division of Reproductive Health within the CDC, on its website. In addition, the AHCA must submit such information in an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 3 amends s. 390.01114, F.S., to make conforming changes and to delete the definition of "medical emergency," which has been moved to s. 390.011(8), F.S., in the bill.

Section 4 amends s. 390.0112, F.S., to require the director of any hospital, validly licensed abortion clinic, or physician's office in which an abortion is performed to submit a report to the AHCA each month. The report must be on a form developed by the AHCA which is consistent with the U.S. Standard Report of Induced Termination of Pregnancy from the CDC. The AHCA is required to submit this reported information to the Division of Reproductive Health within the CDC. The bill authorizes the AHCA to adopt rules to administer this section.

Section 5 amends s. 390.012, F.S., to require the AHCA to adopt rules to prescribe standards for advertisements used by an abortion clinic by requiring the clinic to provide conspicuous notice on its premises and on its advertisements that it is prohibited from performing abortions in the third trimester or after viability of the fetus.

Section 6 amends s. 390.014, F.S., to incorporate the existing requirement contained in s. 797.03(2), F.S., that each abortion clinic hold a valid and current license. The bill requires abortion clinics to be wholly owned and operated by one or more physicians with residency training in dilation-and-curettage[36] and dilation-and-evacuation[37] procedures or by a professional corporation or limited liability company composed solely of one or more such physicians. This requirement does not apply to clinics licensed before July 1, 2012, or to the renewal of licenses held by such clinics. The willful violation of these licensure requirements is a first-degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. (maximum imprisonment of 1 year or maximum fine of $1,000).

Section 7 amends s. 390.018, F.S., to increase the fine that the AHCA may impose on abortion clinics for certain violations from $1,000 to $5,000.

[36] Dilation-and-curettage is a medical procedure in which the uterine cervix is dilated and a curette is inserted into the uterus to scrape away the endometrium, also known as a D&C. Merriam-Webster, MedlinePlus Medical Dictionary, available at: <http://www.merriam-webster.com/medlineplus/dilation-and-curettage> (Last visited on February 15, 2012).
[37] Dilation-and-evacuation is a surgical abortion that is typically performed midway during the second trimester of pregnancy and in which the uterine cervix is dilated and fetal tissue is removed using surgical instruments and suction, also called a D&E. Merriam-Webster, MedlinePlus Medical Dictionary, available at: <http://www.merriam-webster.com/medlineplus/dilation-and-evacuation%20> (Last visited on February 15, 2012).

Section 8 amends s. 456.013, F.S., to require physicians who offer to perform or perform abortions in an abortion clinic to annually complete a 3-hour course related to ethics as part of the licensure and renewal process as required in section 2 of the bill. This section clarifies that the 3-hour course must count toward the total number of continuing education hours required for the profession and the applicable board, or department if there is no board, must approve of the course.

Section 9 amends s. 765.113, F.S., relating to health care surrogates or proxies, to conform a cross-reference to reflect the movement of the definition of "viability" in the bill.

Sections 10-13 repeal ss. 782.30-782.36, F.S., the Partial-Birth Abortion Act, which has been held unconstitutional by federal trial courts in Florida.

Section 14 repeals s. 797.02- F.S., the provisions of which are transferred to ch. 390, F.S., in section 2 of the bill.

Section 15 repeals s. 797.03, F.S., the provisions of which are transferred to ch. 390, F.S., in section 2 of the bill.

Section 16 is an undesignated section of law that provides for the severability of any provision in the bill that is held invalid.

Section 17 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

If the bill, should it become law, is challenged as an invasion of privacy, it will be subject to a strict scrutiny review, rather than that of an undue burden test pursuant to *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*,[38] as

[38] 866 So. 2d 612 (Fla. 2003).

discussed above under the subheading, "Relevant Case Law." Otherwise, any challenge that does not impinge on a constitutional fundamental right will be subject to the "undue burden" standard announced in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[39]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Abortion clinics may incur indeterminate costs associated with complying with the advertisement requirements, ownership requirements, and report requirements provided for in the bill.

C. Government Sector Impact:

The Department of Health will experience a recurring increase in workload associated with auditing physicians specified in the bill to ensure compliance with completion of a 3 hour ethics course annually and with additional complaints and investigations due to non-compliance. The department indicates that current resources are adequate to absorb these costs.

The AHCA expects a total of 80,000 individual reports of abortions to be submitted annually as a result of this bill. The agency's Office of Information Technology will need to update the current reporting system or develop a new system that will collect the additional data elements (age in years of the woman, gestational age in weeks at the time of abortion, race, ethnicity, method used, marital status, number of previous live births, number of previous abortions, and location of residence) and develop reports that will provide the information which is requested by the CDC. The AHCA estimates the cost to comply with the requirements of the bill to be $50,000. A $50,000 appropriation from the Health Care Trust Fund would be required to implement the bill. No appropriation is provided in the bill.

The Office of State Courts Administrator indicates that the bill would have little direct impact on either judicial time or court workload, except as necessary to ensure judges are familiar with changes in the law.

VI. Technical Deficiencies:

On line 350, the word "cause" should be "caused."

On line 395, the word "department" should be replaced with "board, or the department if there is no board." Sections 456.072, 458.331, and 459.015, F.S., give the authority to the respective

[39] 505 U.S. 833 (1992).

boards to impose discipline, particularly revocation. The only time the department handles licensure or disciplinary issues is when there is no board.

VII. Related Issues:

On line 351, the bill retains existing statutory language relating to a partial-birth abortion that is necessary to save the life of the mother, which is not included in the federal partial-birth abortion ban. The specific statutory language that is retained is "no other medical procedure would suffice for that purpose."

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Budget
Budget - Subcommittee on Education Pre-K - 12 Appropriations
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Reapportionment
Rules

SENATOR ANITERE FLORES
Majority Whip
38th District

December 21, 2011

The Honorable Rene Garcia
Chair of Committee on Health Regulation
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Garcia:

I respectfully request that you place SB 290, regarding the circumstances in which a third trimester abortion may be performed, on the next Committee on Health Regulation agenda.

I look forward to presenting this bill before your committee.

Please do not hesitate to contact me should you have any questions. Thank you for your consideration.

Sincerely,

Anitere Flores

Anitere Flores

CC: Ms. Sandra R. Stovall, Committee on Health Regulation

ENTERED

REPLY TO:
❒ 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
❒ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5130

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Regulation, *Vice Chair*
Banking and Insurance
Budget
Budget - Subcommittee on Health and Human Services Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Environmental Preservation and Conservation
Reapportionment
Rules - Subcommittee on Ethics and Elections

SENATOR ELEANOR SOBEL
31st District

February 16, 2012

Chairman Garcia,

Please excuse my absence from the Health Regulation committee meeting, today, February 16, 2012. My return flight to Tallahassee was cancelled and I was unable to acquire alternative transportation to return in time for the meeting.

Thank you for your understanding,

Eleanor Sobel
State Senator
District 31

REPLY TO:
❒ The "Old" Library, First Floor, 2600 Hollywood Boulevard, Hollywood, Florida 33020 (954) 924-3693
❒ 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5097

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules - Subcommittee on Ethics and Elections, *Chair*
Budget - Subcommittee on General Government Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Communications, Energy, and Public Utilities
Health Regulation
Reapportionment
Regulated Industries

SENATOR MIGUEL DIAZ de la PORTILLA
36th District

February 16, 2012

The Honorable Rene Garcia
Chairman
Health Regulation Committee

Via email

Dear Chairman Garcia:

Please excuse me from the committee meeting today of Health Regulation due to illness.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 36

Cc:: Ms. Sandra Stovall; ~~Ms. Elizabeth Wells;~~ Mr. David Marin

REPLY TO:
❒ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
❒ 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5109

Senate's Website: *www.flsenate.gov*

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Healt Regulaiton **Judge:**

Started: 2/16/2012 10:32:27 AM
Ends: 2/16/2012 11:55:55 AM **Length: 01:23:29**

10:33:48 AM Roll Call
10:33:55 AM Opening Remarks
10:34:35 AM Announced excused absenses for Senators Diaz de la Portilla and Sobel
10:35:09 AM SB 290 and 668 TPed
10:35:15 AM Tab 11 SB 362 by Senator Lynn
10:35:22 AM Larry Gonzalez, Association of Surgical Technologists
10:35:47 AM Shannon Smith, Florida State Assembly for Asst/Association of Surgical Assistants
10:36:41 AM Libby McNaron, Florida State Assembly/Association of Surgical Technologists
10:37:36 AM Chris Nuland, Florida Chapter, American College of Surgeons
10:38:30 AM Roll call on SB 362
10:38:49 AM SB 362 reported favorably
10:39:02 AM TAB 1 by Senator Altman SB 1374
10:39:34 AM AM # 249756
10:40:08 AM Roll Call on SB 1378
10:40:20 AM SB 1378 passed favorably
10:40:35 AM TAB 2 SB 1750 by Senator Siplin
10:42:18 AM AM # 913088 by Senator Jones
10:42:38 AM Amendment adopted
10:43:04 AM Michael Williams, Florida Nurse Practitioner Network
10:43:16 AM Alisa Snow, Florida Nurses Association
10:43:44 AM Stan Whittaker, Florida Council of Advance Practice Nurses
10:44:26 AM Timra Cloud, Panhandle Nurse Practitioner Coalition
10:44:51 AM Mai Kuna, Tallahassee Nurse Practitioner Association
10:45:10 AM Corinne Mixon, Florida Acadamy of Physician Assistants
10:45:14 AM Roll call on SB 1750
10:45:22 AM SB 1750 passed favorable
10:45:44 AM TAB 4 CS/SB 654 by Senator Hays
10:48:45 AM Diana Ferguson, Florida Animal Control Association
10:48:52 AM Roll call on CS/SB 654
10:49:04 AM CS/SB 654 passed favorable
10:49:13 AM TAB 7 CS/SB 956 by Senator Hays
10:51:28 AM Late file Amendment by Senator Jones Barcode 968764
10:51:53 AM AM# 370528 adopted
10:52:22 AM AM# 968764 W/D
10:52:41 AM AM # 748440
10:53:38 AM AM # 120494 - adopted
10:53:56 AM AM # 748440 - adopted
10:54:08 AM AM # 364868 adopted
10:56:07 AM AM # 968764
10:57:12 AM Brecht Heuchan, MedCure, Inc.
10:58:45 AM Rep Roberson
11:00:04 AM AM # 968764 adopted
11:00:32 AM Michael Scott
11:01:12 AM Corinne Mixon
11:01:13 AM Heather Wildermuth, Florida association of Counties
11:01:14 AM F. James Wylie, Jr., Florida Funeral & Cemetery Consumers Advocacy, Inc.
11:01:34 AM CS/SB 956 reported favorable
11:02:05 AM TAB 10 SB 1292 by Senator Bogdanoff
11:05:00 AM Senator Fasano w/questions
11:06:02 AM Janegale Boyd, President, CEO Leading Age Florida
11:07:33 AM Elliott Palevsky, Senior Executive, River Garden Senior Services
11:12:15 AM AM # 591198 - adopted

11:12:21 AM Senator Norman w/comments
11:14:17 AM Senator Garcia w/comments
11:14:52 AM AM #322386
11:15:21 AM AM # 286862 AA
11:15:40 AM AM # 322386 - adopted
11:15:52 AM Senator Garcia
11:16:47 AM Janeqale Boyd
11:17:50 AM Senator Bogdanoff closes on SB 1292
11:18:18 AM Roll call on SB 1292
11:18:59 AM TAB 13 SB 1602 Senator Latvala
11:20:00 AM AM # by Senator Jones 795548 - adopted
11:20:34 AM Jorge Chamizo
11:20:35 AM Doug Bell, Medco
11:20:36 AM Larry Gonzalez, Florida Society of Health System Pharmacists
11:20:52 AM Mike Fisher, Florida Independent Pharmacy Network
11:21:13 AM Jim Powers, Florida Independent Pharmacy Network
11:21:21 AM Michael Jackson, Florida Pharmacy Association
11:22:23 AM Roll call on SB 1602
11:23:14 AM TAB 9 SB 1646 Senator Flores presented by Patricia Flor (Leg Aide)
11:24:24 AM Michael Garner, Florida Association of Health Plans
11:24:25 AM Jan Gorrie, Safety Net Hospital Alliance
11:24:38 AM Roll call on SB 1646
11:25:07 AM TAB 6 1502 Senator by Evers presented by his Mike Bascom (Leg Aide)
11:25:54 AM AM # 777524 - adopted
11:26:36 AM AM # 370844 - adopted
11:28:42 AM Vickie Gardner, FDLE
11:28:52 AM Andrew Fay, Office of Attorney General
11:28:53 AM David Gross, FDLE
11:29:31 AM Dr. Kenneth Woliner, MD
11:29:41 AM Tim Stanfield
11:30:09 AM Roll call on SB 1502
11:30:41 AM Senator Jones assumes the chair
11:30:50 AM TAB 3 SB 1294 by Senator Garcia - speaking on AM 440118
11:32:45 AM AM 440118 - AM #743490 to AM 440118 - adpoted
11:33:24 AM AM's adopted
11:34:37 AM Ms. Karen Woodall - speaks for the bill
11:36:47 AM Senator Gaetz
11:37:01 AM Senator Garcia closes
11:37:19 AM Roll call on SB 1294 - bill passes
11:37:45 AM TAB 8 TP
11:38:28 AM TAB 5 CS/SB 1286 by Senator Thrasher
11:40:12 AM Judy Rivenbark, PRN of Florida
11:40:29 AM Roll call on on SB 1286
11:40:53 AM TAB 8 SB 1824 by Senator Garcia speaking on PCS 661060
11:46:26 AM Senator Norman w/question
11:46:43 AM Senator Garcia to answer
11:47:03 AM Amendment adopted
11:47:14 AM Chris Nuland, Florida Public Health Association
11:47:53 AM Col. Michael P. Smith, FL State University, College of Medicine
11:53:36 AM Kristina Wiggins, Deputy Secretary, Department of Health
11:53:38 AM Motion by Senator Gaetz for CS
11:54:18 AM Roll call on SB 1824
11:54:57 AM Senator Gaetz ask to being shown voting in the yea for all the bills he missed