The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Bean, Chair
Senator Sobel, Vice Chair

MEETING DATE: Wednesday, March 20, 2013
TIME: 3:00 —5:30 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Bean, Chair; Senator Sobel, Vice Chair; Senators Brandes, Braynon, Flores, Galvano, Garcia, Grimsley, and Joyner

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1240** Richter (Identical H 1391)	Children Who Are Deaf or Hard of Hearing; Requiring health care providers to provide an opportunity for a child's parent or legal guardian to provide contact information so that he or she may receive information from specified service providers when the hearing loss is identified; requiring the Department of Health to register certain service providers and institutions; allowing a parent or legal guardian to request services from a participating service provider; providing that the level of services received is based on the child's individualized education program or individual and family service plan, etc. HP 03/20/2013 Fav/CS ED AHS AP	Fav/CS Yeas 8 Nays 1
2	**SB 1448** Smith (Identical H 1041)	Controlled Substances; Adding to the list of Schedule III controlled substances certain specified materials, compounds, mixtures, or preparations that promote muscle growth or otherwise enhance athletic performance, etc. HP 03/20/2013 Fav/CS CJ ACJ AP	Fav/CS Yeas 8 Nays 0
3	**CS/SB 726** Community Affairs / Simmons	Regulation of Family or Medical Leave Benefits for Employees; Prohibiting a political subdivision from requiring or otherwise regulating family or medical leave benefits for employees; preempting regulation of family or medical leave benefits to the state; providing that the act does not prohibit a political subdivision from establishing family or medical leave benefits for its employees; providing that the act does not prohibit a federally authorized or recognized tribal government from requiring family or medical leave benefits under certain conditions, etc. CA 03/07/2013 Temporarily Postponed CA 03/14/2013 Fav/CS HP 03/20/2013 Fav/CS JU	Fav/CS Yeas 6 Nays 3

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 924** Latvala (Similar H 581)	Dentists; Prohibiting a contract between a health insurer and a dentist from requiring the dentist to provide services at a fee set by the insurer under certain circumstances; prohibiting a contract between a prepaid limited health service organization and a dentist from requiring the dentist to provide services at a fee set by the organization under certain circumstances; prohibiting a contract between a health maintenance organization and a dentist from requiring the dentist to provide services at a fee set by the organization under certain circumstances, etc. HP 03/20/2013 Favorable BI AP RC	Favorable Yeas 9 Nays 0
5	**Workshop** - Discussion and testimony only on the following (no vote to be taken):		
	Patient Protection and Affordable Care Act Medical Coverage for Expansion Population		Discussed
6	**SB 876** Stargel (Identical H 759)	Offenses Against Unborn Children; Citing this act as the "Florida Unborn Victims of Violence Act"; providing a rule of construction that a person who engages in conduct that violates any provision of the Florida Criminal Code or of a criminal offense defined by another statute and causes the death of, or bodily injury to, an unborn child commits a separate offense if such an offense is not otherwise specifically provided for; providing for criminal penalties for such an offense, etc. HP 03/20/2013 Fav/1 Amendment CJ JU AP	Fav/1 Amendment (714942) Yeas 6 Nays 3
7	**SB 1368** Ring (Similar H 1161)	Clinical, Counseling, and Psychotherapy Services; Requiring registered interns to remain under supervision while maintaining registered intern status; revising the requirements for a clinical social worker license, a marriage and family therapist license, and a mental health counselor license; revising a provision providing that a psychotherapist who commits sexual misconduct with a client or former client commits a felony of the third degree; providing a presumption of good faith for the actions of a court-appointed mental health professional who develops a parenting plan recommendation, etc. HP 03/20/2013 Not Considered CJ CF AP	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1160** Bullard (Compare CS/CS/H 375)	Onsite Sewage Treatment and Disposal Systems; Revising the frequency of inspections that owners of aerobic treatment unit systems must provide for under service agreements with certain maintenance entities permitted by the Department of Health, etc. HP 03/20/2013 Fav/CS CA EP RC	Fav/CS Yeas 8 Nays 0
9	**SB 732** Grimsley (Compare CS/CS/H 365)	Prescription Drugs; Authorizing a pharmacist to substitute a biosimilar product for a prescribed product if certain requirements are met, etc. HP 03/20/2013 Not Considered RI AHS AP	Not Considered
10	**SB 1192** Grimsley	Pharmacy and Controlled Substance Prescription; Limiting the application of requirements for prescribing controlled substances; requiring a physician to consult the prescription drug monitoring program database or designate an agent to consult the database before prescribing certain controlled substances; providing that regulation of the licensure, activity, and operation of pharmacies, pharmacists, and health care facilities and clinics is preempted to the state; authorizing the prescription drug monitoring program to be funded by state funds and pharmaceutical company donations, etc. HP 03/20/2013 Fav/CS AHS AP	Fav/CS Yeas 9 Nays 0
11	**SB 1264** Flores (Similar H 919)	Hospital Licensure; Authorizing certain specialty-licensed children's hospitals to provide obstetrical services under certain circumstances, etc. HP 03/20/2013 Temporarily Postponed CF AHS AP	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**SB 1690** Bean (Identical H 1093)	Volunteer Health Services; Revising requirements for patient referral under the "Access to Health Care Act"; eliminating a requirement that the governmental contractor approve all followup or hospital care; requiring the Department of Health to post specified information online concerning volunteer providers; permitting volunteer providers to earn continuing education credit for participation in the program up to a specified amount, etc. HP 03/20/2013 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0
13	**CS/SB 748** Children, Families, and Elder Affairs / Bean (Compare CS/H 125, H 779, S 440)	Program of All-inclusive Care for the Elderly; Requiring the Agency for Health Care Administration to contract with a certain organization to provide services under the federal Program of All-inclusive Care for the Elderly in Duval, St. Johns, Baker, and Nassau Counties; requiring the agency to contract with a certain organization to provide services under the federal Program of All-inclusive Care for the Elderly in Alachua, Bradford, Clay, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union counties etc. CF 03/12/2013 Fav/CS HP 03/20/2013 Fav/CS AP	Fav/CS Yeas 6 Nays 2
14	**SB 594** Bean (Similar H 709)	Nursing Homes and Related Health Care Facilities; Clarifying provisions to exempt certain clinics that receive reimbursement under the Florida Motor Vehicle No-Fault Law from licensure requirements in this state if they hold specific federal certification; extending the exemption to clinics that are owned by certain entities, etc. HP 03/20/2013 Favorable BI RC	Favorable Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**SB 1420** Sobel (Identical CS/H 317)	Mental Health Treatment; Authorizing forensic and civil facilities to order the continuation of psychotherapeutics for individuals receiving such medications in the jail before admission; providing timeframes within which competency hearings must be held; revising the time for dismissal of certain charges for defendants that remain incompetent to proceed to trial; standardizing the protocols, procedures, diagnostic criteria, and information and findings that must be included in an expert's competency evaluation report, etc. HP 03/20/2013 Fav/CS CJ AP	Fav/CS Yeas 9 Nays 0
16	**SB 360** Garcia (Identical H 281)	Surgical Assistants and Surgical Technologists; Prohibiting a health care facility from employing, contracting with, or granting surgical privileges to a person who does not hold a current and valid certification as a surgical assistant; requiring a health insurance policy, health care services plan, or other contract to provide for payment to a certified surgical assistant or to an employer of a certified surgical assistant if the policy, plan, or contract provides for payment for surgical first assisting benefits or services and reimbursement for a physician assistant is covered, etc. HP 03/20/2013 Not Considered BI AHS AP	Not Considered
	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 Committee on Health Policy

BILL: CS/SB 1240

INTRODUCER: Health Policy Committee; and Senator Richter and others

SUBJECT: Children Who Are Deaf or Hard of Hearing

DATE: March 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Fav/CS**
2.			ED	
3.			AHS	
4.			AP	
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:

CS/SB1240 requires a health care provider to provide an opportunity for a child's parent or legal guardian to provide contact information so that he or she may receive information from specified service providers when a hearing loss is identified. The Department of Health (DOH) is required to register service providers and institutions based on standards developed with the Department of Education (DOE). A parent or legal guardian may request services from a participating service provider. The level of services received is based on the child's individualized education program or individual and family service plan and the child is eligible until age 7 or after completion of grade 2, whichever occurs first.

This bill creates an unnumbered section in the Florida Statute.

II. Present Situation:

Deaf or Hard of Hearing

Hearing loss is the most common birth defect with three out of every 1000 newborns being found to have a permanent hearing problem that causes them to be at high risk for developing

communication delays unless early help is provided to their families. Florida can expect approximately 600 new children to be confirmed as hearing impaired annually. Early intervention and quality education is necessary to prevent developmental delays in language and learning. By the time a child with hearing loss graduates from high school, more than $400,000 per child can be saved in special education costs if the child is identified early and given appropriate educational, medical, and audio logical services.[1]

"Deaf" means having a hearing impairment of such severity that an individual must depend on visual tactile methods, or both, to communicate. "Hard of hearing" means having a hearing impairment that results in a loss of hearing functions to an individual and in which the individual: relies on residual hearing that may be sufficient to process linguistic information through audition with or without amplification under favorable listening conditions; depends on visual methods to communicate; depends on assistive listening devices; or has an impairment with other auditory disabling conditions.[2]

Newborn and Infant Hearing Screening

Since October 1, 2000, newborn hearing screenings have been required, unless the parent objects, for all newborns in Florida.[3] The intent of this requirement is "to provide a statewide comprehensive and coordinated interdisciplinary program of early hearing impairment screening, identification, and follow up care for newborns. The goal is to screen all newborns for hearing impairment in order to alleviate the adverse effects of hearing loss on speech and language development, academic performance, and cognitive development."[4]

The screening of a newborn's hearing is ideally completed before the newborn is discharged from the hospital. When a newborn is delivered in a facility other than a hospital, the parents must be instructed on the importance of having the hearing screening performed and must be given information to assist them in having the screening performed within 3 months after the child's birth. Any person who is not covered through insurance, enrolled in Medicaid, or cannot afford the costs for testing must be given a list of newborn hearing screening providers who provide the necessary testing free of charge.

Screenings must be conducted by a licensed audiologist, a physician, or other newborn hearing screening provider who has completed documented training specifically for newborn hearing screening.[5]

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[1] Florida Coordinating Council for the Deaf and Hard of Hearing website found at: < http://www.fccdhh.org/services/birth-to-3-years.html> (Last visited on March 15, 2013).
[2] s. 413.271, F.S.
[3] *See* s. 383.145, F.S.
[4] Florida Newborn Screening Program <http://www.doh.state.fl.us/cms/NewbornScreening/nbscreen-hearing.html>(Last visited on March 18, 2013) and s. 383.145, F.S.
[5] s. 383.145(3)(e), F.S.

Newborn Screening Referral[6]

Currently, DOH provides written and verbal information to families about the different communication options for their child. The DOH also publishes a reference guide which was last updated, May 2011.

Any child who is diagnosed as having a permanent hearing impairment must be referred to a primary care physician for medical management, treatment, and follow-up services. Children from birth to age three who have a developmental delay or an established condition (such as hearing loss) that is likely to lead to developmental delay may be referred to and enrolled in the DOH Children's Medical Services Early Steps program. Referrals may come from many sources, including the parents. Early steps does not serve children over age three.

For a child eligible for Early Steps, services needed to enhance the child's development, as well as the appropriate service providers must be determined through the Individualized Family Support Plan process as dictated by the federal Individuals with Disabilities Education Act (IDEA). Services for these children are provided by Children's Medical Services credentialed providers. In accordance with the IDEA requirements governing the Early Steps program, Early Steps must ensure that appropriate early intervention services are available to all eligible infants and toddlers in the state, as authorized on an Individualized Family Support Plan.

Individual and Family Service Plan

The "Individual and family service plan" as defined in s. 411.202, F.S., is not the Early Steps Individualized Family Support Plan. The Individual and family service plan is a written individualized plan describing the developmental status of the high-risk child and the therapies and services needed to enhance both the high-risk child's growth and development and family functioning, and *shall include the contents of the written Individualized Family Service Plan.*[7]

Individualized Education Program

An individualized education program is a written statement developed for a student eligible for special education services under the federal Individuals with Disabilities Education Act.[8,9]

Continuum of Comprehensive Services

The DOH and the DOE participate in interagency coordination for the continuum of prevention and early assistance for high-risk and handicapped children. Under the Florida Prevention, Early Assistance, and Early Childhood Act,[10] a high-risk and handicapped child includes a preschool child who is, among other things, speech impaired, language impaired, deaf, or hard of hearing. Information and referral[11] is a component of this continuum and includes:

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[6] DOH Bill Analysis for SB 1240 dated March 7, 2013, on file with the Senate Health Policy Committee.
[7] s.411.202 (11), F.S.
[8] s. 1003.55 (3)(c), F.S.
[9] *See* s. s. 602(a)(20), Part A of the Individuals with Disabilities Education Act, 20 U.S.C. s. 1401(a).
[10] *See* ss. 411.201 – 411.205, F.S.
[11] s. 411.203(2), F.S.

- Providing information about available services and programs to families of high-risk and handicapped children,
- Providing information about service options and providing technical assistance to aid families in the decision-making process, and
- Directing the family to appropriate services and programs to meet identified needs.

Florida Education Finance Program

The base student allocation for the Florida Education Finance Program for kindergarten through grade 12 is determined annually by the Legislature and is prescribed in the current year's General Appropriations Act.[12]

A matrix of services is developed for students with disabilities who are funded at the highest level of need, support levels 4 and 5, based on needs identified in a student's Individual Education Program (IEP). Consistent with the services identified through the IEP, a matrix of services is used to determine which one of two cost factors would apply to each eligible exceptional education student and the support level needed. The matrix document contains checklists of services in each of the five domains (curriculum and learning environment; social/emotional behavior; independent functioning; health care; and communication) and a special considerations section. The sum of these domain ratings and any special considerations points corresponds to one of the two cost factors.[13]

III. Effect of Proposed Changes:

The bill creates an undesignated section of law relating to instruction of children who are deaf or hard of hearing. The bill provides findings that children who are deaf or hard of hearing are entitled to an individual and family services plan or an individualized education program to better accommodate the specific needs of the child and his or her family. The bills also finds that instruction of these children should be expanded to include center-based programs and services and that allowing the child's parent or guardian the opportunity to provide contact information to registered service providers will enhance access to information about critical services and service providers.

The DOH and the DOE are to cooperatively develop standards for the selection of registered service providers or institutions to provide the services or instruction identified in this bill to children who are deaf or hard of hearing. The bill lists the type of services that the registered providers or institutions may offer to include: diagnostic and evaluation services, speech and language pathology services, services provided by a certified listening and spoken language specialist, or other services as approved by department rule.

The DOH is required to register service providers or institutions that are currently licensed, approved, or accredited by the Florida Kindergarten Council, the Florida Council of Independent Schools, the John M. McKay Scholarships for Students with Disabilities Program, or the Office

[12] Section 1011.62, F.S.
[13] *See* Budget Committee Bill Analysis for CS/SB 1656 (2011) on file with the Senate Health Policy Committee.

of Early Learning, in addition to newborn screening providers offering services pursuant to the newborn and infant hearing screening provisions in s. 383.145, F.S. Other institutions or direct services providers may not participate unless the DOH approves them for inclusion on the list of registered providers.

At the time the hearing loss is identified, a health care provider is required to offer a child's parent or legal guardian the opportunity to provide contact information in the form of a mailing address or an e-mail address so that he or she may receive information from specified service providers. A parent of legal guardian of a deaf or hard of hearing child may request services from a registered service provider or institution. The level of services is determined by the child's individualized education program or individual and family service plan.

The child is eligible for services until the end of the school year in which he or she reaches age 7 or after completion of second grade, whichever occurs first. The amount allocated for a child eligible for services must be equivalent to the base student allocation in the Florida Education Finance Program multiplied by the support level V cost factor specified in the matrix of services for school funding in s. 1011.62, F.S.

The bill requires the DOH to adopt rules for the standards for the selection of service providers and other rules that are necessary to implement and administer this bill.

The effective date of this bill is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Potentially the list of service providers registered by the DOH might be limited, thereby providing those listed with enhanced business opportunities and adversely affecting those not listed on the registry.

C. Government Sector Impact:

Registration capability of service providers and institutions will need to be added to an existing system within the DOH or a new system will need to be developed, the cost of which is indeterminate.[14]

CS/SB 1240 discusses allocating funds for each child according to the base student allocation in the Florida Education Finance Program per s. 1011.62, F.S. The bill does not address which agency would receive the allocation. The DOH does not receive funds through Florida Education Finance Program[15]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The authority and manner for a health care provider to transmit the email address or mailing address to either the DOH to make available to the registered services providers or directly to registered service providers or institutions is not addressed in the bill.

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 Policy on March 20, 2013:
The CS removes the word "and" and replaces it with the word "or" when identifying the types of service providers from whom the patient might receive correspondence.

B. Amendments:

None.

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

[14] The DOH's bill analysis did not provide a fiscal analysis.
[15] *Supra* note 6.

914852

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2013	.	
	.	
	.	
	.	

The Committee on Health Policy (Grimsley) recommended the following:

1 **Senate Amendment**
2
3 Delete line 49
4 and insert:
5 <u>specialist; or other such services as approved by department</u>

By Senator Richter

23-00847A-13 20131240__

A bill to be entitled

An act relating to children who are deaf or hard of hearing; providing legislative findings; requiring health care providers to provide an opportunity for a child's parent or legal guardian to provide contact information so that he or she may receive information from specified service providers when the hearing loss is identified; requiring the Department of Health to register certain service providers and institutions; allowing a parent or legal guardian to request services from a participating service provider; providing that the level of services received is based on the child's individualized education program or individual and family service plan; providing for eligibility; providing a funding formula; requiring the department to develop standards for participating service providers; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Children who are deaf or hard of hearing; instruction.—

(1) The Legislature finds that children who are deaf or hard of hearing are entitled to an individual and family service plan, as defined in s. 411.202, Florida Statutes, or an individualized education program, as defined in s. 1003.55, Florida Statutes, to better accommodate the specific needs of the child and his or her family. The Legislature also finds that

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 the instruction of children who are deaf or hard of hearing
31 should be expanded to include center-based programs and
32 services. Allowing a child's parent or legal guardian the
33 opportunity to provide his or her mailing address or e-mail
34 address to registered service providers will enhance access to
35 information about critical services and service providers.
36 (2)(a) In cooperation with the Department of Education, the
37 Department of Health shall develop standards for the selection
38 of registered service providers or institutions to provide the
39 services or instruction identified in paragraph (b) to children
40 who are deaf or hard of hearing.
41 (b) At the time that a child's hearing loss is identified,
42 the health care provider shall ask the child's parent or legal
43 guardian to provide a mailing address or an e-mail address if he
44 or she wishes to receive correspondence from registered
45 providers or institutions that offer diagnostic and evaluation
46 services; speech and language pathology services; interpretation
47 and auditory amplification; auditory-oral education; services
48 provided by a certified listening and spoken language
49 specialist; and other such services as approved by department
50 rule.
51 (c) In addition to newborn hearing screening providers
52 offering services pursuant to s. 383.145, the Department of
53 Health shall register service providers or institutions that
54 provide services or instruction to children who are deaf or hard
55 of hearing and are currently licensed, approved, or accredited
56 by:
57 1. The Florida Kindergarten Council;
58 2. The Florida Council of Independent Schools;

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

59 3. The John M. McKay Scholarships for Students with
60 Disabilities Program; or
61 4. The Office of Early Learning.
62 (d) Other institutions or direct service providers may not
63 participate unless the Department of Health approves them for
64 inclusion on the list of registered providers.
65 (3) A parent or legal guardian of a deaf or hard of hearing
66 child may request services from a registered service provider or
67 institution. The level of services is determined by the child's
68 individualized education program or individual and family
69 service plan. A child is eligible for services with a registered
70 provider or institution under this section until the end of the
71 school year in which he or she reaches the age of 7 years or
72 after completion of grade 2, whichever occurs first. The amount
73 allocated for a child eligible for services under this section
74 must be equivalent to the base student allocation in the Florida
75 Education Finance Program multiplied by the support level V cost
76 factor specified in the matrix of services established in s.
77 1011.62, Florida Statutes.
78 (4) The Department of Health shall adopt by rule the
79 standards for the selection of service providers and may adopt
80 other rules necessary to implement and administer this section.
81 Section 2. This act shall take effect July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

March 10, 2013

The Honorable Aaron Bean, Chair
Committee on Health Policy
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Bean:

Senate Bill 1240, related to Children Who Are Deaf or Hard of Hearing, has been referred to the Committee on Health Policy. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: Sandra Stovall, Staff Director

REPLY TO:
☐ 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
☐ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
☐ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

FLORIDA SENATE
MAR 11 2013
Health Policy Committee
ENTERED

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-20-13
Meeting Date

Topic: SB 1240 Vote yes

Bill Number: 1240 *(if applicable)*

Name: Cal Davis

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: Eastwood Ranch Dr.
Street

Jacksonville FL
City *State* *Zip*

Phone: 954 529 6709

E-mail: _____

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

Representing: _____

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)

3·20·13
Meeting Date

Topic

Bill Number SB 1240 (if applicable)

Name Joanna McLaughlin

Amendment Barcode (if applicable)

Job Title MOM, Neonatal ICU nurse

Address 153 SE Gregory Glen
Street

Lake City FL 32025
City State Zip

Phone 386 984 5423

E-mail JRAMAISLAME@yahoo.com

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

Representing Deaf Children & Deaf Community

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)

3/20/2013
Meeting Date

Topic

Bill Number 1240 (if applicable)

Name Donna Drake

Amendment Barcode (if applicable)

Job Title Retired Educator / FAD Representative

Address 1359 Prince Rodd
Street

St. Augustine, FLA 32086
City State Zip

Phone 904-201-4744

E-mail drakedll@aol.com

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Association of the Deaf

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)

3/20/13
Meeting Date

Topic _____

Bill Number SB 1240 *(if applicable)*

Name CHRISTOPHER WAGNER

Amendment Barcode _____ *(if applicable)*

Job Title PRESIDENT / BOARD CHAIR

Address 518 49th St. EAST
Street

BRADENTON FL 34208
City *State* *Zip*

Phone 727-483-7742

E-mail Chris.wagner@nad.org

Speaking: ☐ For ☒ Against ☐ Information

Representing National Association of the DEAF / Florida School f/t Deaf & Blind

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)

3/20/13
Meeting Date

Topic: DEAF AND HARD OF HEARING

Bill Number: 1240 (if applicable)

Name: GARY L. LIEFFERS

Amendment Barcode: (if applicable)

Job Title: PRESIDENT

Address: 5020 CENTENNIAL OAK CIRCLE
Street

TALLAHASSEE, FL 32308
City, State, Zip

Phone: 850.264.5139

E-mail: GLLIEF@YAHOO.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing: FLORIDA ASSOCIATION OF THE DEAF / FLORIDA REGISTRY OF INTERPRETERS FOR THE DEAF

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)

3-20-13
Meeting Date

Topic: Deaf + Hard of Hearing

Bill Number: SB1240 *(if applicable)*

Name: Nancy Osborn

Amendment Barcode: *(if applicable)*

Job Title: North Florida Regional Representative/ Florida Registry of Interpreters for the Deaf

Address: 12266 Prairie View Dr.
Street

Jax, FL 32258
City *State* *Zip*

Phone: 904-260-3084

E-mail: RegionRepNorth@FRIDCentral.org

Speaking: ☐ For ☒ Against ☐ Information

Representing: FRID/FAD

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)

03-19-13
Meeting Date

Topic: Deaf / Hard of Hearing

Bill Number: 1240 *(if applicable)*

Name: Patricia K Wilmore

Amendment Barcode: *(if applicable)*

Job Title: FSDB retiree / Flagler College adjunct instructor

Address: 29 Madeira Dr.
Street

St. Augustine, Fla 32080
City *State* *Zip*

Phone: 904-201-4706

E-mail: PLKWilmore@Comcast.net

Speaking: ☐ For ☑ Against ☐ Information

Representing: FAD

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)

3/20/2013
Meeting Date

Topic: Children Who are Deaf or Hard of Hearing

Bill Number: 1240 (if applicable)

Name: Patsy Eccles

Amendment Barcode: (if applicable)

Job Title: Legislative Director - Florida School for Deaf & Blind

Address: Florida School for Deaf & Blind
Street

City State Zip

Phone: 320-1413

E-mail: eccles p@iron-bridge-net

Speaking: ☐ For ☒ Against ☐ Information

Representing: Florida School for Deaf & Blind

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)

3/20/2013
Meeting Date

Topic: Children who are DHH

Bill Number: SB 1240 *(if applicable)*

Name: Josephine Sondossi

Amendment Barcode: _____ *(if applicable)*

Job Title: Interpreter

Address: 3565 Beaver Creek Ct.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 210-5746

E-mail: _____

Speaking: ☐ For ☒ Against ☐ Information

Representing: myself

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)

3-20-13
Meeting Date

Topic: Support 1240

Bill Number: 1240 *(if applicable)*

Name: DOROTHY NOLEN

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 3850 NE 21 AVE
Street

LIGHTHOUSE PT FL 33064
City *State* *Zip*

Phone: 954-338-9065

E-mail: _____

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

Representing: _____

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)

3/20/'13
Meeting Date

Topic: Children Who Are Deaf or Hard of Hearing

Bill Number: SB 1240 (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: aichildren@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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-20-13
Meeting Date

Topic: Support 1240

Bill Number: 1240 *(if applicable)*

Name: Cathie Desjean

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 3740 NE 25th Ave
Street

Lighthouse Pt FL 33064
City *State* *Zip*

Phone: 954-494-2033

E-mail: CeeLeeDee@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Representing: _____

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)

3-20-13
Meeting Date

Topic: Children who are Deaf or Hard of Hearing

Bill Number: 1240 *(if applicable)*

Name: Amy Datz

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 1130 Crestview Ave.
Street

Tallahassee, FL 32303
City *State* *Zip*

Phone: 850-322-7599

E-mail: amaliedatz@Mac.com

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-20-13
Meeting Date

Topic: Parent Choice for Deaf

Bill Number: 1240 *(if applicable)*

Name: Arzra McNeal

Amendment Barcode: *(if applicable)*

Job Title: Parent

Address: 8674 1st Ave
Street

Jacksonville, Fl 32208
City *State* *Zip*

Phone: 904-635-6999

E-mail: lady.scorpion2007@yahoo

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

Representing: Deaf Community

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)

3-20-13
Meeting Date

Topic: Parents Choice for Deaf

Bill Number: 1240 *(if applicable)*

Name: Azaryah Lanier

Amendment Barcode: _____ *(if applicable)*

Job Title: Deaf Student

Address: 8674 1st Ave
Street

Jacksonville, FL 32208
City, State, Zip

Phone: 904-635-6999

E-mail: lady.scorpion2007@yahoo

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

Representing: Deaf Community

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)

3/20/13
Meeting Date

Topic: Resources for families of deaf children

Bill Number: 1240 *(if applicable)*

Name: Terri Fisk

Amendment Barcode: _____ *(if applicable)*

Job Title: Mother of a deaf child

Address: 992 Buttercup Dr
Street

Saint Johns, FL 32259
City *State* *Zip*

Phone: 904-230-9709

E-mail: _____

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

Representing: families of deaf children

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)

3/20/13
Meeting Date

Topic: Resources for deaf families

Bill Number: 1240 *(if applicable)*

Name: Knox Fisk

Amendment Barcode: *(if applicable)*

Job Title: Deaf Child

Address: 992 Buttercup Dr
Street

Saint Johns, FL 32259
City, State, Zip

Phone: 904-230-9709

E-mail:

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

Representing: Deaf Children

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)

Meeting Date: _____

Topic: SB 1240 VOTE YES

Bill Number: 1240 (if applicable)

Name: Theresa Burger

Amendment Barcode: _____ (if applicable)

Job Title: Parent Liaison

Address: 3214 Coral Sens Court
Street

Tallahassee, FL
City, State, Zip

Phone: (904) 880 9063

E-mail: burger12@yahoo.com

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

Representing: _____

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)

3/20/13
Meeting Date

Topic: SB 1240 Vote Yes

Bill Number: 1240 *(if applicable)*

Name: Alexandra McGowan

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 1612 Twin oak Drive W
Street

Middleburg, Fl 32068
City *State* *Zip*

Phone: (904) 600.9697

E-mail: amcg-26@hotmail.com

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

Representing: Parents. Group

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)

3·20·13
Meeting Date

Topic: Choice for Parents

Bill Number: SB 1240 (if applicable)

Name: Owen McLaughlin

Amendment Barcode: (if applicable)

Job Title: deaf son

Address: 153 SE Gregory Glen
Street

Lake City FL 32025
City State Zip

Phone: 386 984 5423

E-mail: Dramaislame@yahoo.com

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

Representing: Choices for Deaf Children

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)

3-20-13
Meeting Date

Topic: SB 1240 vote yes

Bill Number: 1240 *(if applicable)*

Name: Cynthia Robinson

Amendment Barcode: _____ *(if applicable)*

Job Title: Co Director Clarke Schools

Address: 9803 St Augustine Rd
Street

Jacksonville FL 32257
City *State* *Zip*

Phone: 904 880 9001

E-mail: crobinson@clarkeschools.org

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

Representing: Educators of the deaf

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

Lobbyist registered with Legislature: [ ] Yes [x] 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)

3/20/13
Meeting Date

Topic: SB 1240

Bill Number: 1240 *(if applicable)*

Name: Ashley R McGowan

Amendment Barcode: _____ *(if applicable)*

Job Title: Deaf child

Address: 1612 Twin Oak Drive W
Street

Middleburg, Fl 32068
City, State, Zip

Phone: (904) 600-9697

E-mail: _____

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

Representing: Deaf children

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)

3/20/13
Meeting Date

Topic: RESOURCES FOR DEAF CHILDREN

Bill Number: 1240 *(if applicable)*

Name: CARTER FISK

Amendment Barcode: *(if applicable)*

Job Title: BROTHER of DEAF CHILD.

Address: 992 BUTTERCUP DR.
Street

ST. JOHN'S FL 32259
City *State* *Zip*

Phone: 904-230-9709

E-mail: RYANBENNETTFISK@GMAIL.COM

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

Representing: DEAF CHILDREN

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)

3/20/13
Meeting Date

Topic: RESOURCES FOR DEAF CHILDREN

Bill Number: 1240 *(if applicable)*

Name: RYAN FISK

Amendment Barcode: *(if applicable)*

Job Title: FATHER OF DEAF CHILD

Address: 992 BUTTERCUP DR.
Street

ST. JOHNS, FL 32259
City, State, Zip

Phone: 706-941-2195

E-mail: RYANBENNETTFISK@GMAIL.COM

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

Representing: PARENTS GROUP

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)

3/20/13
Meeting Date

Topic: SB 1240

Bill Number: 1240 *(if applicable)*

Name: Anna McGowan

Amendment Barcode: _____ *(if applicable)*

Job Title: Deaf child

Address: 1612 Twin oak Drive W
Street

Middleburg, Fl 32068
City, State, Zip

Phone: (904) 600-9697

E-mail: _____

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

Representing: Deaf children

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)

3-20-13
Meeting Date

Topic: Resources for Deaf Families

Bill Number: SB 1240 *(if applicable)*

Name: Alisa Demico

Amendment Barcode: *(if applicable)*

Job Title: Speech Pathologist - SLP

Address: 6179 Eclipse Circle
Street

Jacksonville, FL 32258
City, State, Zip

Phone: 904-534-8111

E-mail: ademico@clarkeschools.org

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

Representing: Speech Language Pathologist - SLP

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

Lobbyist registered with Legislature: [ ] Yes [X] 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)

3-20-13
Meeting Date

Topic: SB 1240/

Bill Number: SB 1240 *(if applicable)*

Name: Christine Halvorsen

Amendment Barcode: / *(if applicable)*

Job Title:

Address: 9009 Western Lake Drive
Street

Jax. FL 32256
City *State* *Zip*

Phone: (904)-735-7097

E-mail: psychicdeafchic@bellsouth.net

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

Representing: Deaf Community

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)

3-20-13
Meeting Date

Topic: CHOICES FOR DEAF CHILDREN

Bill Number: SB1240 *(if applicable)*

Name: JORDAN LEAVITT

Amendment Barcode: *(if applicable)*

Job Title: DEAF CHILD

Address: 2407 COVINGTON CREEK CIR E
Street

JAX, FL 32224
City *State* *Zip*

Phone: 904-982-4503

E-mail: dd15082@yahoo.com

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

Representing: CHOICES FOR DEAF CHILDREN

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)

3-20-13
Meeting Date

Topic: SB1240 \ [illegible]

Bill Number: SB1240 *(if applicable)*

Name: DEBRA LEAVITT

Amendment Barcode: *(if applicable)*

Job Title: PARENT OF DEAF CHILD

Address: 2407 COVINGTON CREEK CIRCLE
Street

JAX, FL 32224
City *State* *Zip*

Phone: 904-982-4503

E-mail: dal5082@yahoo.com

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

Representing: CHOICES FOR DEAF CHILDREN

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

Lobbyist registered with Legislature: [ ] Yes [X] 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)

Meeting Date: _____

Topic: Resources for Deaf Families

Bill Number: _____ (if applicable)

Name: Cheryl Montero

Amendment Barcode: _____ (if applicable)

Job Title: R.N; mom

Address: 942 Ponte Vedra Blvd.
Street

Ponte Vedra, FL 32082
City, State, Zip

Phone: 757-289-4400

E-mail: Cherylmontero1@yahoo

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

Representing: Families of Deaf 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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic

Bill Number (if applicable)

Name Pierce Montero

Amendment Barcode (if applicable)

Job Title Child

Address 9142 Ponte Vedra

Street

Phone

B PVB 32082

City State Zip

E-mail

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

Representing Deaf Families

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)

3-20-13
Meeting Date

Topic: Children Who Are Deaf or Hard of Hearing

Bill Number: SB 1240 *(if applicable)*

Name: Janet Lamoureux (Lamb-a-row)

Amendment Barcode: *(if applicable)*

Job Title:

Address: 1345 Turkey Trl
Street

Lakeland FL 33810
City *State* *Zip*

Phone: 863 899-7301

E-mail: janetL@tampabay.rr.com

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

Representing: Florida PTA - waive in support

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

Lobbyist registered with Legislature: [ ] Yes [X] 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)

3-20-13
Meeting Date

Topic _____

Bill Number 1240 (if applicable)

Name Leah Cook

Amendment Barcode _____ (if applicable)

Job Title Childrens Advocate

Address 3214 Coral Sea Ct
Street

Tallahassee FL 32312
City State Zip

Phone 850 661-1258

E-mail _____

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

Representing Parents of Deaf Children

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

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

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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 Committee on Health Policy

BILL: CS/SB 1448

INTRODUCER: Health Policy Committee and Senator Smith

SUBJECT: Controlled Substances

DATE: March 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HP	**Fav/CS**
2.			CJ	
3.			ACJ	
4.			AP	
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:

CS/SB 1448 adds several substances to Schedule III of the Florida Comprehensive Drug Abuse Prevention and Control Act.[1] The bill also re-enacts parts of ss. 893.13 and 921.0022, F.S., to incorporate the addition of these substances to Schedule III.

The bill provides an effective date of October 1, 2013.

This bill could have a major fiscal impact upon the Florida Department of Law Enforcement (FDLE), estimated between $400,000 and $2.4 million.

The bill amends s. 893.03(3), F.S., and reenacts ss. 893.13(1) - (6) and s. 921.0022(3)(b) – (e), F.S.

[1] This Act is found in ch. 893, F.S.

II. Present Situation:

Controlled Substances

"Controlled substance" means any substance named or described in Schedules I-V of s. 839.03, F.S.[2] Drug schedules are specified by the United States Department of Justice Drug Enforcement Administration (DEA) in 21 C.F.R. ss. 1308.11-15 and in s. 893.03, F.S.

Schedule I controlled substances currently have no accepted medical use in treatment in the United States and therefore may not be prescribed, administered, or dispensed for medical use. These substances have a high potential for abuse and include heroin, lysergic acid diethylamide (LSD), and marijuana. Schedule II controlled substances have a high potential for abuse, which may lead to severe psychological or physical dependence, including morphine and its derivatives, amphetamines, cocaine, and pentobarbital. Schedule III controlled substances have lower abuse potential than Schedule II substances but may still cause psychological or physical dependence. Schedule III substances include products containing less than 15 milligrams (mg) of hydrocodone (such as Vicodin) or less than 90 mg of codeine per dose (such as Tylenol #3), ketamine, and anabolic steroids. Schedule IV substances have a low potential for abuse and include propoxyphene (Darvocet), alprazolam (Xanax), and lorazepam (Ativan). Schedule V controlled substances have an extremely low potential for abuse and primarily consist of preparations containing limited quantities of certain narcotics, such as cough syrup.[3]

Anabolic Steroid Abuse

An anabolic steroid is any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth.[4] Anabolic steroids have both legitimate medical uses, such as treating delayed puberty and certain hormonal genetic disorders, and a plethora of illegitimate uses, such as building muscle bulk among athletes or bodybuilders.

Illegally obtained anabolic steroids are usually given at doses 10 to 100 times higher than their medically-indicated doses and may be administered as pills, injections, or skin creams. Steroid abusers often take two different types of steroids at once or may cycle between taking no drug and high doses of a drug over weeks to months.

Anabolic steroids can have serious and permanent effects if taken for extended periods. In addition to building bone density and muscle bulk, steroids can:[5]

- Drastically reduce sperm count;
- Shrink the testicles;
- Cause infertility;

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[2] Section 893.02(4), F.S.
[3] DEA, Office of Diversion Control, *Controlled Substance Schedules*, available at: http://www.deadiversion.usdoj.gov/schedules/#define (last visited on March 15, 2013).
[4] Section 893.03(3)(d)1., F.S.
[5] WebMD, *Anabolic Steroid Abuse*, available at: http://men.webmd.com/guide/anabolic-steroid-abuse-topic-overview. (last visited on March 15, 2013).

- Enlarge breast size in men and decrease it in women;
- Increase body hair in women;
- Make skin rough in women;
- Enlarge the clitoris;
- Deepen the voice of women;
- Halt bone growth in adolescents;
- Cause heart attacks, even in young and healthy people;
- Cause strokes, even in young and healthy people'
- Elevate blood pressure;
- Cause liver disease and liver cancer;
- Interfere with normal cholesterol levels;
- Cause acne;
- Cause balding; and
- Cause psychiatric problems.

Once someone is addicted to steroids, he or she will also need increasing amounts of the drug to achieve the same effect and will experience withdrawal symptoms.[6]

Anabolic steroids are already considered Schedule III by the state and can only be legally administered with a prescription.[7]

Specific Drugs Introduced in the Bill

hCG

Human chorionic gonadotropin, or hCG, is normally produced by the placenta to help maintain progesterone levels in the early stages of pregnancy. It can also be administered as injections to treat fertility problems in women or certain puberty problems in men.[8] Among anabolic steroid abusers, hCG is used to counteract the reduction in testosterone levels caused by steroids. The hCG has experienced recent popularity as a weight loss drug, although the U.S. Food and Drug Administration (FDA) has prohibited its sale as a homeopathic weight loss medication.[9]

HGH-Related Substances

Human growth hormone (HGH), also known as somatotropin, is normally produced by the pituitary gland in the brain and spurs growth in children and in adolescents. The HGH also helps regulate many other functions related to homeostasis. Its medical indications include treatment of poor growth in children, pituitary dysfunction, and muscle wasting caused by HIV/AIDS. It is

[6] *Id.*
[7] Section 893.03(3), F.S.
[8] WebMD, *Drugs & Medications- HCG*, available at: http://www.webmd.com/drugs/drug-11192-HCG.aspx?drugid=11192&drugname=HCG (last visited on March 15, 2013).
[9] FDA, *hCG Diet Products are Illegal*, available at: http://www.fda.gov/forconsumers/consumerupdates/ucm281333.htm (last visited on March 15, 2013).

also frequently abused for performance enhancement or anti-aging purposes.[10] Somatropin and tesamorelin are synthetic versions of HGH.[11,12]

Growth hormone releasing factor (GHRH) stimulates the body to produce more HGH. GHRH is also known as growth hormone releasing factor (GHRF) or sermorelin.[13] Growth hormone-releasing hexapeptide (GHRP-6) and CJC-1295 are artificially-made hormones, which also increase HGH levels.[14,15]

Penalties Related to Sale or Use of Schedule III Drugs

It is unlawful for any unauthorized person[16] to sell, manufacture, deliver, or possess with the intent to sell, manufacture, or deliver any controlled substance. Such misuse of a Schedule III drug constitutes a third-degree felony.[17] Such an act is considered a second-degree felony if it occurs within 1000 feet of:

- A child care facility as defined in s. 402.302, F.S.;
- An elementary, middle, or secondary schools between the hours of 6 a.m. and 12 midnight;
- A recreational facility;[18,19]
- A college, university, or other postsecondary institution;[20]
- A place of worship;
- A convenience business as defined in s. 812.171, F.S.;[21]
- A public housing facility;[22] or
- As assisted living facility.[23]

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[10] WebMD, *Human Growth Hormone*, available at: http://www.webmd.com/fitness-exercise/human-growth-hormone-hgh (last visited on March 15, 2013).
[11] FDA, *Somatotropin Information*, available at: http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm237839.htm (last visited on March 15, 2013).
[12] Spooner L. Tesamorelin: A growth hormone-releasing factor analogue for HIV-associated lipodystrophy. Annals of Pharmacotherapy. 2012;46(2):240-247.
[13] Entrez Gene, *GHRH Growth Hormone Releasing Hormone*, available at: http://www.ncbi.nlm.nih.gov/gene?cmd=Retrieve&dopt=full_report&list_uids=2691 (last visited on March 15, 2013).
[14] Locatelli V, et al. Growth hormone-releasing hexapeptide is a potent stimulator of growth hormone gene expression and release in the growth hormone-releasing hormone-deprived infant rat. Pediatr Res. 1994 Aug;36(2):169-74.
[15] Henninje J, et al. Identification of CJC-1295, a growth-hormone-releasing peptide, in an unknown pharmaceutical preparation. Drug Test Anal. 2010 Nov-Dec;2(11-12):647-50.
[16] Chapters 893 and 499, F.S., provide exceptions for those allowed to possess scheduled drugs, such as for medical or research purposes.
[17] Section 893.13(1)(a)2., F.S.
[18] Per s. 893.13(1)(c), F.S., recreational facilities include real property comprising a state, county, or municipal park; facilities operated by nonprofit, community-based organizations for the provision of recreational, social, or educational services to the public ("community centers"); or publicly-owned recreational facilities.
[19] Section 893.13(1)(c)2., F.S.
[20] Section 893.13(1)(d)2., F.S.
[21] Section 893.13(1)(e)2., F.S.
[22] Section 893.13(1)(f)2., F.S.
[23] Section 893.13(1)(h)2., F.S.

Anyone who purchases or possesses with the intent to purchase a Schedule III controlled substance commits a third-degree felony.[24]

III. Effect of Proposed Changes:

Section 1 amends s. 893.03(3), F.S., to add hCG, GHRH, GHRP-6, HGH, CJC-1295, somatropin, and tesamorelin to the list of Schedule III controlled substances in Florida.

Sections 2 and 3 reenact, respectively, s. 893.13(1) - (6)[25] and 921.0022(3)(b) – (e),[26] F.S., to incorporate the amendments made to s. 893.03, F.S., in Section 1 of the bill.

Section 4 provides an effective date of October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who use these drugs without a prescription may be prosecuted by the state. Persons who sell or distribute these substances may also be prosecuted.

C. Government Sector Impact:

The FDLE estimates that it would experience a fiscal impact between $400,000 and $2.4 million. Because the substances added to Schedule III by this bill are too large and complex to be handled by FDLE's current laboratory equipment, new analyzing machines would have to be purchased for each of FDLE's six regional crime laboratories at a cost of approximately $400,000 per machine.

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[24] Section 893.13(2)(a)2. F.S.
[25] This provides prohibited acts and penalties for violating the Florida Comprehensive Drug Abuse Control and Prevention Act.
[26] This is the Offense Severity Ranking Chart of the Criminal Punishment Code.

The FDLE could lower the fiscal impact by only purchasing the required machines for one or a few of its regional laboratories. Fiscal impact to the state could also be reduced by requiring local law enforcement agencies to contract with private laboratories for analysis of these substances, for which the fiscal impact has not been determined.[27]

This bill was not discussed at any 2013 Criminal Justice Impact Conference.[28]

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 Policy on March 20, 2013:
The CS eliminates mention of GHRF and sermorelin in the bill as they are alternate names for GHRH. The CS also recategorizes the drugs added to Schedule III by this bill to place them in the general listing of prohibited drugs rather than under the paragraph devoted to anabolic steroids.

B. Amendments:

None.

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

[27] FDLE, *2013 Bill Analysis of SB 1448*. A copy is on file with the Senate Health Policy Committee.
[28] A listing of the bills discussed at each 2013 Criminal Justice Impact Conference is on file with the Senate Health Policy Committee.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2013	.	
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The Committee on Health Policy (Sobel) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 18 - 111
4 and insert:
5 Section 1. Paragraphs (h), (i), (j), (k), (l), (m), and (n) are
6 added to subsection (3) of section 893.03, Florida Statutes, to
7 read:
8 893.03 Standards and schedules.—The substances enumerated
9 in this section are controlled by this chapter. The controlled
10 substances listed or to be listed in Schedules I, II, III, IV,
11 and V are included by whatever official, common, usual,
12 chemical, or trade name designated. The provisions of this

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13 section shall not be construed to include within any of the
14 schedules contained in this section any excluded drugs listed
15 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
16 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
17 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
18 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
19 Anabolic Steroid Products."
20 (3) SCHEDULE III.—A substance in Schedule III has a
21 potential for abuse less than the substances contained in
22 Schedules I and II and has a currently accepted medical use in
23 treatment in the United States, and abuse of the substance may
24 lead to moderate or low physical dependence or high
25 psychological dependence or, in the case of anabolic steroids,
26 may lead to physical damage. The following substances are
27 controlled in Schedule III:
28 (a) Unless specifically excepted or unless listed in
29 another schedule, any material, compound, mixture, or
30 preparation which contains any quantity of the following
31 substances having a depressant or stimulant effect on the
32 nervous system:
33 1. Any substance which contains any quantity of a
34 derivative of barbituric acid, including thiobarbituric acid, or
35 any salt of a derivative of barbituric acid or thiobarbituric
36 acid, including, but not limited to, butabarbital and
37 butalbital.
38 2. Benzphetamine.
39 3. Chlorhexadol.
40 4. Chlorphentermine.
41 5. Clortermine.

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42 6. Lysergic acid.
43 7. Lysergic acid amide.
44 8. Methyprylon.
45 9. Phendimetrazine.
46 10. Sulfondiethylmethane.
47 11. Sulfonethylmethane.
48 12. Sulfonmethane.
49 13. Tiletamine and zolazepam or any salt thereof.
50 (b) Nalorphine.
51 (c) Unless specifically excepted or unless listed in
52 another schedule, any material, compound, mixture, or
53 preparation containing limited quantities of any of the
54 following controlled substances or any salts thereof:
55 1. Not more than 1.8 grams of codeine per 100 milliliters
56 or not more than 90 milligrams per dosage unit, with an equal or
57 greater quantity of an isoquinoline alkaloid of opium.
58 2. Not more than 1.8 grams of codeine per 100 milliliters
59 or not more than 90 milligrams per dosage unit, with recognized
60 therapeutic amounts of one or more active ingredients which are
61 not controlled substances.
62 3. Not more than 300 milligrams of hydrocodone per 100
63 milliliters or not more than 15 milligrams per dosage unit, with
64 a fourfold or greater quantity of an isoquinoline alkaloid of
65 opium.
66 4. Not more than 300 milligrams of hydrocodone per 100
67 milliliters or not more than 15 milligrams per dosage unit, with
68 recognized therapeutic amounts of one or more active ingredients
69 that are not controlled substances.
70 5. Not more than 1.8 grams of dihydrocodeine per 100

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71 milliliters or not more than 90 milligrams per dosage unit, with
72 recognized therapeutic amounts of one or more active ingredients
73 which are not controlled substances.
74 6. Not more than 300 milligrams of ethylmorphine per 100
75 milliliters or not more than 15 milligrams per dosage unit, with
76 one or more active, nonnarcotic ingredients in recognized
77 therapeutic amounts.
78 7. Not more than 50 milligrams of morphine per 100
79 milliliters or per 100 grams, with recognized therapeutic
80 amounts of one or more active ingredients which are not
81 controlled substances.
82
83 For purposes of charging a person with a violation of s. 893.135
84 involving any controlled substance described in subparagraph 3.
85 or subparagraph 4., the controlled substance is a Schedule III
86 controlled substance pursuant to this paragraph but the weight
87 of the controlled substance per milliliters or per dosage unit
88 is not relevant to the charging of a violation of s. 893.135.
89 The weight of the controlled substance shall be determined
90 pursuant to s. 893.135(6).
91 (d) Anabolic steroids.
92 1. The term “anabolic steroid” means any drug or hormonal
93 substance, chemically and pharmacologically related to
94 testosterone, other than estrogens, progestins, and
95 corticosteroids, that promotes muscle growth and includes:
96 a. Androsterone.
97 b. Androsterone acetate.
98 c. Boldenone.
99 d. Boldenone acetate.

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100 e. Boldenone benzoate.
101 f. Boldenone undecylenate.
102 g. Chlorotestosterone (4-chlortestosterone).
103 h. Clostebol.
104 i. Dehydrochlormethyltestosterone.
105 j. Dihydrotestosterone (4-dihydrotestosterone).
106 k. Drostanolone.
107 l. Ethylestrenol.
108 m. Fluoxymesterone.
109 n. Formebulone (formebolone).
110 o. Mesterolone.
111 p. Methandienone.
112 q. Methandranone.
113 r. Methandriol.
114 s. Methandrostenolone.
115 t. Methenolone.
116 u. Methyltestosterone.
117 v. Mibolerone.
118 w. Nandrolone.
119 x. Norethandrolone.
120 y. Nortestosterone.
121 z. Nortestosterone decanoate.
122 aa. Nortestosterone phenylpropionate.
123 bb. Nortestosterone propionate.
124 cc. Oxandrolone.
125 dd. Oxymesterone.
126 ee. Oxymetholone.
127 ff. Stanolone.
128 gg. Stanozolol.

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129 hh. Testolactone.
130 ii. Testosterone.
131 jj. Testosterone acetate.
132 kk. Testosterone benzoate.
133 ll. Testosterone cypionate.
134 mm. Testosterone decanoate.
135 nn. Testosterone enanthate.
136 oo. Testosterone isocaproate.
137 pp. Testosterone oleate.
138 qq. Testosterone phenylpropionate.
139 rr. Testosterone propionate.
140 ss. Testosterone undecanoate.
141 tt. Trenbolone.
142 uu. Trenbolone acetate.
143 vv. Any salt, ester, or isomer of a drug or substance
144 described or listed in this subparagraph if that salt, ester, or
145 isomer promotes muscle growth.
146 2. The term does not include an anabolic steroid that is
147 expressly intended for administration through implants to cattle
148 or other nonhuman species and that has been approved by the
149 United States Secretary of Health and Human Services for such
150 administration. However, any person who prescribes, dispenses,
151 or distributes such a steroid for human use is considered to
152 have prescribed, dispensed, or distributed an anabolic steroid
153 within the meaning of this paragraph.
154 (e) Ketamine, including any isomers, esters, ethers, salts,
155 and salts of isomers, esters, and ethers, whenever the existence
156 of such isomers, esters, ethers, and salts is possible within
157 the specific chemical designation.

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158 (f) Dronabinol (synthetic THC) in sesame oil and
159 encapsulated in a soft gelatin capsule in a drug product
160 approved by the United States Food and Drug Administration.
161 (g) Any drug product containing gamma-hydroxybutyric acid,
162 including its salts, isomers, and salts of isomers, for which an
163 application is approved under s. 505 of the Federal Food, Drug,
164 and Cosmetic Act.
165 (h) Human chorionic gonadotropin (hCG).
166 (i) CJC-1295.
167 (j) Growth hormone releasing hormone (GHRH).
168 (k) Growth hormone releasing hexapeptide (GHRP-6).
169 (l) Human growth hormone (HGH).
170 (m) Somatropin.
171 (n) Tesamorelin.
172
173
174 ========== T I T L E A M E N D M E N T ==========
175 And the title is amended as follows:
176 Delete line 7
177 and insert:
178 performance; adding human chorionic gonadotropin to
179 the list of Schedule III controlled substances;
180 reenacting s. 893.12(1)-(6), F.S.,

By Senator Smith

31-01003-13 20131448__

A bill to be entitled

An act relating to controlled substances; amending s. 893.03, F.S.; adding to the list of Schedule III controlled substances certain specified materials, compounds, mixtures, or preparations that promote muscle growth or otherwise enhance athletic performance; reenacting s. 893.13(1)-(6), F.S., relating to prohibited acts involving controlled substances, to incorporate the amendments made to s. 893.03, F.S., in references thereto; reenacting s. 921.0022(3)(b)-(e), F.S., relating to the Criminal Punishment Code offense severity ranking chart, to incorporate the amendments made to s. 893.03, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, or trade name designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled “Excluded Substances”; 21 C.F.R. s. 1308.24, styled “Exempt Chemical Preparations”; 21 C.F.R. s. 1308.32, styled “Exempted

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
31 Anabolic Steroid Products."
32 (3) SCHEDULE III.—A substance in Schedule III has a
33 potential for abuse less than the substances contained in
34 Schedules I and II and has a currently accepted medical use in
35 treatment in the United States, and abuse of the substance may
36 lead to moderate or low physical dependence or high
37 psychological dependence or, in the case of anabolic steroids,
38 may lead to physical damage. The following substances are
39 controlled in Schedule III:
40 (d) Anabolic steroids.
41 1. The term "anabolic steroid" means any drug or hormonal
42 substance, chemically and pharmacologically related to
43 testosterone, other than estrogens, progestins, and
44 corticosteroids, that promotes muscle growth and includes:
45 a. Androsterone.
46 b. Androsterone acetate.
47 c. Boldenone.
48 d. Boldenone acetate.
49 e. Boldenone benzoate.
50 f. Boldenone undecylenate.
51 g. Chlorotestosterone (4-chlortestosterone).
52 h. Chorionic Gonadotropin, Human (hCG).
53 i.~~h.~~ Clostebol.
54 j. CJC-1295.
55 k.~~i.~~ Dehydrochlormethyltestosterone.
56 l.~~j.~~ Dihydrotestosterone (4-dihydrotestosterone).
57 m.~~k.~~ Drostanolone.
58 n.~~l.~~ Ethylestrenol.

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59 o.~~m.~~ Fluoxymesterone.
60 p.~~n.~~ Formebulone (formebolone).
61 q. Growth-hormone-releasing factor (GRF, GHRF).
62 r. Growth-hormone-releasing hormone (GHRH).
63 s. Growth-hormone-releasing peptide 6 (GHRP-6).
64 t. Human Growth Hormone (HGH).
65 u.~~o.~~ Mesterolone.
66 v.~~p.~~ Methandienone.
67 w.~~q.~~ Methandranone.
68 x.~~r.~~ Methandriol.
69 y.~~s.~~ Methandrostenolone.
70 z.~~t.~~ Methenolone.
71 aa.~~u.~~ Methyltestosterone.
72 bb.~~v.~~ Mibolerone.
73 cc.~~w.~~ Nandrolone.
74 dd.~~x.~~ Norethandrolone.
75 ee.~~y.~~ Nortestosterone.
76 ff.~~z.~~ Nortestosterone decanoate.
77 gg.~~aa.~~ Nortestosterone phenylpropionate.
78 hh.~~bb~~. Nortestosterone propionate.
79 ii.~~cc.~~ Oxandrolone.
80 jj.~~dd.~~ Oxymesterone.
81 kk.~~ee.~~ Oxymetholone.
82 ll. Sermorelin.
83 mm. Somatropin.
84 nn.~~ff.~~ Stanolone.
85 oo.~~gg.~~ Stanozolol.
86 pp. Tesamorelin.
87 qq.~~hh.~~ Testolactone.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

88 rr.~~ii.~~ Testosterone.
89 ss.~~jj.~~ Testosterone acetate.
90 tt.~~kk.~~ Testosterone benzoate.
91 uu.~~ll.~~ Testosterone cypionate.
92 vv.~~mm.~~ Testosterone decanoate.
93 ww.~~nn.~~ Testosterone enanthate.
94 xx.~~oo.~~ Testosterone isocaproate.
95 yy.~~pp.~~ Testosterone oleate.
96 zz.~~qq.~~ Testosterone phenylpropionate.
97 aaa.~~rr.~~ Testosterone propionate.
98 bbb.~~ss.~~ Testosterone undecanoate.
99 ccc.~~tt.~~ Trenbolone.
100 ddd.~~uu.~~ Trenbolone acetate.
101 eee.~~vv.~~ Any salt, ester, or isomer of a drug or substance
102 described or listed in this subparagraph if that salt, ester, or
103 isomer promotes muscle growth.
104 2. The term does not include an anabolic steroid that is
105 expressly intended for administration through implants to cattle
106 or other nonhuman species and that has been approved by the
107 United States Secretary of Health and Human Services for such
108 administration. However, any person who prescribes, dispenses,
109 or distributes such a steroid for human use is considered to
110 have prescribed, dispensed, or distributed an anabolic steroid
111 within the meaning of this paragraph.
112 Section 2. For the purpose of incorporating the amendment
113 made by this act to section 893.03, Florida Statutes, in a
114 reference thereto, subsections (1) through (6) of section
115 893.13, Florida Statutes, are reenacted to read:
116 893.13 Prohibited acts; penalties.—

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117 (1)(a) Except as authorized by this chapter and chapter
118 499, it is unlawful for any person to sell, manufacture, or
119 deliver, or possess with intent to sell, manufacture, or
120 deliver, a controlled substance. Any person who violates this
121 provision with respect to:
122 1. A controlled substance named or described in s.
123 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
124 commits a felony of the second degree, punishable as provided in
125 s. 775.082, s. 775.083, or s. 775.084.
126 2. A controlled substance named or described in s.
127 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
128 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
129 the third degree, punishable as provided in s. 775.082, s.
130 775.083, or s. 775.084.
131 3. A controlled substance named or described in s.
132 893.03(5) commits a misdemeanor of the first degree, punishable
133 as provided in s. 775.082 or s. 775.083.
134 (b) Except as provided in this chapter, it is unlawful to
135 sell or deliver in excess of 10 grams of any substance named or
136 described in s. 893.03(1)(a) or (1)(b), or any combination
137 thereof, or any mixture containing any such substance. Any
138 person who violates this paragraph commits a felony of the first
139 degree, punishable as provided in s. 775.082, s. 775.083, or s.
140 775.084.
141 (c) Except as authorized by this chapter, it is unlawful
142 for any person to sell, manufacture, or deliver, or possess with
143 intent to sell, manufacture, or deliver, a controlled substance
144 in, on, or within 1,000 feet of the real property comprising a
145 child care facility as defined in s. 402.302 or a public or

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146 private elementary, middle, or secondary school between the
147 hours of 6 a.m. and 12 midnight, or at any time in, on, or
148 within 1,000 feet of real property comprising a state, county,
149 or municipal park, a community center, or a publicly owned
150 recreational facility. For the purposes of this paragraph, the
151 term "community center" means a facility operated by a nonprofit
152 community-based organization for the provision of recreational,
153 social, or educational services to the public. Any person who
154 violates this paragraph with respect to:
155 1. A controlled substance named or described in s.
156 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
157 commits a felony of the first degree, punishable as provided in
158 s. 775.082, s. 775.083, or s. 775.084. The defendant must be
159 sentenced to a minimum term of imprisonment of 3 calendar years
160 unless the offense was committed within 1,000 feet of the real
161 property comprising a child care facility as defined in s.
162 402.302.
163 2. A controlled substance named or described in s.
164 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
165 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
166 the second degree, punishable as provided in s. 775.082, s.
167 775.083, or s. 775.084.
168 3. Any other controlled substance, except as lawfully sold,
169 manufactured, or delivered, must be sentenced to pay a $500 fine
170 and to serve 100 hours of public service in addition to any
171 other penalty prescribed by law.
172
173 This paragraph does not apply to a child care facility unless
174 the owner or operator of the facility posts a sign that is not

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175 less than 2 square feet in size with a word legend identifying
176 the facility as a licensed child care facility and that is
177 posted on the property of the child care facility in a
178 conspicuous place where the sign is reasonably visible to the
179 public.
180 (d) Except as authorized by this chapter, it is unlawful
181 for any person to sell, manufacture, or deliver, or possess with
182 intent to sell, manufacture, or deliver, a controlled substance
183 in, on, or within 1,000 feet of the real property comprising a
184 public or private college, university, or other postsecondary
185 educational institution. Any person who violates this paragraph
186 with respect to:
187 1. A controlled substance named or described in s.
188 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
189 commits a felony of the first degree, punishable as provided in
190 s. 775.082, s. 775.083, or s. 775.084.
191 2. A controlled substance named or described in s.
192 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
193 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
194 the second degree, punishable as provided in s. 775.082, s.
195 775.083, or s. 775.084.
196 3. Any other controlled substance, except as lawfully sold,
197 manufactured, or delivered, must be sentenced to pay a $500 fine
198 and to serve 100 hours of public service in addition to any
199 other penalty prescribed by law.
200 (e) Except as authorized by this chapter, it is unlawful
201 for any person to sell, manufacture, or deliver, or possess with
202 intent to sell, manufacture, or deliver, a controlled substance
203 not authorized by law in, on, or within 1,000 feet of a physical

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204 place for worship at which a church or religious organization
205 regularly conducts religious services or within 1,000 feet of a
206 convenience business as defined in s. 812.171. Any person who
207 violates this paragraph with respect to:
208 1. A controlled substance named or described in s.
209 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
210 commits a felony of the first degree, punishable as provided in
211 s. 775.082, s. 775.083, or s. 775.084.
212 2. A controlled substance named or described in s.
213 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
214 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
215 the second degree, punishable as provided in s. 775.082, s.
216 775.083, or s. 775.084.
217 3. Any other controlled substance, except as lawfully sold,
218 manufactured, or delivered, must be sentenced to pay a $500 fine
219 and to serve 100 hours of public service in addition to any
220 other penalty prescribed by law.
221 (f) Except as authorized by this chapter, it is unlawful
222 for any person to sell, manufacture, or deliver, or possess with
223 intent to sell, manufacture, or deliver, a controlled substance
224 in, on, or within 1,000 feet of the real property comprising a
225 public housing facility at any time. For purposes of this
226 section, the term “real property comprising a public housing
227 facility” means real property, as defined in s. 421.03(12), of a
228 public corporation created as a housing authority pursuant to
229 part I of chapter 421. Any person who violates this paragraph
230 with respect to:
231 1. A controlled substance named or described in s.
232 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,

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233 commits a felony of the first degree, punishable as provided in
234 s. 775.082, s. 775.083, or s. 775.084.
235 2. A controlled substance named or described in s.
236 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
237 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
238 the second degree, punishable as provided in s. 775.082, s.
239 775.083, or s. 775.084.
240 3. Any other controlled substance, except as lawfully sold,
241 manufactured, or delivered, must be sentenced to pay a $500 fine
242 and to serve 100 hours of public service in addition to any
243 other penalty prescribed by law.
244 (g) Except as authorized by this chapter, it is unlawful
245 for any person to manufacture methamphetamine or phencyclidine,
246 or possess any listed chemical as defined in s. 893.033 in
247 violation of s. 893.149 and with intent to manufacture
248 methamphetamine or phencyclidine. If any person violates this
249 paragraph and:
250 1. The commission or attempted commission of the crime
251 occurs in a structure or conveyance where any child under 16
252 years of age is present, the person commits a felony of the
253 first degree, punishable as provided in s. 775.082, s. 775.083,
254 or s. 775.084. In addition, the defendant must be sentenced to a
255 minimum term of imprisonment of 5 calendar years.
256 2. The commission of the crime causes any child under 16
257 years of age to suffer great bodily harm, the person commits a
258 felony of the first degree, punishable as provided in s.
259 775.082, s. 775.083, or s. 775.084. In addition, the defendant
260 must be sentenced to a minimum term of imprisonment of 10
261 calendar years.

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262 (h) Except as authorized by this chapter, it is unlawful
263 for any person to sell, manufacture, or deliver, or possess with
264 intent to sell, manufacture, or deliver, a controlled substance
265 in, on, or within 1,000 feet of the real property comprising an
266 assisted living facility, as that term is used in chapter 429.
267 Any person who violates this paragraph with respect to:
268 1. A controlled substance named or described in s.
269 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
270 commits a felony of the first degree, punishable as provided in
271 s. 775.082, s. 775.083, or s. 775.084.
272 2. A controlled substance named or described in s.
273 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
274 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
275 the second degree, punishable as provided in s. 775.082, s.
276 775.083, or s. 775.084.
277 (2)(a) Except as authorized by this chapter and chapter
278 499, it is unlawful for any person to purchase, or possess with
279 intent to purchase, a controlled substance. Any person who
280 violates this provision with respect to:
281 1. A controlled substance named or described in s.
282 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
283 commits a felony of the second degree, punishable as provided in
284 s. 775.082, s. 775.083, or s. 775.084.
285 2. A controlled substance named or described in s.
286 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
287 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
288 the third degree, punishable as provided in s. 775.082, s.
289 775.083, or s. 775.084.
290 3. A controlled substance named or described in s.

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291 893.03(5) commits a misdemeanor of the first degree, punishable
292 as provided in s. 775.082 or s. 775.083.
293 (b) Except as provided in this chapter, it is unlawful to
294 purchase in excess of 10 grams of any substance named or
295 described in s. 893.03(1)(a) or (1)(b), or any combination
296 thereof, or any mixture containing any such substance. Any
297 person who violates this paragraph commits a felony of the first
298 degree, punishable as provided in s. 775.082, s. 775.083, or s.
299 775.084.
300 (3) Any person who delivers, without consideration, not
301 more than 20 grams of cannabis, as defined in this chapter,
302 commits a misdemeanor of the first degree, punishable as
303 provided in s. 775.082 or s. 775.083. For the purposes of this
304 paragraph, "cannabis" does not include the resin extracted from
305 the plants of the genus *Cannabis* or any compound manufacture,
306 salt, derivative, mixture, or preparation of such resin.
307 (4) Except as authorized by this chapter, it is unlawful
308 for any person 18 years of age or older to deliver any
309 controlled substance to a person under the age of 18 years, or
310 to use or hire a person under the age of 18 years as an agent or
311 employee in the sale or delivery of such a substance, or to use
312 such person to assist in avoiding detection or apprehension for
313 a violation of this chapter. Any person who violates this
314 provision with respect to:
315 (a) A controlled substance named or described in s.
316 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
317 commits a felony of the first degree, punishable as provided in
318 s. 775.082, s. 775.083, or s. 775.084.
319 (b) A controlled substance named or described in s.

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320 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
321 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
322 the second degree, punishable as provided in s. 775.082, s.
323 775.083, or s. 775.084.
324
325 Imposition of sentence may not be suspended or deferred, nor
326 shall the person so convicted be placed on probation.
327 (5) It is unlawful for any person to bring into this state
328 any controlled substance unless the possession of such
329 controlled substance is authorized by this chapter or unless
330 such person is licensed to do so by the appropriate federal
331 agency. Any person who violates this provision with respect to:
332 (a) A controlled substance named or described in s.
333 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
334 commits a felony of the second degree, punishable as provided in
335 s. 775.082, s. 775.083, or s. 775.084.
336 (b) A controlled substance named or described in s.
337 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
338 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
339 the third degree, punishable as provided in s. 775.082, s.
340 775.083, or s. 775.084.
341 (c) A controlled substance named or described in s.
342 893.03(5) commits a misdemeanor of the first degree, punishable
343 as provided in s. 775.082 or s. 775.083.
344 (6)(a) It is unlawful for any person to be in actual or
345 constructive possession of a controlled substance unless such
346 controlled substance was lawfully obtained from a practitioner
347 or pursuant to a valid prescription or order of a practitioner
348 while acting in the course of his or her professional practice

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349 or to be in actual or constructive possession of a controlled
350 substance except as otherwise authorized by this chapter. Any
351 person who violates this provision commits a felony of the third
352 degree, punishable as provided in s. 775.082, s. 775.083, or s.
353 775.084.
354 (b) If the offense is the possession of not more than 20
355 grams of cannabis, as defined in this chapter, or 3 grams or
356 less of a controlled substance described in s. 893.03(1)(c)46.-
357 50. and 114.-142., the person commits a misdemeanor of the first
358 degree, punishable as provided in s. 775.082 or s. 775.083. For
359 the purposes of this subsection, "cannabis" does not include the
360 resin extracted from the plants of the genus *Cannabis*, or any
361 compound manufacture, salt, derivative, mixture, or preparation
362 of such resin, and a controlled substance described in s.
363 893.03(1)(c)46.-50. and 114.-142. does not include the substance
364 in a powdered form.
365 (c) Except as provided in this chapter, it is unlawful to
366 possess in excess of 10 grams of any substance named or
367 described in s. 893.03(1)(a) or (1)(b), or any combination
368 thereof, or any mixture containing any such substance. Any
369 person who violates this paragraph commits a felony of the first
370 degree, punishable as provided in s. 775.082, s. 775.083, or s.
371 775.084.
372 (d) Notwithstanding any provision to the contrary of the
373 laws of this state relating to arrest, a law enforcement officer
374 may arrest without warrant any person who the officer has
375 probable cause to believe is violating the provisions of this
376 chapter relating to possession of cannabis.
377 Section 3. For the purpose of incorporating the amendment

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378 made by this act to section 893.03, Florida Statutes, in a
379 reference thereto, paragraphs (b) through (e) of subsection (3)
380 of section 921.0022, Florida Statutes, are reenacted to read:
381 921.0022 Criminal Punishment Code; offense severity ranking
382 chart.—
383 (3) OFFENSE SEVERITY RANKING CHART
384 (b) LEVEL 2
385

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.

386
387
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784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $300, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.

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817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01	3rd	Forgery.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.

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831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	Falsely impersonating an officer.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description

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420

119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.

421

316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.

422

316.193(2)(b)	3rd	Felony DUI, 3rd conviction.

423

316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

424

319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.

425

319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.

426

319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.

427

319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.

428

327.35(2)(b)	3rd	Felony BUI.

429

328.05(2)	3rd	Possess, sell, or counterfeit

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		fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)	3rd	Operating a clinic without a license or filing false license application or other required information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.

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436

501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.

437

624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.

438

624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.

439

626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.

440

697.08	3rd	Equity skimming.

441

790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.

442

796.05(1)	3rd	Live on earnings of a prostitute.

443

806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.

444

806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.

445

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810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.

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817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.

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464

893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

465

893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.

466

893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.

467

893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.

468

893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

469

893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled

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		substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person,

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		or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver pedigree

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		papers.
499.0051(2)	3rd	Failure to authenticate pedigree papers.
499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.

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784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the

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		Internet; property stolen $300 or more.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
874.05(1)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.

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918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another

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		harvester.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.

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790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or

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		trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more individuals.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.

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566

825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

567

827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

568

827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.

569

839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

570

843.01	3rd	Resist officer with violence to person; resist arrest with violence.

571

847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.

572

847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.

573

847.0138	3rd	Transmission of material harmful to

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(2) & (3)		minors to a minor by electronic device or equipment.
874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s.

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		893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Section 4. This act shall take effect October 1, 2013.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/13
Meeting Date

Topic: CONTROLLED SUBSTANCES

Bill Number: 1448 (if applicable)

Name: DR. KENNETH WOLINER M.D.

Amendment Barcode: (if applicable)

Job Title: PHYSICIAN

Address: 9325 glades Rd #104
Street

BOCA RATON 33434
City State Zip

Phone:

E-mail:

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

Representing: MYSELF, AS A MEMBER OF THE FMA

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)

3/20/13
Meeting Date

Topic _____

Bill Number 1448 (if applicable)

Name Stacy Lieberman, M.D.

Amendment Barcode _____ (if applicable)

Job Title _____

Address 1611 NW 12th Ave.
Street

Miami, FL 33132
City State Zip

Phone (305) 585-1111

E-mail splieberman@med.miami.edu

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

Representing Florida Chapter, American College of Physicians

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-20-13
Meeting Date

Topic: Controlled Substances

Bill Number: SB1448 *(if applicable)*

Name: Cody Schwarz

Amendment Barcode: *(if applicable)*

Job Title: Legislative Coordinator

Address: 215 S. Monroe St. #701
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 850-728-7583

E-mail: CSchwarz@cfflaw.com

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

Representing: Florida Police Chiefs

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

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 Committee on Health Policy

BILL: CS/CS/SB 726

INTRODUCER: Community Affairs Committee; Health Policy Committee; and Senator Simmons

SUBJECT: Regulation of Family or Medical Leave Benefits for Employees

DATE: March 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Fav/CS**
2.	Davlantes	Stovall	HP	**Fav/CS**
3.			JU	
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:

CS/CS/SB 726 preempts the regulation of family and medical leave benefits to the state. Exceptions are provided for leave related to and arising directly from domestic violence and for federal laws or regulations governing family or medical leave benefits. The bill also creates an Employer-Sponsored Benefits Task Force to analyze employer-sponsored family and medical leave benefits and the impact of the state preemption.

The bill does not limit the authority of a political subdivision to establish family or medical leave benefits for its own employees. Federally authorized and recognized tribal governments are not prohibited from requiring family or medical leave benefits for a person employed within tribe jurisdiction.

This bill creates an undesignated section of Florida Statutes.

II. Present Situation:

The Family Medical Leave Act

The Family and Medical Leave Act (FMLA) of 1993, as amended, entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons.[1]

Covered Employers[2]

The FMLA only applies to employers that meet certain criteria. A covered employer is a:

- private-sector employer, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer;
- public agency, including a local, state, or federal government agency, regardless of the number of employees it employs; or
- public or private elementary or secondary school, regardless of the number of employees it employs.

Eligible Employees[3]

Only eligible employees are entitled to take FMLA leave. An eligible employee is one who:

- works for a covered employer;
- has worked for the employer for at least 12 months;
- has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave; and
- works at a location where the employer has at least 50 employees within 75 miles.

Leave Entitlement[4]

Eligible employees may take up to 12 workweeks of leave in a 12-month period for one or more of the following reasons:

- the birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care;
- to care for a spouse, son, daughter, or parent who has a serious health condition;
- for a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- for any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.[5]

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[1] *See* Public Law 103-3, Enacted February 5, 1993, *available at* *http://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_107_ENFORCEMENT* (last visited Feb. 25, 2013).
[2] *Id. See* section 101. Definitions.
[3] *Id. See* section 101. Definitions.
[4] *Id. See* section 102. Leave Requirement.
[5] An eligible employee may also take up to 26 workweeks of leave during a "single 12-month period" to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

Notice[6]

Employees must comply with their employer's usual and customary requirements for requesting leave and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request. Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

Enforcement7

The Wage and Hour Division of the United States Department of Labor administers and enforces the FMLA for all private, state and local government employees, and some federal employees. The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. An employee may also be able to bring a private civil action against an employer for violations. In general, any allegation must be raised within two years from the date of violation.

Expansion of FMLA in other States and Local Governments

The FMLA allows states and local governments to set standards that are more expansive than the federal law, and many states and local entities have chosen to do so.[8] Currently, only two states, California and New Jersey, offer paid, or partially paid, family and medical leave.[9] In California, paid leave is funded by a payroll tax on employees and allows employees to participate in the temporary disability program. New Jersey extended its existing temporary disability insurance system to administer paid leave, and also funds the program through an employee payroll tax.

Washington passed a paid family leave law in 2007 that was to take effect in October 2009. However, due to state budget concerns, subsequent bills have delayed the implementation of the paid leave law until 2015.[10]

Wisconsin recently provided for the preemption of local sick leave ordinances in the state.[11] The 2011 Wisconsin Act 16 prohibits a city, village, town, or county from enacting or administering an ordinance that requires employers to provide paid or unpaid leave for four reasons:

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[6]See supra note 4.

[7] United States Department of Labor, Wage and Hour Division, *Fact Sheet # 77B: Protection for Individuals under the FMLA, available at* http://www.dol.gov/whd/regs/compliance/whdfs77b.htm (last visited Feb. 25, 2013).

[8] *See* 29 C.F.R. s. 825.701, *available at* http://law.justia.com/cfr/title29/29-3.1.1.3.52.7.466.2.html (last visited Feb. 25, 2013). Connecticut and Minnesota allow leave for an organ or bone marrow donor. Oregon's definition of "family member" includes the employee's grandparent, grandchild, or parent-in-law. North Carolina allows leave to participate in children's educational activities. See National Conference of State Legislatures, *State Family and Medical Leave Laws that Differ from the Federal FMLA* (Sept. 2008), *available at* http://www.ncsl.org/Portals/1/Documents/employ/StateFamilyandMedicalLeaveLaws.pdf (last visited Feb. 25, 2013). San Francisco, Philadelphia, and Seattle have also passed expanded leave ordinances. Miami-Dade County ordinances on family leave and domestic violence include unpaid leave for the care of a grandparent and for circumstances related to a medical or dental problem resulting from domestic or repeat violence. See Miami-Dade County Regulations, *Chapter 11A Discrimination: Article V. - Family Leave, Article VIII - Domestic Leave, available at* http://miamidade.fl.eregulations.us/code/reglist/ord_ptiii_ch11a?selectdate=3/1/2013 (last visited Mar. 1, 2013).

[9] National Conference of State Legislatures, *State Family Medical Leave Laws, available at* http://www.ncsl.org/issues-research/labor/state-family-and-medical-leave-laws.aspx (last visited Feb. 25, 2013).

[10] *Id.*

- for the employee's own health condition or preventive medical care;
- for a family member of the employee's health condition or preventive medical care;
- for the employee's medical care or assistance relating to domestic violence; and
- for the employee's other family, medical, or health issues, for himself or herself or a family member.[12]

Leave Provisions in Florida Law

Some leave of absence and medical leave provisions exist in Florida Statutes. Section 741.313, F.S., provides that an employer permit an employee to take up to three working days of leave from work in any 12-month period if the employee or a family or household member of an employee is the victim of domestic violence or sexual violence. This leave may be paid or unpaid, at the discretion of the employer. These provisions only apply to an employer who employs 50 or more employees and to an employee who has been employed for three months or longer.[13]

Section 110.221, F.S., prevents the termination of state career service employees for reasons related to pregnancy or adoption. The section also allows up to six months of unpaid leave for these employees.[14] In addition, s. 121.121, F.S., governs authorized leaves of absences for members of the Florida Retirement System.

"At-Will" Employment

Florida is an "at-will" employment state.[15] In essence, this means that, absent an employment contract, either party, employer or employee, may terminate the employment relationship at any time, for any reason, so long as the reason is not prohibited by law.[16]

Actions for wrongful termination of employment, under the constitutional theory of a violation of "basic rights" as set forth in Art. I, s. 2, State Constitution, must be based upon a state action, and not the action of one citizen (employer) against another (employee).[17] One citizen's rights

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[11] *See* Wisconsin Legislative Council, *Act Memo for 2011 Wisconsin Act 16: Preemption of Local Sick Leave Ordinances* (May 10, 2011), *available at* http://docs.legis.wisconsin.gov/2011/related/lcactmemo/sb23.pdf.

[12] *Id*. The Act does not affect local ordinances that require leave for employees of a local governmental unit. If the terms of a collective bargaining agreement are inconsistent with the provisions of the Act, the provisions apply when the collective bargaining agreement expires, or is extended, modified, or renewed, whichever occurs first.

[13] *See* s. 741.313, F.S.

[14] *See* s. 110.221, F.S. Additional provisions relate to annual leave credits and accrued sick leave.

[15] This section of the analysis is drawn from Florida Senate Judiciary Committee, *CS/SB 1130 Analysis: Firearms in Motor Vehicles* (Mar. 26, 2008) *available at* http://archive.flsenate.gov/data/session/2008/Senate/bills/analysis/pdf/2008s1130.ju.pdf.

[16] See *Smith v. Piezo Technology and Prof'l Adm'rs*, 427 So. 2d 182, 184 (Fla. 1983) ("[t]he established rule in Florida relating to employment termination is that '[W]here the term of employment is discretionary with either party or indefinite, then either party for any reason may terminate it at any time and no action may be maintained for breach of the employment contract.'") (quoting *DeMarco v. Publix Super Markets, Inc.*, 384 So. 2d 1253, 1254 (Fla. 1980)); *Leonardi v. City of Hollywood*, 715 So. 2d 1007, 1008 fn. 1 (Fla. 4th DCA 1998) ("[t]he general rule of at-will employment is that an employee can be discharged at any time, as long as he is not terminated for a reason prohibited by law, such as retaliation or unlawful discrimination").

[17] *Schreiner v. McKenzie Tank Lines*, 432 So. 2d 567, 569-70 (Fla. 1983).

"shall not be construed to deny or impair others retained by the people."[18] The application of the right to equal protection in Art. I, s. 2, State Constitution, is activated when the government intrudes into a citizen's most basic, personal freedom from such intrusion. Consequently, there is no constitutional right to employment in Florida in the private sector.

The Legislature has enacted statutes addressing discrimination based upon race, color, religion, sex, national origin, age, handicap, or marital status.[19] These statutes provide causes of action for employment discrimination, and the methods by which they are to be pursued, against employers who employ 15 or more employees for each working day in each of 20 or more calendar weeks.[20]

The statutory protections set forth protect employees from discrimination based upon who they are, not matters that are necessarily matters of choice or preference. These statutory protections could be viewed as an expansion, or at least a clarification from a public policy standpoint, of the constitutional basic rights enumerated in Art. I, s. 2, State Constitution.

Reasons not inherently "identity-related," for employing or not employing, retaining, or terminating an employee are matters within the discretion of the employer and are neither constitutionally nor statutorily governed.

Orange County Earned Sick Time Ordinance Petition

In 2012, registered voters petitioned to place an Orange County ordinance entitled *Earned Sick Time for Employees of Businesses in Orange County* on the November ballot.[21] The ordinance would require employers with 15 or more employees to give employees within Orange County paid sick time when they are sick or caring for a sick family member. Employees would accrue one hour of sick time for every 37 hours worked, capped at 56 hours in a calendar year. Employers with fewer than 15 employees would not have to offer paid sick time, but could not retaliate against workers who take unpaid time off when they are sick.

Local Government Powers and Legislative Preemption

The State 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.[22] 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.[23] 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.[24] Section

[18] FLA. CONST., art. 1, s. 1.
[19] Florida Civil Rights Act, ss. 760.1-760.11, F.S.; s. 509.092, F.S.
[20] Section 760.02(7), F.S.
[21] Petition language is available at http://blogs.orlandosentinel.com/news_politics/files/2012/08/Earned_Sick_Time_Petition_Form.pdf. The ordinance was not on the November 2012 ballot but is now scheduled for the August 2014 ballot.
[22] FLA. CONST. art. VIII, s. 1(f).
[23] FLA. CONST. art. VIII, s. 1(g).
[24] FLA. CONST. art. VIII, s. 2(b); s*ee also* s. 166.021, F.S.

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.[25] Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication or by inference.[26] A county or municipality cannot forbid what the Legislature has expressly licensed, authorized or required, nor may it authorize what the Legislature has expressly forbidden.[27] The Legislature can preempt a county's broad authority to enact ordinances and may do so either expressly or by implication.[28]

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of Florida Statutes on ordinances relating to family or medical leave benefits for employees. Definitions provided for "employee" and "employer" are those as established in the federal Fair Labor Standards Act of 1938.[29] "Family or medical leave" is defined to mean a paid or unpaid absence from employment to deal with a health condition or seek medical attention for oneself or to assist another person engaged in the same two activities. This type of leave is also defined to include the birth or adoption of a child. "Family or medical leave" does *not* include leave related to and arising directly from domestic violence. "Political subdivision" is also defined and includes a county, municipality, department, commission, special district board or other public body.

This section provides that a political subdivision may not require an employer to provide family or medical leave benefits to an employee and may not otherwise regulate such leave. With the exception of family or medical leave benefits regulated under federal law or regulations, the regulation of family and medical leave benefits is expressly preempted to the state.

This section also creates the Employer-Sponsored Benefits Study Task Force to analyze employer-sponsored family and medical leave benefits and the impact of state preemption of the regulation of such benefits. The task force shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The task force is composed of 11 members and includes the Director of the

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[25] *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).
[26] *Id.*
[27] *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[28] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[29] See U.S. Department of Labor Wage and Hour Division, *The Fair Labor Standards Act of 1938, As Amended*, *available at* http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf (last visited Feb. 25, 2013). Section 203 of the Act defines "employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization." The term "employee" means "any individual employed by an employer" subject to certain federal government employee definitions and excluding certain employees deemed as volunteers.

Workforce Florida, Inc., who will serve as chair of the group. Workforce Florida, Inc., will provide administrative and staff support services for the task force.

The President and Speaker shall each make four appointments to the task force and will include members of the Legislature, owners of various sized businesses, and representatives of organizations representing non-management employees of businesses. The Speaker shall also appoint one member who is an economist with a background in business economics, and the President shall appoint one member who is a licensed physician with at least five years of experience in the active practice of medicine. Members of the task force will serve without compensation but may receive reimbursement for per diem and travel expenses.

The task force shall organize by September 1, 2013, and complete its work by January 15, 2014. The task force is dissolved effective June 30, 2014, with the repeal of the subsection creating the task force.

This section does not limit the authority of a political subdivision to establish family or medical leave benefits for its employees. In addition, the section does not prohibit a federally authorized and recognized tribal government from requiring family or medical leave benefits for a person employed within a territory over which the tribe has jurisdiction.

Section 2 provides an effective date upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Municipalities and charter counties have broad powers of home rule in Florida,[30] however, they are limited by general law. Preemption precludes a local government from exercising authority in a particular area and involves inconsistency with the state constitution or state statute. Preemption can occur expressly, or impliedly. [31] Where the Legislature has expressly "acted," a local government may not pass ordinances to the contrary.

---

[30] For municipalities s*ee*, FLA CONST., Art VII, s. 2.; and s. 166.021(1). For counties, *see*, FLA CONST., Art VII, s. 1, and part II, ch. 125, F.S.

[31] *See*, *Florida Power Corp. v. Seminole County*, 579 So. 2d 105 (Fla. 1991) (expressly preempted); Santa Rosa County v. Gulf Power Co. 635 So.2d 96 (1994), (recognizing express and implied pre-emption).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A private business will be able to craft its leave benefits to fit its own needs.

C. Government Sector Impact:

It is unknown how many local governments may have established family or medical leave benefits that apply to non-government employees which are more expansive than federal law.[32] Under the bill, any such benefits would be preempted to the state.

The state agency responsible for the regulation of family and medical leave benefits may experience increased workload and costs related to such regulation.

There will be indeterminate costs associated with the meetings and the work-product of the Employer-Sponsored Benefits Study Task Force. There will be a fiscal impact on Workforce Florida, Inc., related to providing administrative support for the task force and reimbursing travel and per diem expenses for members.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Line 36 states that "family or medical leave" includes a period of absence used by an employee to, among other things, adopt a child. Assumedly this means that both men and women may use leave for purposes of adopting a child; it is unclear if both men and women may also use the leave when a child of their own is born.

It is unknown if any local governments have established their own family or medical leave benefits or if any employees have begun to accrue leave hours under such local ordinances. If so, the bill provides no details as to what will happen to employees' accrued leave hours if this bill becomes law.

[32] Miami-Dade County ordinances on family leave and domestic violence include unpaid leave for the care of a grandparent and for circumstances related to a medical or dental problem resulting from domestic or repeat violence. See Miami-Dade County Regulations, *Chapter 11A Discrimination: Article V. - Family Leave, Article VIII - Domestic Leave, available at* http://miamidade.fl.eregulations.us/code/reglist/ord_ptiii_ch11a?selectdate=3/1/2013 (last visited Mar. 1, 2013).

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Health Policy on March 20, 2013:
The CS/CS clarifies that Workforce Florida, Inc., will provide administrative and staff support services for the task force. The CS/CS adds two new members to the task force: an economist with a background in business economics appointed by the Speaker, and a licensed physician with at least five years of experience in the active practice of medicine appointed by the President. The CS/CS also states that members of the task force are not entitled to compensation but may receive reimbursement for travel and per diem expenses.

C**S by Community Affairs on March 14, 2013:**
Establishes an exception to the preemption provision for leave related to and arising directly from domestic violence.

- Removes the bill's provision of an employee's right to absence from work for illness or a medical emergency and the process for work schedule adjustments for doctor or dental appointments.
- Creates the Employer-Sponsored Benefits Study Task Force.

B. Amendments:

None.

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

454396

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2013	.	
	.	
	.	
	.	

The Committee on Health Policy (Grimsley) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 47 - 70
4 and insert:
5 Study Task Force. Workforce Florida, Inc., shall provide
6 administrative and staff support services relating to the
7 functions of the task force. The task force shall organize by
8 September 1, 2013. The task force shall be composed of 11
9 members. The Director of Workforce Florida, Inc., shall serve as
10 a member and chair of the task force. The Speaker of the House
11 of Representatives shall appoint one member who is an economist
12 with a background in business economics. The President of the

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13 Senate shall appoint one member who is a physician licensed
14 under chapter 458 or chapter 459 with at least 5 years of
15 experience in the active practice of medicine. In addition, the
16 President of the Senate and the Speaker of the House of
17 Representatives shall each appoint four additional members to
18 the task force. The four appointments from the President of the
19 Senate and the four appointments from the Speaker of the House
20 of Representatives must each include:
21 1. A member of the Legislature.
22 2. An owner of a business in this state which employs fewer
23 than 50 people.
24 3. An owner or representative of a business in this state
25 which employs more than 50 people.
26 4. A representative of an organization who represents the
27 nonmanagement employees of a business.
28 (b) Members of the task force shall serve without
29 compensation, but are entitled to reimbursement for per diem and
30 travel expenses in accordance with s. 112.061.
31 (c) The purpose of the task force is to analyze employer-
32 sponsored family or medical leave benefits and the impact of
33 state preemption of the regulation of such benefits. The task
34 force shall develop a report that includes its findings and
35 recommendations for legislative action regarding the regulation
36 of family or medical leave benefits. The task force shall submit
37 the report to the Governor, the President of the Senate, and the
38 Speaker of the House of Representatives by January 15, 2014.
39 (d) This subsection is repealed June 30, 2014.
40
41 ========== T I T L E A M E N D M E N T ==========

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42 And the title is amended as follows:
43 Delete lines 9 - 10
44 and insert:
45 directing Workforce Florida, Inc., to provide
46 administrative and staff support services for the task
47 force; establishing the purpose and composition of the
48 task force; providing for reimbursement for per diem
49 and travel expenses; requiring the task force to
50 submit a report to

By the Committee on Community Affairs; and Senator Simmons

578-02398-13 2013726c1

A bill to be entitled

An act relating to the regulation of family or medical leave benefits for employees; providing definitions; prohibiting a political subdivision from requiring or otherwise regulating family or medical leave benefits for employees; preempting regulation of family or medical leave benefits to the state; creating the Employer-Sponsored Benefits Study Task Force; establishing the purpose and composition of the task force; requiring the task force to submit a report to the Governor and the Legislature by a specified date; providing report requirements; providing for future repeal of the task force; providing that the act does not prohibit a political subdivision from establishing family or medical leave benefits for its employees; providing that the act does not prohibit a federally authorized or recognized tribal government from requiring family or medical leave benefits under certain conditions; providing an effective date.

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

Section 1. Family or medical leave benefits for employees.—

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

(a) "Employee" and the term "employer" have the same meanings as established in the federal Fair Labor Standards Act of 1938, 29 U.S.C. s. 203.

(b) "Family or medical leave" means a period of absence from employment, paid or unpaid, used by an employee to deal

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 with a health condition or seek medical attention, to assist
31 another person dealing with a health condition or seeking
32 medical attention, or to give birth to or adopt a child. The
33 term does not include leave related to and arising directly from
34 domestic violence.
35 (c) "Political subdivision" means a county, municipality,
36 department, commission, special district, board, or other public
37 body, whether corporate or otherwise, created by or under state
38 law.
39 (2) A political subdivision may not require an employer to
40 provide family or medical leave benefits to an employee and may
41 not otherwise regulate such leave. For purposes of uniform
42 application of this section throughout the state, with the
43 exception of family or medical leave benefits regulated under
44 federal law or regulations, the regulation of family and medical
45 leave benefits is expressly preempted to the state.
46 (3)(a) There is created the Employer-Sponsored Benefits
47 Study Task Force. The task force shall organize by September 1,
48 2013. The task force is composed of nine members. The Director
49 of Workforce Florida, Inc., shall serve as a member and chair of
50 the task force. The President of the Senate and the Speaker of
51 the House of Representatives shall each appoint four members to
52 the task force. The four appointments from the President of the
53 Senate and the four appointments from the Speaker of the House
54 of Representatives must include:
55 1. A member of the Legislature.
56 2. An owner of a business in this state which employs fewer
57 than 50 people.
58 3. An owner or representative of a business in this state

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

59 which employs more than 50 people.
60 4. A representative of an organization who represents the
61 nonmanagement employees of a business.
62 (b) The purpose of the task force is to analyze employer-
63 sponsored family or medical leave benefits and the impact of
64 state preemption of the regulation of such benefits. The task
65 force shall develop a report that includes its findings and
66 recommendations for legislative action regarding the regulation
67 of family or medical leave benefits. The task force shall submit
68 the report to the Governor, the President of the Senate, and the
69 Speaker of the House of Representatives by January 15, 2014.
70 (c) This subsection is repealed June 30, 2014.
71 (4) This section does not limit the authority of a
72 political subdivision to establish family or medical leave
73 benefits for the employees of the political subdivision.
74 (5) This section does not prohibit a federally authorized
75 and recognized tribal government from requiring family or
76 medical leave benefits for a person employed within a territory
77 over which the tribe has jurisdiction.
78 Section 2. This act shall take effect upon becoming a law.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 14, 2013

I respectfully request that **Senate Bill 726**, relating to Regulation of Family or Medical Leave Benefits for Employees, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

ENTERED

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/13
Meeting Date

Topic: Family Benefits

Bill Number: 726 *(if applicable)*

Name: Melissa Joiner

Amendment Barcode: _____ *(if applicable)*

Job Title: Director Gov't Affairs

Address: _____
Street

Tallahassee, Fl
City, State, Zip

Phone: 850 570 0269

E-mail: Melissa@frf.org

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

Representing: Florida Retail Federation

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)

MARCH 20, 2013
Meeting Date

Topic: Regulation of Family or Medical Leave

Bill Number: 726 *(if applicable)*

Name: Carol Dover

Amendment Barcode: *(if applicable)*

Job Title: President / CEO

Address: 230 S. Adams St
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 850-224-2250

E-mail: cdover@fla.org

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

Representing: Florida Restaurant & Lodging Assoc

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)

3/20/13
Meeting Date

Topic _____

Bill Number 726 (if applicable)

Name Pablo Diaz

Amendment Barcode _____ (if applicable)

Job Title Legislative Director

Address _____
Street

_____
City State Zip

Phone 850-681-0416

E-mail _____

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

Representing National Federation of Independent Business

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)

3/20/13
Meeting Date

Topic

Bill Number 726 (if applicable)

Name David Christian

Amendment Barcode (if applicable)

Job Title VP - Government Affairs

Address 136 S. Bronough St.
Street

Tallahassee FL 32301
City State Zip

Phone 850/521-1211

E-mail dchristian@flchamber.com

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

Representing Florida Chamber

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)

3/20/2013
Meeting Date

Topic _____

Bill Number 726 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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)

WAIVE IN Support

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/13
Meeting Date

Topic: Regulation of Benefits

Bill Number: 726 (if applicable)

Name: FRANK MAYERNICK

Amendment Barcode: (if applicable)

Job Title: Lobbyist

Address: PO BOX 10329
Street

Tallahassee, FL 32302
City State Zip

Phone: 850-201-6938

E-mail:

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

Representing: A.I.F.

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)

3/20/13
Meeting Date

Topic: Regulation Family or Medical Leave

Bill Number: 726 (if applicable)

Name: Richard Watson WATSON

Amendment Barcode: (if applicable)

Job Title: Legislative Counsel

Address: P.O. Box 10038
Street

Tallahassee, FL 32302
City State Zip

Phone: 850 222 0020

E-mail: rick@rwatsonassociates.com

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

Representing: Associated Builders & Contractors of 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)

1

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-20-13
Meeting Date

Topic: Sick leave

Bill Number: CS/SB 726 *(if applicable)*

Name: Stephanie Kunkel

Amendment Barcode: *(if applicable)*

Job Title:

Address: 1143 Albritton DR
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850-320-4208

E-mail: Stef.Kunkel@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: Organize Now

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)

(2)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-20-13
Meeting Date

Topic: Earned Sick Time

Bill Number: CS/SB 726 *(if applicable)*

Name: Maria McCluskey

Amendment Barcode: *(if applicable)*

Job Title:

Address: 12073 LK Cypress Cir
Street

Orlando, FL 32828
City, State, Zip

Phone: 904-614-3687

E-mail: mccluskey.maria@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

Representing:

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 Committee on Health Policy

BILL: SB 924

INTRODUCER: Senator Latvala

SUBJECT: Dentists

DATE: March 15, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.			BI	
3.			AP	
4.			RC	
5.				
6.				

I. Summary:

SB 924 prohibits an insurer, health maintenance organization (HMO), or prepaid limited health service organization from contracting with a licensed dentist to provide services to an insured or subscriber at a specified fee unless such services are "covered services" under the applicable contract. The bill prohibits an insurer, HMO, or prepaid limited health services organization from requiring that a contracted dentist participate in a discount medical plan. The bill also prohibits an insurer from requiring that a contracted health care provider accept the terms of other practitioner contracts with a prepaid limited health service organization that is under common management and control with the contracting insurer.

This bill substantially amends the following sections of the Florida Statutes: 627.6474, 636.035, and 641.315.

II. Present Situation:

Prohibition Against "All Products" Clauses in Health Care Provider Contracts

Section 627.6474, F.S., prohibits a health insurer from requiring that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with an insurer, HMO, preferred provider organization, or exclusive provider organization that is under common management and control with the contracting insurer. The statute exempts practitioners in group practices who must accept the contract terms negotiated by the group. These contractual provisions are referred to as "all products" clauses, and, before being prohibited by the 2001 Legislature, typically required the health care provider, as a condition of participating in any of the health plan products, to

participate in *all* of the health plan's current or future health plan products. The 2001 Legislature outlawed "all products" clauses after concerns were raised by physicians that the clauses:

- may force providers to render services at below market rates;
- harm consumers through suppressed market competition;
- may require physicians to accept future contracts with unknown and unpredictable business risk; and
- may unfairly keep competing health plans out of the marketplace.

Prepaid Limited Health Service Organizations Contracts

Prepaid limited health service organizations (PLHSO) provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment, and are authorized in ch. 636, F.S. Limited health services are ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and pharmaceutical services.[1] Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

Health Maintenance Organization Provider Contracts

An HMO is an organization that provides a wide range of health care services, including emergency care, inpatient hospital care, physician care, ambulatory diagnostic treatment and preventive health care pursuant to contractual arrangements with preferred providers in a designated service area. Traditionally, an HMO member must use the HMO's network of health care providers in order for the HMO to make payment of benefits. The use of a health care provider outside the HMO's network generally results in the HMO limiting or denying the payment of benefits for out-of-network services rendered to the member. Section 641.315, F.S., specifies requirements for the HMO provider contracts with providers of health care services.

Discount Medical Plan Organizations

Discount medical plan organizations (DMPOs) offer a variety of health care services to consumers at a discounted rate. These plans are not health insurance and therefore do not pay for services on behalf of members; instead, the plans offer members access to specific health care products and services at a discounted fee. These health products and services may include, but are not limited to, dental services, emergency services, mental health services, vision care, chiropractic services, and hearing care. Generally, a DMPO has a contract with a provider network under which the individual providers render the medical services at a discount.

The DMPOs are regulated by the Office of Insurance Regulation (OIR) under part II of ch. 636, F.S. That statute establishes licensure requirements, annual reporting, minimum capital requirements, authority for examinations and investigations, marketing restrictions, prohibited activities, and criminal penalties, among other regulations.

[1] s. 636.003(5), F.S.

Before transacting business in Florida, a DMPO must be incorporated and possess a license as a DMPO.[2] As a condition of licensure, each DMPO must maintain a net worth requirement of $150,000. All charges to members of such plans must be filed with OIR and any charge to members greater than $30 per month or $360 per year must be approved by OIR before the charges can be used by the plan. All forms used by the organization must be filed with and approved by OIR.

III. Effect of Proposed Changes:

Inclusion of PLHSOs In Prohibition Against "All Products" Health Care Provider Contracts

Under current law, a health insurer cannot require that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with an insurer, HMO, preferred provider organization, or exclusive provider organization that is under common management and control with the contracting insurer. The bill adds to that list by prohibiting the insurer from requiring that a contracted health care provider accept the terms of other practitioner contracts with a PLHSO that is under common management and control with the contracting insurer.

Dentist Provider Contracts: Prohibition Against Specifying Fees for Non-Covered Services

The bill prohibits insurers, HMOs, and PLHSOs from executing a contract with a licensed dentist that requires the dentist to provide services to an insured or subscriber at a specified fee unless such services are "covered services" under the applicable contract. "Covered services" are defined as those services that are listed as a benefit that the subscriber is entitled to receive under the contract. This will prevent contracts between dentists and insurers, HMOs, or PLHSOs from containing provisions that subject non-covered services to negotiated payment rates.

The bill also prohibits insurers, HMOs and PLHSOs from providing merely de minis reimbursement or coverage to avoid the requirements of the bill and that fees for covered services must be set in good faith and cannot be nominal.

The bill prohibits insurers, HMOs, and PLHSOs from requiring that a contracted dentist participate in a DMPO.

The bill also addresses the criminal penalty specified in s. 624.15, F.S.,[3,4] by limiting the exemption from the criminal penalty currently contained in s. 627.6474, F.S., to subsection (1) of s. 627.6474, F.S. The provisions of subsection (2) of s. 627.6474, F.S., as created by the bill, are not specifically exempted from the criminal penalty. This leaves the current-law exemption in

[2] Section 636.204, F.S.

[3] Section 624.15, F.S., provides that, unless a greater specific penalty is provided by another provision of the Insurance Code or other applicable law or rule of the state, each willful violation of the Insurance Code is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S., and that each instance of such violation shall be considered a separate offense.

[4] Section 775.082, F.S., provides that a person convicted of a misdemeanor of the second degree may be sentenced to a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that a person convicted of a misdemeanor of the second degree may be sentenced to pay a fine not exceeding $500 plus court costs.

place for the amended statutory provisions to which it currently applies, without applying the exemption to the bill's new provisions in subsection (2).

The bill provides an effective July 1, 2013, and the provisions in the bill apply to contracts entered into or renewed on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 6, article III of the Florida Constitution requires every law to embrace only one subject and matter properly connected therewith, and the subject is to be briefly expressed in the title. Section 1 of the bill affects all health care practitioners listed in s. 456.001(4), F.S., and not only dentists. As such, section 1 is not germane to the title of the bill ("an act relating to dentists").

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 924 may have a negative fiscal impact on health insurer, HMO, and PLHSO policyholders and subscribers who may pay higher costs for dental care if the Legislature prohibits these entities from contracting with dentists to provide services that are not covered at a negotiated fee.

The bill may have a positive fiscal impact on dentists who may be able to benefit from increased payments from insurers, HMOs, and PLHSOs due to the contract restrictions in this bill.

C. Government Sector Impact:

According to the Office of Insurance Regulation writing on a similar 2011 Senate bill,[5] implementing the provisions of this bill will have no fiscal impact on the office. There also should be no direct impact on the costs that the state incurs for the state employees' Preferred Provider Organization, (PPO) or the HMO Plans. However, members of the state dental coverage plans could be affected if dentists have the ability to bill and charge amounts above contracted rates when members are financially responsible for the service in question.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 1 of this bill is not germane to the title of the bill ("an act relating to dentists") as it affects more health care practitioners than only dentists. A germane title might be "an act relating to insurance contracts with health care providers."

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.

[5] SB 546

By Senator Latvala

20-00157A-13 2013924__

A bill to be entitled

An act relating to dentists; amending s. 627.6474, F.S.; prohibiting a contract between a health insurer and a dentist from requiring the dentist to provide services at a fee set by the insurer under certain circumstances; providing that covered services are those services listed as a benefit that the insured is entitled to receive under a contract; prohibiting an insurer from providing merely de minimis reimbursement or coverage; requiring that fees for covered services be set in good faith and not be nominal; prohibiting a health insurer from requiring as a condition of a contract that a dentist participate in a discount medical plan; amending s. 636.035, F.S.; prohibiting a contract between a prepaid limited health service organization and a dentist from requiring the dentist to provide services at a fee set by the organization under certain circumstances; providing that covered services are those services listed as a benefit that a subscriber of a prepaid limited health service organization is entitled to receive under a contract; prohibiting a prepaid limited health service organization from providing merely de minimis reimbursement or coverage; requiring that fees for covered services be set in good faith and not be nominal; prohibiting the prepaid limited health service organization from requiring as a condition of a contract that a dentist participate in a discount medical plan; amending s. 641.315, F.S.; prohibiting a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 contract between a health maintenance organization and
31 a dentist from requiring the dentist to provide
32 services at a fee set by the organization under
33 certain circumstances; providing that covered services
34 are those services listed as a benefit that a
35 subscriber of a health maintenance organization is
36 entitled to receive under a contract; prohibiting a
37 health maintenance organization from providing merely
38 de minimis reimbursement or coverage; requiring that
39 fees for covered services be set in good faith and not
40 be nominal; prohibiting the health maintenance
41 organization from requiring as a condition of a
42 contract that a dentist participate in a discount
43 medical plan; providing for application of the act;
44 providing an effective date.
45
46 Be It Enacted by the Legislature of the State of Florida:
47
48 Section 1. Section 627.6474, Florida Statutes, is amended
49 to read:
50 627.6474 Provider contracts.—
51 (1) A health insurer may ~~shall~~ not require a contracted
52 health care practitioner as defined in s. 456.001(4) to accept
53 the terms of other health care practitioner contracts with the
54 insurer or any other insurer, or health maintenance
55 organization, under common management and control with the
56 insurer, including Medicare and Medicaid practitioner contracts
57 and those authorized by s. 627.6471, s. 627.6472, s. 636.035, or
58 s. 641.315, except for a practitioner in a group practice as

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

59 defined in s. 456.053 who must accept the terms of a contract
60 negotiated for the practitioner by the group, as a condition of
61 continuation or renewal of the contract. Any contract provision
62 that violates this section is void. A violation of this
63 subsection ~~section~~ is not subject to the criminal penalty
64 specified in s. 624.15.
65 (2)(a) A contract between a health insurer and a dentist
66 licensed under chapter 466 for the provision of services to an
67 insured may not contain any provision that requires the dentist
68 to provide services to the insured under such contract at a fee
69 set by the health insurer unless such services are covered
70 services under the applicable contract.
71 (b) Covered services are those services that are listed as
72 a benefit that the insured is entitled to receive under the
73 contract. An insurer may not provide merely de minimis
74 reimbursement or coverage in order to avoid the requirements of
75 this section. Fees for covered services shall be set in good
76 faith and must not be nominal.
77 (c) A health insurer may not require as a condition of the
78 contract that the dentist participate in a discount medical plan
79 under part II of chapter 636.
80 Section 2. Subsection (13) is added to section 636.035,
81 Florida Statutes, to read:
82 636.035 Provider arrangements.—
83 (13)(a) A contract between a prepaid limited health service
84 organization and a dentist licensed under chapter 466 for the
85 provision of services to a subscriber of the prepaid limited
86 health service organization may not contain any provision that
87 requires the dentist to provide services to the subscriber of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

88 the prepaid limited health service organization at a fee set by
89 the prepaid limited health service organization unless such
90 services are covered services under the applicable contract.
91 (b) Covered services are those services that are listed as
92 a benefit that the subscriber is entitled to receive under the
93 contract. A prepaid limited health service organization may not
94 provide merely de minimis reimbursement or coverage in order to
95 avoid the requirements of this section. Fees for covered
96 services shall be set in good faith and must not be nominal.
97 (c) A prepaid limited health service organization may not
98 require as a condition of the contract that the dentist
99 participate in a discount medical plan under part II of this
100 chapter.
101 Section 3. Subsection (11) is added to section 641.315,
102 Florida Statutes, to read:
103 641.315 Provider contracts.—
104 (11)(a) A contract between a health maintenance
105 organization and a dentist licensed under chapter 466 for the
106 provision of services to a subscriber of the health maintenance
107 organization may not contain any provision that requires the
108 dentist to provide services to the subscriber of the health
109 maintenance organization at a fee set by the health maintenance
110 organization unless such services are covered services under the
111 applicable contract.
112 (b) Covered services are those services that are listed as
113 a benefit that the subscriber is entitled to receive under the
114 contract. A health maintenance organization may not provide
115 merely de minimis reimbursement or coverage in order to avoid
116 the requirements of this section. Fees for covered services

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

117 shall be set in good faith and must not be nominal.
118 (c) A health maintenance organization may not require as a
119 condition of the contract that the dentist participate in a
120 discount medical plan under part II of chapter 636.
121 Section 4. This act shall take effect July 1, 2013, and
122 applies to contracts entered into or renewed on or after that
123 date.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Budget - Subcommittee on General Government Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA
20th District

February 26, 2013

The Honorable Senator Aaron Bean Chair
Senate Committee on Health Policy
5300 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Bean:

I respectfully request consideration of Senate Bill 924 pertaining to Non-Covered Dental Services at your earliest convenience.

I have filed this bill in order to increase fairness in the health care market by prohibiting Florida insurance companies from requiring dentists to charge specified amounts for services that are not covered by the insurance plan. I would greatly appreciate the opportunity to present this legislation to the Committee on Health Policy as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

Cc: Sandra Stovall, Staff Director
Celia Georgiades, Administrative Assistant

FLORIDA SENATE
MAR 04 2013
Health Policy Committee

REPLY TO:
☐ 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

ENTERED

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/13
Meeting Date

Topic: Non-Contracted

Bill Number: SB 924 *(if applicable)*

Name: Chris Hansen

Amendment Barcode: *(if applicable)*

Job Title: Gray Robinson

Address: *Street*

Tallahassee, FL 32301
City *State* *Zip*

Phone: 850/577-9090

E-mail: chansen@gray-robinson.com

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

Representing: Florida Society of Oral Maxillofacial Surgeons (FSOMS)

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)

03/20/2013
Meeting Date

Topic: Dentists

Bill Number: SB 924 (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@fahpnet

Speaking: ☐ For ☑ Against ☐ Information

Representing: Florida Association of Health Plans

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)

3-20-13
Meeting Date

Topic: Dentists

Bill Number: SB924 *(if applicable)*

Name: Joy Ryan

Amendment Barcode: *(if applicable)*

Job Title: -

Address: 204 S. Monroe
Street

Tally 32312
City *State* *Zip*

Phone: 681-6710

E-mail: joy@blanklaw.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: AHIP, MetLife & Delta Dental

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)

Waive in Support

3/20/13
Meeting Date

Topic: Non-Covered Services

Bill Number: SB 924 (if applicable)

Name: Ron Watson

Amendment Barcode: (if applicable)

Job Title: Lobbyist

Address: 118 E Jefferson St.
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 850 224 1089

E-mail: rwatson@floridadental.org

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

Representing: FDA - 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.

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)

3-20-13
Meeting Date

Topic: Waive in Support of SB 924

Bill Number: 924 *(if applicable)*

Name: Toni Large

Amendment Barcode: _____ *(if applicable)*

Job Title: Government Affairs

Address: 519 E. Park Ave
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 556-1461

E-mail: toni@sulaw.net

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

Representing: Florida Association of Orthodontists

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)

3/20/2013
Meeting Date

Topic _____

Bill Number 924 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

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

Representing JUSTICE-2-JESUS

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)

No Information Available for this Tab

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 Committee on Health Policy

BILL: SB 876

INTRODUCER: Senator Stargel

SUBJECT: Offenses Against Unborn Children

DATE: March 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HP	**Fav/1 amendment**
2.			CJ	
3.			JU	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

SB 876 states that anyone who commits a crime causing bodily injury to or death of an unborn child commits a separate offense from any offenses committed against the mother of that child, and offenses committed against such a child are punished as if they had been committed against the pregnant mother. Assigning punishment for an offense against an unborn child does not require proof that the perpetrator had or should have had knowledge of the pregnancy or that he or she intended to cause death or harm to the child.

Notwithstanding any other provision of law, the death penalty may not be imposed for an offense against an unborn child. Nor does this bill permit the prosecution of:

- Any person for conduct relating to an abortion for which the woman or her legal representative gave permission, or for which there was lawfully implied consent;
- Any person giving medical treatment to a pregnant woman or her unborn child; or
- Any woman with respect to her unborn child.

The bill defines "unborn child" to mean any member of the species *Homo sapiens* at any stage of development who is carried in the womb. The bill also changes all statutory references to

"unborn quick child" and "viable fetus" to "unborn child" and provides cross-references to the previously mentioned definition.

The bill provides an effective date of October 1, 2013.

This bill substantially amends ss. 775.021, 316.193, 435.05, 782.071, 782.09, and 921.022, F.S.

II. Present Situation:

History of Prenatal Criminal Law

Beginning in the 17th century, the common law rule was that only children who were born alive were afforded protections of the criminal law.[1] This became known as the "born alive rule." Due to the lack of medical technology in that time, it was difficult for doctors to know the health or condition of an unborn child; therefore, it was impossible to prove whether an assault on the mother was the proximate cause of the death of the fetus. The born alive rule became the standard in federal cases for imposing additional punishment on a perpetrator in crimes against an expectant mother. The born alive rule has been challenged many times; however, courts have upheld it stating that it is the job of the state legislatures to change the law.

Alternatively, some jurisdictions began adopting the rule that an unborn child is afforded protection of the criminal law at quickening, which was defined as "the first recognizable movements of the fetus, appearing usually from the sixteenth to eighteenth week of pregnancy."[2] Quickening also became the evidentiary standard for determining whether a person violated an abortion statute because, at the time (early 20th century), it was the most certain way to determine whether a woman was pregnant or not.

Finally, many jurisdictions have determined that an unborn child is afforded protection under the law if the fetus is viable. This term has been defined as "the physical maturation or physiological capability of the fetus to live outside the womb."[3] The Massachusetts Supreme Court became the first court to include viable unborn children in the statutory meaning of "person" for purposes of criminal laws.[4]

Due to the advancement in technology and challenges to the born alive rule, many state legislatures have enacted changes to their criminal laws to provide a criminal penalty for crimes against unborn children. Although many jurisdictions began enacting such laws, some people felt that no protection existed for an unborn victim of a federal crime.[5]

---

[1] Joseph L. Falvey, Jr., *Kill an Unborn Child – Go to Jail: The Unborn Victims of Violence Act of 2004 and Military Justice*, 53 NAVAL L. REV. 1, 1 (2006).
[2] *Id*. at 5 (quoting Clarke D. Forsythe, *Homicide of the Unborn Child: The Born Alive Rule and Other Legal Anachronisms*, 21 VAL. U. L. REV. 563, 567 (1987)).
[3] *Id*. at 6 (quoting Forsythe, *supra* note 2, at 569).
[4] *Id*.
[5] Jon O. Shimabukuro, *The Unborn Victims of Violence Act*, CRS Report for Congress (May 21, 2004), *available at* http://assets.opencrs.com/rpts/RS21550_20040521.pdf (last visited March 14, 2013).

Federal Unborn Victims of Violence Act[6]

The Unborn Victims of Violence Act (UVVA or act), signed into law on April 1, 2004, establishes a separate offense for harming or killing an unborn child during the commission of specified crimes.[7] Under the act, any person who injures or kills a "child in utero" during the commission of certain specified crimes is guilty of an offense separate from one involving the pregnant woman. Punishment for the separate offense is the same as if the offense had been committed against the pregnant woman. In addition, an offense does not require proof that the person engaging in the misconduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant, or that the defendant intended to cause the death of, or bodily injury to, the child in utero. The term "child in utero" is defined by the act to mean "a member of the species homo sapiens, at any stage of development, who is carried in the womb." The death penalty is not applicable to an offense under the UVVA.[8]

In an attempt to preserve a woman's right to have an abortion, there are three specific exclusions from the prohibitions of the act:

- Persons conducting consensual, legal abortions;
- Persons conducting any medical treatment of the pregnant woman or unborn child; and
- Any woman with respect to her unborn child.

Currently, 38 states, including Florida, have fetal homicide laws. Twenty-three states, not including Florida, have fetal homicide laws that apply to the earliest stages of pregnancy ("any state of gestation," "conception," "fertilization" or "post-fertilization").[9]

Florida Law

Section 782.071, F.S., which is Florida's vehicular homicide statute, holds a defendant equally accountable for the death of a viable fetus as for the death of the mother or any other person killed as a result of the defendant's actions. This law also specifically recognizes a civil cause of action for damages under the Wrongful Death Act.[10] The term "viable fetus," which is cited by other homicide statutes within the Florida Criminal Code, is defined to mean "a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures." The term "viable fetus" is commonly used in abortion case law. For example, in 1989 the Florida Supreme Court stated that "the potentiality of life in the fetus becomes compelling at the point in time when the fetus becomes viable."[11] Further, the court provided the following definition of viability:

> Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures. Under current

[6] The information in this section of the Present Situation of this bill analysis is from the CRS Report for Congress. *Id*.
[7] *See* 18 U.S.C. s. 1841 and 10 U.S.C. s. 919a.
[8] 18 U.S.C. s. 1841(a)(2)(D).
[9] National Conference of State Legislatures, *Fetal Homicide Laws*, http://www.ncsl.org/issues-research/health/fetal-homicide-state-laws.aspx . Last visited on March 14, 2013.
[10] Section 768.19, F.S.
[11] *In re T.W.*, 551 So. 2d 1186, 1193 (Fla. 1989)

> standards, this point generally occurs upon completion of the second trimester. [N]o medical evidence exists indicating that technological improvements will move viability forward beyond twenty-three to twenty-four weeks gestation within the foreseeable future due to the anatomic threshold of fetal development.[12]

Florida has a statute specifically aimed at holding a defendant equally accountable for the death of an unborn quick child as he or she would have been if the mother or any other person died as a result of the defendant's actions.[13] The crimes included in this section of law span from capital murder to manslaughter. For purposes of defining "unborn quick child," this statute references the definition of "viable fetus" in s. 782.071, F.S. Under current law, the mother of the unborn quick child is excluded from the provisions for an unlawful killing of an unborn quick child by any injury to the mother that would be murder if it resulted in the mother's death. However, the same exemption is not provided for the mother in the event of an unlawful killing of an unborn quick child by injury to the mother which would be manslaughter if it resulted in the death of the mother.[14] It is unclear if the exemption was intentionally excluded in the subsection relating to manslaughter.

Section 316.193, F.S., provides that a defendant who kills an unborn quick child as a result of committing DUI manslaughter is equally as culpable as if he or she killed any other human being. Again, for purposes of defining "unborn quick child," the statute references the definition of "viable fetus" in s. 782.071, F.S.

Although Florida law uses the definition of "viable fetus" to define "unborn quick child," the specific term "unborn quick child" is not defined in statute similarly to how it has been defined by the courts. In *Stokes v. Liberty Mutual Insurance Co.*, the Florida Supreme Court used a medical dictionary definition of "quick" in its analysis of a wrongful death claim. This term was defined as follows: Pregnant with a child the movement of which is felt.[15] However, Justice Ervin offered a different definition of "quick child" in a concurring opinion in a case overturning a conviction for unlawful abortion. Specifically, Justice Ervin said that a woman is pregnant with a quick child "when the embryo (has) advanced to that degree of maturity where the child had a separate and independent existence, and the woman has herself felt the child alive and quick within her."[16]

III. Effect of Proposed Changes:

Section 1 provides a short title for the bill, the Florida Unborn Victims of Violence Act.

Section 2 adds a subsection to s. 775.021, F.S., related to the rules of construction for the Florida Criminal Code, to state that anyone who commits a crime that causes bodily injury to or death of an unborn child commits a separate offense from any offenses committed against the mother of

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[12] *Id*. at 1194 (internal citation omitted).
[13] Section 782.09, F.S.
[14] Compare s. 782.09(1), F.S., with s. 782.09(2), F.S.
[15] *Stokes v. Liberty Mutual Insurance Co.*, 213 So. 2d 695, 697 (Fla. 1968)
[16] *Walsingham v. State*, 250 So. 2d 857 (Fla. 1971) (Ervin, J., specially concurring) (quoting *State v. Steadman*, 51 S.E.2d 91, 93 (1948)).

that child. If not otherwise stated in this subsection, any offense committed against an unborn child is punished as if that offense had been committed against the pregnant mother.

Assigning punishment for an offense against an unborn child does not require proof that the perpetrator had or should have had knowledge of the pregnancy or that he or she intended to cause death or harm to the child. However, notwithstanding any other provision of law, the death penalty may not be imposed for an offense against an unborn child. Nor does this subsection permit the prosecution of:

- Any person for conduct relating to an abortion for which the woman or her legal representative gave permission, or for which there was lawfully implied consent;
- Any person giving medical treatment to a pregnant woman or her unborn child; or
- Any woman with respect to her unborn child.

The bill also defines "unborn child" to mean any member of the species *Homo sapiens* at any stage of development who is carried in the womb.

Section 3 amends s. 316.193, F.S., concerning penalties for driving under the influence, to change any references to "unborn quick child" to simply "unborn child." It also provides a cross-reference to the definition of "unborn child" which the bill adds to s. 775.021, F.S.

Section 4 amends s. 435.05, F.S., concerning employment screening, to change the term "unborn quick child" to "unborn child."

Section 5 amends s. 782.071, F.S., concerning vehicular homicide, to define "vehicular homicide" as the killing of a human being or of an unborn child (rather than of a viable fetus) by and injury to the mother. It also provides a cross-reference to the definition of "unborn child" which the bill adds to s. 775.021, F.S.

Section 6 amends s. 782.09, F.S., concerning the unlawful killing of an unborn child by injuries to the mother, to change all references to "unborn quick child" to "unborn child." It also provides a cross-reference to the definition of "unborn child" which the bill adds to s. 775.021, F.S.

Section 7 amends s. 921.022(3), F.S., Level 7 of the Criminal Punishment Code, to change a reference to "viable fetus" to "unborn child" to correspond with changes made earlier in the bill related to vehicular homicide.

Section 8 provides an effective date of October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill eliminates the use of the terms "unborn quick child" and "viable fetus" within Florida's criminal laws, and replaces them with "unborn child." The bill provides that an "unborn child" is "a member of the species homo sapiens, at any stage of development, who is carried in the womb." This is the same definition used in the federal Unborn Victims of Violence Act (UVVA or act). Similarly, Illinois' and Minnesota's prenatal criminal laws mirror the UVVA. Courts in Illinois and Minnesota have addressed the constitutionality of their state's prenatal criminal laws and have declined to invalidate them. Although it cannot be known how Florida courts would interpret and apply the changes made by this bill, an examination of the cases from Illinois and Minnesota may provide some guidance as to how a court in Florida may consider a similar case.

In *State v. Merrill*, 450 N.W.2d 318 (Minn. 1990), the Minnesota Supreme Court concluded that the state's unborn child homicide statutes did not violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and were not unconstitutionally vague. Merrill shot a woman who was pregnant with a 27- or 28-day-old embryo. With respect to his equal protection claim, Merrill argued that the statutes subjected him to prosecution for ending a pregnancy while allowing a pregnant woman to terminate a nonviable fetus or embryo without criminal consequences. Merrill contended that the statutes treated similarly situated persons differently.

The court rejected Merrill's equal protection claim on the grounds that the defendant and a pregnant woman are not similarly situated: "The defendant who assaults a pregnant woman causing the death of the fetus she is carrying destroys the fetus without the consent of the woman. This is not the same as the woman who elects to have her pregnancy terminated by one legally authorized to perform the act." Unlike the assailant who has no right to kill a fetus, the pregnant woman has a right to decide to terminate her pregnancy. The actions of the woman's doctor are based on the woman's constitutionally protected rights under *Roe v. Wade*.[17]

Merrill advanced two arguments for finding the statutes to be unconstitutionally vague. First, he contended that the statutes failed to give fair warning of the prohibited conduct. Merrill maintained that it was unfair to punish an assailant for the murder of an unborn child when neither he nor the pregnant woman may be aware of the pregnancy. However, the court found that the statutes provided fair warning based on the doctrine of transferred intent. The court noted that even if the offender did not intend to kill a particular victim,

[17] *Roe v. Wade*, 410 U.S. 113 (1973).

he should have fair warning that he would be held criminally accountable given that the same type of harm would result if another victim was killed.

Merrill's second argument was that the statutes encouraged arbitrary and discriminatory enforcement by using the phrase "cause the death of an unborn child"[18] to identify prohibited conduct without actually defining when death may occur. Merrill believed that the failure to identify when death occurs for the unborn child would result in judges and juries providing their own definitions. Moreover, Merrill asserted that because an embryo is not alive, it could not experience death.

The court determined that to have life means "to have the property of all living things to grow, to become." The court avoided the question of whether the unborn child should be considered a person or human being. Instead, the court observed that criminal liability "requires only that the embryo be a living organism that is growing into a human being. Death occurs when the embryo is no longer living, when it ceases to have the properties of life." Thus, the trier of fact would simply have to determine whether an assailant's acts caused the embryo or unborn child to stop growing or stop showing the properties of life.

In *People v. Ford*, 581 N.E.2d 1189 (Ill. App. Ct. 1991), the Fourth District Appellate Court of Illinois concluded similarly that the state's fetal homicide statute did not violate the Equal Protection Clause of the Fourteenth Amendment and was not unconstitutionally vague. Like in *Merrill*, Ford argued that the statute treated similarly situated people differently. While a pregnant woman could terminate her nonviable fetus without punishment, an assailant would face criminal penalties for killing such a fetus. Following the Minnesota Supreme Court, the Illinois court found that the defendant and a pregnant woman are not similarly situated. In addition, the court determined that the statute could be upheld as rationally related to a legitimate governmental purpose. Because the statute did not affect a fundamental right held by the defendant, and because it did not discriminate against a suspect class, the validity of the statute could be considered under the rational basis standard of review. The court concluded that the statute was rationally related to a legitimate governmental interest in protecting the potentiality of human life.

Ford's vagueness argument focused on the statute's use of the phrase "cause the death of an unborn child."[19] Ford contended that the absence of statutory definitions for when life begins and death occurs would result in the application of subjective definitions by the trier of fact, and lead to the arbitrary and discriminatory enforcement of the statute. Citing *Merrill*, the court maintained that the trier of fact would be required only to determine whether there was an embryo or fetus that was growing into a human being, and whether because of the acts of an assailant, that growing was stopped. The statute did not require the trier of fact to apply its subjective views.

Finally, Ohio's prenatal criminal legislation was challenged on Eighth Amendment grounds in *Coleman v. DeWitt*, 282 F.3d 908 (6th Cir. 2002). The Eighth Amendment not

[18] Minnesota defines "unborn child" as "the unborn offspring of a human being conceived, but not yet born." See M.S.A. s. 609.266.
[19] Illinois defines "unborn child" as "any individual of the human species from fertilization until birth." See 720 IlCS 5/9-1.2.

only protects individuals from cruel and unusual punishment, but also from sentences that are disproportionate to the committed crime. The United States Supreme Court set out a three-prong test for determining whether a sentence is disproportionate.[20] The first prong requires an examination of the gravity of the offense and the harshness of the penalty given. The second prong compares the defendant's sentence to the sentences of other criminals in the same jurisdiction convicted of the same offense. The final prong requires the court to examine how the same crime is treated in other jurisdictions.[21]

The court in *Coleman*, found that the defendant's sentence was not grossly disproportionate to the crime committed and therefore did not violate the Eighth Amendment. Specifically, the court held:

> Coleman's sentence of nine years for involuntary manslaughter is far from the "gross disproportionality" required to offend the Eighth Amendment. Coleman's actions were violent and deprived Williams of her child, or at least the ability to exercise her rights over her pregnancy. At least as important as a woman's right to terminate her pregnancy is her right to choose to carry her child to term. In a jurisprudence that finds mandatory life sentences for the non-violent possession of cocaine constitutionally permissible, we would be hard-pressed to find nine years for Coleman's violent act beyond the constitutional pale. Indeed, the Supreme Court has never held unconstitutional a sentence less severe than life imprisonment without the possibility of parole.[22]

One legal scholar has also done a more extensive analysis on whether a constitutional challenge against the UVVA would survive or not. This scholar found that prosecutions under the UVVA do not appear to constitute cruel and unusual punishment in violation of the Eighth Amendment.[23]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Perpetrators of crimes against unborn children of any age may be prosecuted.

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[20] *See Solem v. Helm*, 463 U.S. 277 (1983).
[21] Falvey, Jr., *supra* note 1, at 24.
[22] *Coleman*, 282 F.3d at 915 (internal citations omitted).
[23] *See* Falvey, Jr., *supra* note 1, at 17, 24-27.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on February 27, 2013, and determined that the bill would have an indeterminate impact upon the Department of Corrections.[24]

State agencies dealing extensively with criminals or the justice system may experience a fiscal impact from processing an increased number of cases concerning unborn children of all ages, rather than simply viable fetuses or fetuses who had already passed quickening. No other agency analyses were submitted by the time of publication for this analysis, so the exact fiscal impact cannot be calculated.

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:

Barcode 714942 by Health Policy on March 20, 2013:
The amendment removes the short title of the bill. (WITH TITLE AMENDMENT)

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

[24] Criminal Justice Impact Conference, *Impact of SB 876- Offenses Against Unborn Children*. A copy is on file with the Senate Health Policy Committee.

714942

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/20/2013	.	
	.	
	.	
	.	

The Committee on Health Policy (Galvano) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 26 - 27.
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 line 3
8 and insert:
9 Amending s. 775.021, F.S.;

By Senator Stargel

15-01082B-13 2013876__

A bill to be entitled

An act relating to offenses against unborn children; providing a short title; amending s. 775.021, F.S.; providing a rule of construction that a person who engages in conduct that violates any provision of the Florida Criminal Code or of a criminal offense defined by another statute and causes the death of, or bodily injury to, an unborn child commits a separate offense if such an offense is not otherwise specifically provided for; providing for criminal penalties for such an offense; specifying that certain types of knowledge or intent are not necessary for such an offense; providing exceptions; providing a definition; amending ss. 316.193, 435.04, 782.071, 782.09, and 921.0022, F.S.; defining and substituting the term "unborn child" for similar terms used in provisions relating to driving under the influence, employment background screening standards, vehicular homicide, the killing of an unborn quick child by injury to the child's mother; and the offense severity ranking chart of the Criminal Punishment Code, respectively; conforming terminology; providing an effective date.

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

Section 1. <u>This act may be cited as the "Florida Unborn Victims of Violence Act."</u>

Section 2. Subsection (5) is added to section 775.021, Florida Statutes, to read:

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

30 775.021 Rules of construction.—
31 (5) Whoever commits an act that violates any provision of
32 this code or commits a criminal offense defined by another
33 statute and thereby causes the death of, or bodily injury to, an
34 unborn child commits a separate offense if the provision or
35 statute does not otherwise specifically provide a separate
36 offense for such death or injury to an unborn child.
37 (a) Except as otherwise provided in this subsection, the
38 punishment for a separate offense under this subsection is the
39 same as the punishment provided under this code or other statute
40 for that conduct had the injury or death occurred to the mother
41 of the unborn child.
42 (b) An offense under this subsection does not require proof
43 that the person engaging in the conduct:
44 1. Had knowledge or should have had knowledge that the
45 victim of the underlying offense was pregnant; or
46 2. Intended to cause the death of, or bodily injury to, the
47 unborn child.
48 (c) Notwithstanding any other provision of law, the death
49 penalty may not be imposed for an offense under this subsection.
50 (d) This subsection does not permit the prosecution:
51 1. Of any person for conduct relating to an abortion for
52 which the consent of the pregnant woman, or a person authorized
53 by law to act on her behalf, has been obtained or for which such
54 consent is implied by law;
55 2. Of any person for any medical treatment of the pregnant
56 woman or her unborn child; or
57 3. Of any woman with respect to her unborn child.
58 (e) As used in this subsection, the term "unborn child"

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59 means a member of the species homo sapiens, at any stage of
60 development, who is carried in the womb.
61 Section 3. Paragraph (c) of subsection (3) of section
62 316.193, Florida Statutes, is amended to read:
63 316.193 Driving under the influence; penalties.—
64 (3) Any person:
65 (c) Who, by reason of such operation, causes or contributes
66 to causing:
67 1. Damage to the property or person of another commits a
68 misdemeanor of the first degree, punishable as provided in s.
69 775.082 or s. 775.083.
70 2. Serious bodily injury to another, as defined in s.
71 316.1933, commits a felony of the third degree, punishable as
72 provided in s. 775.082, s. 775.083, or s. 775.084.
73 3. The death of any human being or unborn ~~quick~~ child
74 commits DUI manslaughter, and commits:
75 a. A felony of the second degree, punishable as provided in
76 s. 775.082, s. 775.083, or s. 775.084.
77 b. A felony of the first degree, punishable as provided in
78 s. 775.082, s. 775.083, or s. 775.084, if:
79 (I) At the time of the crash, the person knew, or should
80 have known, that the crash occurred; and
81 (II) The person failed to give information and render aid
82 as required by s. 316.062.
83
84 For purposes of this subsection, the ~~definition of the~~ term
85 "unborn ~~quick~~ child" has the same meaning as provided in s.
86 775.021(5) ~~shall be determined in accordance with the definition~~
87 ~~of viable fetus as set forth in s. 782.071~~. A person who is

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88 convicted of DUI manslaughter shall be sentenced to a mandatory
89 minimum term of imprisonment of 4 years.
90 Section 4. Paragraph (g) of subsection (2) of section
91 435.04, Florida Statutes, is amended to read:
92 435.04 Level 2 screening standards.—
93 (2) The security background investigations under this
94 section must ensure that no persons subject to the provisions of
95 this section have been arrested for and are awaiting final
96 disposition of, have been found guilty of, regardless of
97 adjudication, or entered a plea of nolo contendere or guilty to,
98 or have been adjudicated delinquent and the record has not been
99 sealed or expunged for, any offense prohibited under any of the
100 following provisions of state law or similar law of another
101 jurisdiction:
102 (g) Section 782.09, relating to killing of an unborn ~~quick~~
103 child by injury to the mother.
104 Section 5. Section 782.071, Florida Statutes, is amended to
105 read:
106 782.071 Vehicular homicide.—"Vehicular homicide" is the
107 killing of a human being, or the killing of <u>an unborn child</u> ~~a~~
108 ~~viable fetus~~ by any injury to the mother, caused by the
109 operation of a motor vehicle by another in a reckless manner
110 likely to cause the death of, or great bodily harm to, another.
111 (1) Vehicular homicide is:
112 (a) A felony of the second degree, punishable as provided
113 in s. 775.082, s. 775.083, or s. 775.084.
114 (b) A felony of the first degree, punishable as provided in
115 s. 775.082, s. 775.083, or s. 775.084, if:
116 1. At the time of the accident, the person knew, or should

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117 have known, that the accident occurred; and
118 2. The person failed to give information and render aid as
119 required by s. 316.062.
120
121 This paragraph does not require that the person knew that the
122 accident resulted in injury or death.
123 (2) For purposes of this section, the term "unborn child"
124 has the same meaning as provided in s. 775.021(5) ~~a fetus is~~
125 ~~viable when it becomes capable of meaningful life outside the~~
126 ~~womb through standard medical measures~~.
127 (3) A right of action for civil damages shall exist under
128 s. 768.19, under all circumstances, for all deaths described in
129 this section.
130 (4) In addition to any other punishment, the court may
131 order the person to serve 120 community service hours in a
132 trauma center or hospital that regularly receives victims of
133 vehicle accidents, under the supervision of a registered nurse,
134 an emergency room physician, or an emergency medical technician
135 pursuant to a voluntary community service program operated by
136 the trauma center or hospital.
137 Section 6. Section 782.09, Florida Statutes, is amended to
138 read:
139 782.09 Killing of unborn ~~quick~~ child by injury to mother.—
140 (1) The unlawful killing of an unborn ~~quick~~ child, by any
141 injury to the mother of such child which would be murder if it
142 resulted in the death of such mother, shall be deemed murder in
143 the same degree as that which would have been committed against
144 the mother. Any person, other than the mother, who unlawfully
145 kills an unborn ~~quick~~ child by any injury to the mother:

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146 (a) Which would be murder in the first degree constituting
147 a capital felony if it resulted in the mother's death commits
148 murder in the first degree constituting a capital felony,
149 punishable as provided in s. 775.082.
150 (b) Which would be murder in the second degree if it
151 resulted in the mother's death commits murder in the second
152 degree, a felony of the first degree, punishable as provided in
153 s. 775.082, s. 775.083, or s. 775.084.
154 (c) Which would be murder in the third degree if it
155 resulted in the mother's death commits murder in the third
156 degree, a felony of the second degree, punishable as provided in
157 s. 775.082, s. 775.083, or s. 775.084.
158 (2) The unlawful killing of an unborn ~~quick~~ child by any
159 injury to the mother of such child which would be manslaughter
160 if it resulted in the death of such mother shall be deemed
161 manslaughter. A person who unlawfully kills an unborn ~~quick~~
162 child by any injury to the mother which would be manslaughter if
163 it resulted in the mother's death commits manslaughter, a felony
164 of the second degree, punishable as provided in s. 775.082, s.
165 775.083, or s. 775.084.
166 (3) The death of the mother resulting from the same act or
167 criminal episode that caused the death of the unborn ~~quick~~ child
168 does not bar prosecution under this section.
169 (4) This section does not authorize the prosecution of any
170 person in connection with a termination of pregnancy pursuant to
171 chapter 390.
172 (5) For purposes of this section, the ~~definition of the~~
173 term "unborn ~~quick~~ child" <u>has the same meaning as provided in s.</u>
174 <u>775.021(5)</u> ~~shall be determined in accordance with the definition~~

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175 ~~of viable fetus as set forth in s. 782.071~~.
176 Section 7. Paragraph (g) of subsection (3) of section
177 921.0022, Florida Statutes, is amended to read:
178 921.0022 Criminal Punishment Code; offense severity ranking
179 chart.—
180 (3) OFFENSE SEVERITY RANKING CHART
181 (g) LEVEL 7
182

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great

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		bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.

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463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total

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		money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

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782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or unborn child ~~viable fetus~~ by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.

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222

784.048(7)	3rd	Aggravated stalking; violation of court order.

223

784.07(2)(d)	1st	Aggravated battery on law enforcement officer.

224

784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.

225

784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.

226

784.081(1)	1st	Aggravated battery on specified official or employee.

227

784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.

228

784.083(1)	1st	Aggravated battery on code inspector.

229

787.06(3)(a)	1st	Human trafficking using coercion for labor and services.

230

787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.

231

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790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in

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		custodial authority to a victim younger than 18 years of age.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.

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812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.

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817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years

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		of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

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893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

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893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less

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		than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

Section 8. This act shall take effect October 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
15th District

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

February 20, 2013

The Honorable Aaron Bean
Senate Health Policy Committee, Chair
302 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Bean:

I am respectfully requesting that SB 876, related to *Offenses Against Unborn Children,* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
Senator, District 15

Cc: Sandra Stovall/ Staff Director
Celia Georgiades / AA

ENTERED

FLORIDA SENATE
FEB 20 2013
Health Policy Committee

REPLY TO:
☐ 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-20-2013
Meeting Date

Topic: Offenses Against Unborn Children

Bill Number: 876 *(if applicable)*

Name: Joan E. Hendrix

Amendment Barcode: _____ *(if applicable)*

Job Title: Retired

Address: 438 Beechwood Dr
Street

Crawfordville, Fl 32327
City *State* *Zip*

Phone: 850/926-7473

E-mail: granpotunia@comcastnet

Speaking: ☐ 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.

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)

3. 20 - 13
Meeting Date

Topic: Offenses Against Unborn Children

Bill Number: 876 *(if applicable)*

Name: DIANE WILSON

Amendment Barcode: *(if applicable)*

Job Title: CO-DIRECTOR UNITEWOMEN.ORG FL

Address: 175 TARPINE DR
Street

PANACEA FL 32346
City *State* *Zip*

Phone: 850-491-4283

E-mail: dwilson.1947@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: UNITE WOMEN. ORG FL

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)

3/20/2013
Meeting Date

Topic: Unborn Children

Bill Number: 876 *(if applicable)*

Name: MARILYNN WILLS

Amendment Barcode: *(if applicable)*

Job Title: 2nd V.P. League of Women Voters of Florida

Address: 2326 Kilkenny Dr West
Street

TALLAHASSEE FL 32309
City *State* *Zip*

Phone: 850 893-4104

E-mail: marilynnwills@msn.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: League of Women Voters of Florida

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)

3/20/13
Meeting Date

Topic: Offenses against Unborn Children

Bill Number: SB 876 *(if applicable)*

Name: Jeff Borg

Amendment Barcode: *(if applicable)*

Job Title: Chair, Public Policy Cmte Board of Directors

Address: 1912 SW 23 Terr. #2
Street

Phone: 305-585-2839

Miami, FL 33145
City *State* *Zip*

E-mail:

Speaking: ☐ For ☑ Against ☐ Information

Representing: ACLU of Florida

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)

3/20/2013
Meeting Date

Topic _____

Bill Number 876 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

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)

3.20.13
Meeting Date

Topic: OFFENSES AGAINST UNBORN CHILDREN

Bill Number: 876 *(if applicable)*

Name: William (Bill) Bunkley

Amendment Barcode: *(if applicable)*

Job Title: President

Address: P O Box 341644
Street

Tampa, FL 33694
City, State, Zip

Phone: 813-264-2977

E-mail:

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

Representing: The Florida Ethics & Religious Liberty Commission, Inc.

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)

March 20-2013
Meeting Date

Topic: SB 876

Bill Number: SB 876 *(if applicable)*

Name: Barbara Zdravecky

Amendment Barcode: _____ *(if applicable)*

Job Title: Pres/CEO Planned Parenthood SWC Fla

Address: 736 Central Ave
Street

Sarasota Fla 34236
City *State* *Zip*

Phone: 941-365-3913

E-mail: barbara.zdravecky@ppfa.org

Speaking: ☐ For ☑ Against ☐ Information

Representing: FAPPA

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 Committee on Health Policy

BILL: SB 1368

INTRODUCER: Senator Ring

SUBJECT: Clinical, Counseling, and Psychotherapy Services

DATE: March 18, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Pre-meeting**
2.			CJ	
3.			CF	
4.			AP	
5.				
6.				

I. Summary:

SB1368 updates and revises Chapter 491, Florida Statutes, which regulates clinical social workers, marriage and family therapists, and mental health counselors. The bill:

- Requires registered interns to remain under supervision.
- Limits intern registration to five years, without renewal. Licenses for interns registered before July 1, 2013, expire 60 months after the date of issuance and cannot be renewed.
- Prohibits a person who has held a provisional license from applying for an intern registration in the same profession, and conversely, prohibits a person who has held an intern registration from applying for a provisional license in the same profession.
- Revises the requirements for licensure as a clinical social worker, marriage and family therapist, or mental health counselor.
- Provides for future repeal of dual licensure as a marriage and family therapist and a clinical social worker, mental health counselor, advanced registered nurse practitioner, or psychologist.
- Eases requirements for an applicant seeking a license or certification by endorsement by eliminating the requirement that the applicant have actively engaged in the profession during three of the last five years immediately preceding application.
- Corrects disciplinary jurisdiction of the Department of Health (DOH or department) and the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board) over certain professionals.
- Removes the qualifier that sexual misconduct with a former client is a felony of the third degree *when the professional relationship was terminated primarily for the purpose of engaging in sexual contact*.

- Prohibits a person from using the title "mental health counselor coach" without a valid mental health counselor license.
- Requires the use of applicable professional titles by mental health professionals regulated under the chapter on social media and other specified advertising materials.
- Creates a presumption of good faith for the actions of a court-appointed mental health professional who develops a parenting plan recommendation; prohibits anonymous complaints; provides prerequisites for a parent to bring a suit against a mental health professional; and provides for fees and court costs incurred in legal matters.

This bill substantially amends sections 491.004, 491.0045, 491.0046, 491.005, 491.0057, 491.006, 491.007, 491.009, 491.0112, 491.012, 491.0145, and 491.0149, of the Florida Statutes.

This bill creates s. 491.017, of the Florida Statutes.

II. Present Situation:

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

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board) is created within the DOH and is responsible for licensing and regulating the practice of clinical social work, marriage and family therapy, and mental health counseling pursuant to ch. 491, F.S.[1]

The practice of clinical social work uses scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior. The purpose of such services is the prevention and treatment of undesired behavior and enhancement of mental health. The practice of clinical social work includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of clinical social work includes, but is not limited to, psychotherapy, hypnotherapy, and sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.[2]

The practice of marriage and family therapy is the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems, including the context of marital formation and dissolution, and is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques. The practice of marriage and family therapy includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions (whether cognitive, affective, or behavioral),

[1] The Department has jurisdiction with respect to the regulation of certified master social workers. *See* s. 491.015, F.S.
[2] *See* s. 491.003(7), F.S.

sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of marriage and family therapy includes, but is not limited to, marriage and family therapy, psychotherapy, including behavioral family therapy, hypnotherapy, and sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.[3]

The practice of mental health counseling is the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behavior and enhancing mental health and human development and is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation. The practice of mental health counseling includes methods of a psychological nature used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders (whether cognitive, affective, or behavioral), behavioral disorders, interpersonal relationships, sexual dysfunction, alcoholism, and substance abuse. The practice of mental health counseling includes, but is not limited to, psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.[4]

Internships

An individual who intends to practice in Florida to satisfy the postgraduate or post master's level experience requirements or to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, must register as an intern in the profession for which he or she is seeking licensure. This must be done prior to commencing the post-master's experience, practicum, internship, or field experience. To become an intern the applicant must complete the application form and submit a nonrefundable application fee not exceeding $200 as set by the board. The applicant must also have completed the necessary education requirements, submitted an acceptable supervision plan, and identified a qualified supervisor.[5]

Currently, an intern may renew his or her license every biennium, with no time limit, by payment of a renewal fee. No continuing education is required for interns. There are 2,708 clinical social work interns, 726 marriage and family therapy interns, and 3,394 mental health counseling inters. Of this total, 697 interns have been renewing their registered intern license for over ten years, and 151 of them have been renewing since the inception of this law in 1998.[6]

Disciplinary cases have shown that those who have held intern licenses for many years are no longer remaining under supervision as is required by law, and many are in private practice without meeting minimum competency standards such as passing the national examination.[7]

---

[3] *See* s. 491.003(8), F.S.
[4] *See* s. 491.003(9), F.S.
[5] s. 491.0045, F.S.
[6] DOH Bill Analysis for SB 1368, dated March 4, 2013, on file with the Senate Health Policy Committee.
[7] *Id.*

Provisional License

A provisional license permits an individual applying by endorsement or examination, who has satisfied the clinical experience requirements, to practice under supervision while completing all licensure requirements. Provisional licenses expire 24 months after the date issued and may not be renewed or reissued.[8]

Licensure Requirements

Clinical Social Work:
An applicant seeking a Clinical Social Work license must submit the application, pay the appropriate fee, and have received a doctoral degree in social work from an accredited graduate school of social work. The applicant's graduate program must have emphasized direct clinical patient or client health care services and include specific coursework related to the field. Each applicant must have had no less than two years of specific clinical experience under a qualified supervisor. The applicant must also pass a theory and practice examination provided by the DOH and demonstrate knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Marriage and Family Therapy:
An applicant seeking a Marriage and Family Therapy license must submit the application, pay the appropriate fee, and have at least a master's degree with major emphasis in marriage and family therapy, or a closely related field, and have completed all of the specific semester hour requirements. The required master's degree must be from an accredited institution of higher education. The applicant must have had no less than two years of specific clinical experience under a qualified supervisor. The applicant must pass a theory and practice examination provided by the DOH and demonstrate knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Mental Health Counseling:
An applicant seeking a Mental Health Counseling license must submit the application, pay the appropriate fee, and have at least a master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs. The education and training must be received in an accredited institution of higher education recognized by the Commission on Recognition of Postsecondary Accreditation. The applicant must have had no less than two years of specific clinical experience in mental health counseling, post masters, and under a specific qualified supervisor. The applicant must pass a theory and practice examination provided by the DOH and demonstrate knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling[9]

[8] Section 491.0046, F.S.
[9] Section 491.005, F.S.

Dual Licensure

The Board is authorized[10] to issue a dual license as a marriage and family therapist if the applicant:

- Holds a valid, active license as a psychologist, a clinical social worker, mental health counselor, or is a certified advanced registered nurse practitioner.
- Has held a valid, active license for at least three years.
- Has passed the examination provided by the DOH for marriage and family therapy.

Promotional Materials

A licensed clinical social worker, marriage and family therapist, or mental health counselor, or certified master social worker shall conspicuously display the valid license issued by the department or a true copy thereof at each location at which the licensee practices his or her profession. All promotional materials, including cards, brochures, stationery, advertisements, and signs, naming the licensee must be provided by the following professionals:

- A licensed clinical social worker shall include the words "licensed clinical social worker" or the letters "LCSW"
- A licensed marriage and family therapist shall include the words "licensed marriage and family therapist" or the letters "LMFT."
- A licensed mental health counselor shall include the words "licensed mental health counselor" or the letters "LMHC."
- A registered clinical social worker intern shall include the words "registered clinical social worker intern," a registered marriage and family therapist intern shall include the words "registered marriage and family therapist intern," and a registered mental health counselor intern shall include the words "registered mental health counselor intern."
- A provisional clinical social worker licensee shall include the words "provisional clinical social worker licensee," a provisional marriage and family therapist licensee shall include the words "provisional marriage and family therapist licensee," and a provisional mental health counselor licensee shall include the words "provisional mental health counselor licensee."[11]

Currently, none of these requirements for the above professional promotional materials include social media.

Parenting Plan Recommendation

Chapter 61, F.S., relating to dissolution of marriage; support; and time-sharing was created to preserve the integrity of marriage and to safeguard meaningful family relationships, promote the amicable settlement of disputes that arise between parties to a marriage and to mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage. Within this chapter, at s. 61.122, F.S.:

[10] Section 491.0057, F.S.
[11] Section 491.0149, F.S.

- A psychologist who has been appointed by the court to develop a parenting plan recommendation in a dissolution of marriage, a case of domestic violence, or a paternity matter involving the relationship of a child and a parent, including time-sharing of children, is presumed to be acting in good faith if the psychologist's recommendation has been reached under standards that a reasonable psychologist would use to develop a parenting plan recommendation.
- An administrative complaint against a court-appointed psychologist which relates to a parenting plan recommendation conducted by the psychologist may not be filed anonymously. The individual who files an administrative complaint must include in the complaint his or her name, address, and telephone number.
- A parent who desires to file a legal action against a court-appointed psychologist who has acted in good faith in developing a parenting plan recommendation must petition the judge who presided over the dissolution of marriage, case of domestic violence, or paternity matter involving the relationship of a child and a parent, including time-sharing of children, to appoint another psychologist. Upon the parent's showing of good cause, the court shall appoint another psychologist. The court shall determine who is responsible for all court costs and attorney's fees associated with making such an appointment.
- If a legal action, whether it be a civil action, a criminal action, or an administrative proceeding, is filed against a court-appointed psychologist in a dissolution of marriage, case of domestic violence, or paternity matter involving the relationship of a child and a parent, including time-sharing of children, the claimant is responsible for all reasonable costs and reasonable attorney's fees associated with the action for both parties if the psychologist is held not liable. If the psychologist is held liable in civil court, the psychologist must pay all reasonable costs and reasonable attorney's fees for the claimant.

III. Effect of Proposed Changes:

Changes are made throughout the bill to remove obsolete language and make grammatical and conforming changes.

Section 1 amends s. 491.004, F.S., to delete obsolete timeframes for Governor appointments to the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. Also, unnecessary verbiage is deleted.

Section 2 amends s. 491.0045, F.S., to require registered interns to remain under supervision and limit intern registration to five years. Licenses for interns registered before July 1, 2013, expire 60 months after the date of issuance and cannot be renewed. A person who has held a provisional license may not apply for an intern registration in the same profession.

Section 3 amends s. 491.0046, F.S., to prohibit a person who has previously held an intern registration from applying for a provisional license.

Section 4 amends s. 491.005, F.S., to clarify that a licensed mental health professional must be on the premises when clinical services are provided by a registered intern in clinical social work, marriage and family therapy, or mental health counseling in a private practice setting, and that a registered intern may not engage in his or her own independent private practice.

The bill amends subsection (3) relating to licensure of a marriage and family therapist to require that the master's degree must be from one of several specified accredited programs or from a program accepted by the board. The number of graduate-level coursework hours is increased from 36 to 60 semester hours or from 48 to 80 quarter hours and additional course subjects are added to the statute. The supervised clinical practicum or field experience is increased from 180 to 400 direct client contact hours of marriage and family therapy.

Authority for the DOH to issue dual licensure as a marriage and family therapist and one of the following health care professionals will expire on July 1, 2020: advanced registered nurse practitioner, clinical social worker, mental health counselor, or psychologist. See section 5 of the bill also.

The bill amends subsection (4) relating to licensure of mental health counselors to update the licensure examinations and course subjects. Coursework in legal, ethical, and professional standards issues in the practice of mental health counseling replaces counseling in community settings. The bill reduces the hours of university-sponsored supervised clinical practicum, internship, or field experience from 1000 to 700 hours which must include at least 280 hours of direct client services. This will make the requirement for all graduates the same regardless of whether they have graduated from a Council for Accreditation of Counseling and Related Educational Programs (CACREP) or nonCACREP approved program.[12]

Effective July 1, 2020, all applicants for a mental health counselors' license are required to have a master's degree accredited by the CACREP consisting of at least 60 semester hours or 80 quarter hours.

Section 5 amends s. 491.0057, F.S., to provide for future repeal of provisions authorizing dual licensure as a marriage and family therapist and a clinical social worker, mental health counselor, advanced registered nurse practitioner, or psychologist on July 1, 2020. Currently there are 12 advanced registered nurse practitioners, 8 clinical social workers, 48 mental health counselors, and no psychologists dually licensed.[13]

Section 6 amends s. 491.006, F.S., to ease requirements for an applicant seeking a license or certification by endorsement by eliminating the requirement that the applicant have actively practiced the profession for which licensure is sought in another state for 3 of the last 5 years immediately preceding licensure.

Section 7 amends s. 491.007, F.S., to delete the rulemaking authority for biennial renewal of an intern registration. The bill transfers an exemption from continuing education requirements for the first renewal of a certified master social worker certificate to s. 491.0145, F.S., in section 11 of the bill.

[12] *Supra* note 7.
[13] *Id*.

Section 8 amends s. 491.009, F.S., to correctly identify disciplinary jurisdiction of the department over certified master social workers and the board over mental health professionals, except for psychologists who are regulated by the Board of Psychology under ch. 490, F.S.

Section 9 amends s. 491.0112, F.S., to provide that a psychotherapist who commits sexual misconduct with a client or former client commits a felony of the third degree. The qualifier that the misconduct is a felony with a former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact is removed.

Section 10 amends s. 491.012, F.S., to prohibit a person from using the title "mental health counselor coach" without having a valid mental health counselor license.

Section 11 amends s. 491.0145, F.S., to exempt a certified master social worker from continuing education requirements for the first renewal of the certificate. This provision is transferred from s. 491.007, F.S., in section 7 of the bill.

Section 12 amends s. 491.0149, F.S., to add social media to the list of materials in which mental health professionals and registered interns must include their appropriate professional title.

Section 13 creates s. 491.017, F.S., to provide a presumption of good faith for the actions of a court-appointed mental health professional who develops a parenting plan recommendation. This section prohibits anonymous complaints, provides prerequisites for a parent to bring a suit against a mental health professional, and provides for fees and court costs incurred in legal matters.

Section 14 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although the bill provides a period of time for interns and applicants to complete full licensure requirements, some interns and applicants may be adversely affected by the changes in the bill.

Section 12 requires certain titles and/or acronyms to be included on all forms of social media used as advertising material. Persons might incur a cost to update existing social media advertisements.

C. Government Sector Impact:

The Board will experience a decrease in renewal funds from the 2,000 interns who have been licensed over five years and will be required to relinquish their intern license. However, these interns may complete their requirements and become fully licensed, therefore the fiscal impact is expected to be minimal. Any additional workload from the bill can be handled within existing resources.[14]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 491.017, F.S., which is created in section 13 of this bill, duplicates provisions in s. 61.122, F.S. Mental health professionals licensed under ch. 491, F.S., could be added to s. 61.122, F.S., to avoid creating essentially a duplicative section of law.

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.

[14] *Id.*

532980

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (3) through (7) of section 491.004, Florida Statutes, are amended to read:

491.004 Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.—

~~(3) No later than January 1, 1988, the Governor shall appoint nine members of the board as follows:~~

~~(a) Three members for terms of 2 years each.~~

~~(b) Three members for terms of 3 years each.~~

532980

13 ~~(c) Three members for terms of 4 years each.~~
14 (3) ~~(4)~~ As the terms of the ~~initial~~ members expire, the
15 Governor shall appoint successors for terms of 4 years; and
16 those members shall serve until their successors are appointed.
17 (4) ~~(5)~~ The board shall adopt rules ~~pursuant to ss.~~
18 ~~120.536(1) and 120.54~~ to implement and enforce the provisions of
19 this chapter.
20 (5) ~~(6)~~ All applicable provisions of chapter 456 relating to
21 activities of regulatory boards shall apply to the board.
22 (6) ~~(7)~~ The board shall maintain its official headquarters
23 in the City of Tallahassee.
24 Section 2. Section 491.0045, Florida Statutes, is amended
25 to read:
26 491.0045 Intern registration; requirements.—
27 (1) ~~Effective January 1, 1998,~~ An individual who has not
28 satisfied ~~intends to practice in Florida to satisfy~~ the
29 postgraduate or post-master's level experience requirements, as
30 specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register
31 as an intern in the profession for which he or she is seeking
32 licensure before ~~prior to~~ commencing the post-master's
33 experience requirement. ~~or~~ An individual who intends to satisfy
34 part of the required graduate-level practicum, internship, or
35 field experience, outside the academic arena for any profession,
36 must register as an intern in the profession for which he or she
37 is seeking licensure before ~~prior to~~ commencing the practicum,
38 internship, or field experience.
39 (2) The department shall register as a clinical social
40 worker intern, marriage and family therapist intern, or mental
41 health counselor intern each applicant who the board certifies

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42 has:
43 (a) Completed the application form and remitted a
44 nonrefundable application fee not to exceed $200, as set by
45 board rule;
46 (b)1. Completed the education requirements as specified in
47 s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which
48 he or she is applying for licensure, if needed; and
49 2. Submitted an acceptable supervision plan, as determined
50 by the board, for meeting the practicum, internship, or field
51 work required for licensure that was not satisfied in his or her
52 graduate program.
53 (c) Identified a qualified supervisor.
54 (3) An individual registered under this section must remain
55 under supervision while practicing under registered intern
56 status ~~until he or she is in receipt of a license or a letter~~
57 ~~from the department stating that he or she is licensed to~~
58 ~~practice the profession for which he or she applied~~.
59 ~~(4) An individual who has applied for intern registration~~
60 ~~on or before December 31, 2001, and has satisfied the education~~
61 ~~requirements of s. 491.005 that are in effect through December~~
62 ~~31, 2000, will have met the educational requirements for~~
63 ~~licensure for the profession for which he or she has applied.~~
64 (4) ~~(5) Individuals who have commenced the experience~~
65 ~~requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c)~~
66 ~~but failed to register as required by subsection (1) shall~~
67 ~~register with the department before January 1, 2000.~~ Individuals
68 who fail to comply with this section ~~subsection~~ shall not be
69 granted a license under this chapter, and any time spent by the
70 individual completing the experience requirement as specified in

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71 s. 491.005(1)(c), (3)(c), or (4)(c) before ~~prior to~~ registering
72 as an intern shall not count toward completion of the ~~such~~
73 requirement.
74 (5) Intern registration shall be valid for 5 years. Any
75 subsequent intern registration must result from applying for and
76 meeting the requirements adopted by the board by rule.
77 (6) A registered intern license issued before July 1, 2013,
78 shall expire 60 months after the date it was issued and may not
79 be renewed or reissued. Any subsequent intern registration shall
80 be issued at the discretion of the board.
81 (7) A person who has held a provisional license issued by
82 the board may not apply for an intern registration in the same
83 profession.
84 Section 3. Paragraph (c) of subsection (2) of section
85 491.0046, Florida Statutes, is amended, and subsection (5) is
86 added to that section, to read:
87 491.0046 Provisional license; requirements.—
88 (2) The department shall issue a provisional clinical
89 social worker license, provisional marriage and family therapist
90 license, or provisional mental health counselor license to each
91 applicant who the board certifies has:
92 (c) Has met the following minimum coursework requirements:
93 1. For clinical social work, a minimum of 15 semester hours
94 or 22 quarter hours of the coursework required by s.
95 491.005(1)(b)2.b.
96 2. For marriage and family therapy, 10 of the courses
97 required by s. 491.005(3)(b)1.a. ~~491.005(3)(b)1.a.-c.~~, as
98 determined by the board, and at least 6 semester hours or 9
99 quarter hours of the course credits must have been completed in

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100 the area of marriage and family systems, theories, or
101 techniques.
102 3. For mental health counseling, a minimum of seven of the
103 courses required under s. 491.005(4)(b)1.a. ~~491.005(b)1.a.-c.~~
104 (5) A person who has held an intern registration issued by
105 the board may not apply for a provisional license in the same
106 profession.
107 Section 4. Section 491.005, Florida Statutes, is amended to
108 read:
109 491.005 Licensure by examination.—
110 (1) CLINICAL SOCIAL WORK.—Upon verification of
111 documentation and payment of a fee not to exceed $200, as set by
112 board rule, plus the actual per applicant cost to the department
113 for purchase of the examination from the American Association of
114 State Social Worker's Boards or a similar national organization,
115 the department shall issue a license as a clinical social worker
116 to an applicant who the board certifies:
117 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid the
118 appropriate fee.
119 (b)1. Has received a doctoral degree in social work from a
120 graduate school of social work which at the time the applicant
121 graduated was accredited by an accrediting agency recognized by
122 the United States Department of Education or has received a
123 master's degree in social work from a graduate school of social
124 work which at the time the applicant graduated:
125 a. Was accredited by the Council on Social Work Education;
126 b. Was accredited by the Canadian Association of Schools of
127 Social Work; or
128 c. Has been determined to have been a program equivalent to

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129 programs approved by the Council on Social Work Education by the
130 Foreign Equivalency Determination Service of the Council on
131 Social Work Education. An applicant who graduated from a program
132 at a university or college outside of the United States or
133 Canada must present documentation of the equivalency
134 determination from the council in order to qualify.
135 2. The applicant's graduate program must have emphasized
136 direct clinical patient or client health care services,
137 including, but not limited to, coursework in clinical social
138 work, psychiatric social work, medical social work, social
139 casework, psychotherapy, or group therapy. The applicant's
140 graduate program must have included all of the following
141 coursework:
142 a. A supervised field placement which was part of the
143 applicant's advanced concentration in direct practice, during
144 which the applicant provided clinical services directly to
145 clients.
146 b. Completion of 24 semester hours or 32 quarter hours in
147 theory of human behavior and practice methods as courses in
148 clinically oriented services, including a minimum of one course
149 in psychopathology, and no more than one course in research,
150 taken in a school of social work accredited or approved pursuant
151 to subparagraph 1.
152 3. If the course title which appears on the applicant's
153 transcript does not clearly identify the content of the
154 coursework, the applicant shall be required to provide
155 additional documentation, including, but not limited to, a
156 syllabus or catalog description published for the course.
157 (c) Has had at least ~~not less than~~ 2 years of clinical

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158 social work experience, which took place subsequent to
159 completion of a graduate degree in social work at an institution
160 meeting the accreditation requirements of this section, under
161 the supervision of a licensed clinical social worker or the
162 equivalent who is a qualified supervisor as determined by the
163 board. An individual who intends to practice in Florida to
164 satisfy clinical experience requirements must register pursuant
165 to s. 491.0045 before ~~prior to~~ commencing practice. If the
166 applicant's graduate program was not a program which emphasized
167 direct clinical patient or client health care services as
168 described in subparagraph (b)2., the supervised experience
169 requirement must take place after the applicant has completed a
170 minimum of 15 semester hours or 22 quarter hours of the
171 coursework required. A doctoral internship may be applied toward
172 the clinical social work experience requirement. A licensed
173 mental health professional must be on the premises when clinical
174 services are provided by a registered intern in a private
175 practice setting. A registered intern may not engage in his or
176 her own independent private practice. ~~The experience requirement~~
177 ~~may be met by work performed on or off the premises of the~~
178 ~~supervising clinical social worker or the equivalent, provided~~
179 ~~the off-premises work is not the independent private practice~~
180 ~~rendering of clinical social work that does not have a licensed~~
181 ~~mental health professional, as determined by the board, on the~~
182 ~~premises at the same time the intern is providing services.~~
183 (d) Has passed a theory and practice examination provided
184 by the department for this purpose.
185 (e) Has demonstrated, in a manner designated by rule of the
186 board, knowledge of the laws and rules governing the practice of

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187 clinical social work, marriage and family therapy, and mental
188 health counseling.
189 (2) CLINICAL SOCIAL WORK.—
190 (a) Notwithstanding the provisions of paragraph (1)(b),
191 coursework which was taken at a baccalaureate level shall not be
192 considered toward completion of education requirements for
193 licensure unless an official of the graduate program certifies
194 in writing on the graduate school's stationery that a specific
195 course, which students enrolled in the same graduate program
196 were ordinarily required to complete at the graduate level, was
197 waived or exempted based on completion of a similar course at
198 the baccalaureate level. If this condition is met, the board
199 shall apply the baccalaureate course named toward the education
200 requirements.
201 (b) An applicant from a master's or doctoral program in
202 social work which did not emphasize direct patient or client
203 services may complete the clinical curriculum content
204 requirement by returning to a graduate program accredited by the
205 Council on Social Work Education or the Canadian Association of
206 Schools of Social Work, or to a clinical social work graduate
207 program with comparable standards, in order to complete the
208 education requirements for examination. However, a maximum of 6
209 semester or 9 quarter hours of the clinical curriculum content
210 requirement may be completed by credit awarded for independent
211 study coursework as defined by board rule.
212 (3) MARRIAGE AND FAMILY THERAPY.—Upon verification of
213 documentation and payment of a fee not to exceed $200, as set by
214 board rule, plus the actual cost to the department for the
215 purchase of the examination from the Association of Marital and

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216 Family Therapy Regulatory Board, or its successor ~~similar~~
217 ~~national organization~~, the department shall issue a license as a
218 marriage and family therapist to an applicant who the board
219 certifies:
220 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid the
221 appropriate fee.
222 (b)1. Has a minimum of a master's degree from a program
223 accredited by the Commission on Accreditation for Marriage and
224 Family Therapy Education, from a mental health counseling
225 program with a marriage and family track from a university in
226 this state accredited by the Council for Accreditation of
227 Counseling and Related Educational Programs, from a program
228 accepted by the board as meeting these coursework requirements
229 ~~with major emphasis in marriage and family therapy~~, or a program
230 in a closely related field as determined by the board, and has
231 completed all of the following requirements:
232 a. Sixty ~~Thirty-six~~ semester hours or 80 ~~48~~ quarter hours
233 ~~of graduate coursework, which must include a minimum of 3~~
234 ~~semester hours or 4 quarter hours~~ of graduate-level coursework
235 ~~course credits~~ in ~~each of~~ the following ~~nine~~ areas: dynamics of
236 marriage and family systems; marriage therapy and counseling
237 theory and techniques; family therapy and counseling theory and
238 techniques; individual human development theories throughout the
239 life cycle; personality theory or general counseling theory and
240 techniques; psychopathology; human sexuality theory and
241 counseling techniques; psychosocial theory; ~~and~~ substance abuse
242 theory and counseling techniques; legal, ethical, and
243 professional standards issues in the practice of marriage and
244 family therapy; individual evaluation, assessment, and testing;

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245 and behavioral research which focuses on the interpretation and
246 application of research data as it applies to clinical practice.
247 ~~Courses in research, evaluation, appraisal, assessment, or~~
248 ~~testing theories and procedures; thesis or dissertation work; or~~
249 ~~practicums, internships, or fieldwork may not be applied toward~~
250 ~~this requirement.~~
251 b. A minimum of one graduate-level course of 3 semester
252 hours or 4 quarter hours in legal, ethical, and professional
253 standards issues in the practice of marriage and family therapy
254 or a course determined by the board to be equivalent.
255 c. A minimum of one graduate-level course of 3 semester
256 hours or 4 quarter hours in diagnosis, appraisal, assessment,
257 and testing for individual or interpersonal disorder or
258 dysfunction; and a minimum of one 3-semester-hour or 4-quarter-
259 hour graduate-level course in behavioral research which focuses
260 on the interpretation and application of research data as it
261 applies to clinical practice. Credit for thesis or dissertation
262 work, practicums, internships, or fieldwork may not be applied
263 toward this requirement.
264 d. A minimum of one supervised clinical practicum,
265 internship, or field experience in a marriage and family
266 counseling setting, during which the student provided 400 ~~180~~
267 direct client contact hours of marriage and family therapy
268 services under the supervision of an individual who met the
269 requirements for supervision under paragraph (c). This
270 requirement may be met by a supervised practice experience which
271 took place outside the academic arena, but which is certified as
272 equivalent to a graduate-level practicum or internship program
273 which required a minimum of 400 ~~180~~ direct client contact hours

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274 of marriage and family therapy services currently offered within
275 an academic program of a college or university accredited by an
276 accrediting agency approved by the United States Department of
277 Education, or an institution which is publicly recognized as a
278 member in good standing with the Association of Universities and
279 Colleges of Canada or a training institution accredited by the
280 Commission on Accreditation for Marriage and Family Therapy
281 Education ~~recognized by the United States Department of~~
282 ~~Education~~. Certification shall be required from an official of
283 such college, university, or training institution.
284 2. If the course title which appears on the applicant's
285 transcript does not clearly identify the content of the
286 coursework, the applicant shall be required to provide
287 additional documentation, including, but not limited to, a
288 syllabus or catalog description published for the course.
289
290 The required master's degree must have been received in an
291 institution of higher education which at the time the applicant
292 graduated was: fully accredited by a regional accrediting body
293 recognized by the Commission on Recognition of Postsecondary
294 Accreditation; publicly recognized as a member in good standing
295 with the Association of Universities and Colleges of Canada; or
296 an institution of higher education located outside the United
297 States and Canada, which at the time the applicant was enrolled
298 and at the time the applicant graduated maintained a standard of
299 training substantially equivalent to the standards of training
300 of those institutions in the United States which are accredited
301 by a regional accrediting body recognized by the Commission on
302 Recognition of Postsecondary Accreditation. Such foreign

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303 education and training must have been received in an institution
304 or program of higher education officially recognized by the
305 government of the country in which it is located as an
306 institution or program to train students to practice as
307 professional marriage and family therapists or psychotherapists.
308 The burden of establishing that the requirements of this
309 provision have been met shall be upon the applicant, and the
310 board shall require documentation, such as, but not limited to,
311 an evaluation by a foreign equivalency determination service, as
312 evidence that the applicant's graduate degree program and
313 education were equivalent to an accredited program in this
314 country. An applicant with a master's degree from a program
315 which did not emphasize marriage and family therapy may complete
316 the coursework requirement in a training institution fully
317 accredited by the Commission on Accreditation for Marriage and
318 Family Therapy Education or the Council for Accreditation of
319 Counseling and Related Educational Programs ~~recognized by the~~
320 ~~United States Department of Education~~.
321 (c) Has had at least ~~not less than~~ 2 years of clinical
322 experience during which 50 percent of the applicant's clients
323 were receiving marriage and family therapy services, which must
324 be at the post-master's level under the supervision of a
325 licensed marriage and family therapist with at least 5 years of
326 experience, or the equivalent, who is a qualified supervisor as
327 determined by the board. An individual who intends to practice
328 in Florida to satisfy the clinical experience requirements must
329 register pursuant to s. 491.0045 before ~~prior to~~ commencing
330 practice. If a graduate has a master's degree with a major
331 emphasis in marriage and family therapy or a closely related

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332 field that did not include all the coursework required under
333 sub-subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-c.~~, credit
334 for the post-master's level clinical experience shall not
335 commence until the applicant has completed coursework in at
336 least ~~a minimum of~~ 10 of the areas ~~courses~~ required under sub-
337 subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-c.~~, as determined
338 by the board, and at least 6 semester hours or 9 quarter hours
339 of the course credits must have been completed in the area of
340 marriage and family systems, theories, or techniques. Within the
341 2 ~~3~~ years of required experience, the applicant shall provide
342 direct individual, group, or family therapy and counseling, to
343 include the following categories of cases: unmarried dyads,
344 married couples, separating and divorcing couples, and family
345 groups including children. A doctoral internship may be applied
346 toward the clinical experience requirement. A licensed mental
347 health professional must be on the premises when clinical
348 services are provided by a registered intern in a private
349 practice setting. A registered intern may not engage in his or
350 her own independent private practice ~~The clinical experience~~
351 ~~requirement may be met by work performed on or off the premises~~
352 ~~of the supervising marriage and family therapist or the~~
353 ~~equivalent, provided the off-premises work is not the~~
354 ~~independent private practice rendering of marriage and family~~
355 ~~therapy services that does not have a licensed mental health~~
356 ~~professional, as determined by the board, on the premises at the~~
357 ~~same time the intern is providing services~~.
358 (d) Has passed a theory and practice examination designated
359 ~~provided~~ by the board ~~department~~ for this purpose.
360 (e) Has demonstrated~~, in a manner designated by rule of the~~

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361 ~~board,~~ knowledge of the laws and rules governing the practice of
362 clinical social work, marriage and family therapy, and mental
363 health counseling as determined by the board.
364 (f) For the purposes of dual licensure, the department
365 shall license as a marriage and family therapist any person who
366 meets the requirements of s. 491.0057. Fees for dual licensure
367 shall not exceed those stated in this subsection. This paragraph
368 expires July 1, 2020.
369 (4) MENTAL HEALTH COUNSELING.—Upon verification of
370 documentation and payment of a fee not to exceed $200, as set by
371 board rule, plus the actual per applicant cost to the department
372 for purchase of the National Clinical Mental Health Counselor
373 Examination ~~from the Professional Examination Service for the~~
374 ~~National Academy of Certified Clinical Mental Health Counselors~~
375 ~~or a similar national organization~~, an examination managed by
376 the National Board of Certified Counselors or its successor, the
377 department shall issue a license as a mental health counselor to
378 an applicant who the board certifies:
379 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid the
380 appropriate fee.
381 (b)1. Has a minimum of an earned master's degree from a
382 mental health counseling program accredited by the Council for
383 ~~the~~ Accreditation of Counseling and Related Educational Programs
384 that consists of at least 60 semester hours or 80 quarter hours
385 of clinical and didactic instruction, including a course in
386 human sexuality and a course in substance abuse. If the master's
387 degree is earned from a program related to the practice of
388 mental health counseling that is not accredited by the Council
389 for ~~the~~ Accreditation of Counseling and Related Educational

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390 Programs, then the coursework and practicum, internship, or
391 fieldwork must consist of at least 60 semester hours or 80
392 quarter hours and meet the following requirements:
393 a. Thirty-three semester hours or 44 quarter hours of
394 graduate coursework, which must include a minimum of 3 semester
395 hours or 4 quarter hours of graduate-level coursework in each of
396 the following 11 content areas: counseling theories and
397 practice; human growth and development; diagnosis and treatment
398 of psychopathology; human sexuality; group theories and
399 practice; individual evaluation and assessment; career and
400 lifestyle assessment; research and program evaluation; social
401 and cultural foundations; ~~counseling in community settings; and~~
402 substance abuse; and legal, ethical, and professional standards
403 issues in the practice of mental health counseling. Courses in
404 research, thesis or dissertation work, practicums, internships,
405 or fieldwork may not be applied toward this requirement.
406 b. ~~A minimum of 3 semester hours or 4 quarter hours of~~
407 ~~graduate-level coursework in legal, ethical, and professional~~
408 ~~standards issues in the practice of mental health counseling,~~
409 ~~which includes goals, objectives, and practices of professional~~
410 ~~counseling organizations, codes of ethics, legal considerations,~~
411 ~~standards of preparation, certifications and licensing, and the~~
412 ~~role identity and professional obligations of mental health~~
413 ~~counselors. Courses in research, thesis or dissertation work,~~
414 ~~practicums, internships, or fieldwork may not be applied toward~~
415 ~~this requirement.~~
416 ~~c.~~ The equivalent, as determined by the board, of at least
417 700 ~~1,000~~ hours of university-sponsored supervised clinical
418 practicum, internship, or field experience that includes at

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419 least 280 hours of direct client services, as required in the
420 accrediting standards of the Council for Accreditation of
421 Counseling and Related Educational Programs for mental health
422 counseling programs. This experience may not be used to satisfy
423 the post-master's clinical experience requirement.
424 2. If the course title which appears on the applicant's
425 transcript does not clearly identify the content of the
426 coursework, the applicant shall be required to provide
427 additional documentation, including, but not limited to, a
428 syllabus or catalog description published for the course.
429
430 Education and training in mental health counseling must have
431 been received in an institution of higher education which at the
432 time the applicant graduated was: fully accredited by a regional
433 accrediting body recognized by the Council for Higher Education
434 or its successor ~~Commission on Recognition of Postsecondary~~
435 ~~Accreditation~~; publicly recognized as a member in good standing
436 with the Association of Universities and Colleges of Canada; or
437 an institution of higher education located outside the United
438 States and Canada, which at the time the applicant was enrolled
439 and at the time the applicant graduated maintained a standard of
440 training substantially equivalent to the standards of training
441 of those institutions in the United States which are accredited
442 by a regional accrediting body recognized by the Council for
443 Higher Education or its successor ~~Commission on Recognition of~~
444 ~~Postsecondary Accreditation~~. Such foreign education and training
445 must have been received in an institution or program of higher
446 education officially recognized by the government of the country
447 in which it is located as an institution or program to train

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448 students to practice as mental health counselors. The burden of
449 establishing that the requirements of this provision have been
450 met shall be upon the applicant, and the board shall require
451 documentation, such as, but not limited to, an evaluation by a
452 foreign equivalency determination service, as evidence that the
453 applicant's graduate degree program and education were
454 equivalent to an accredited program in this country. Effective
455 July 1, 2020, an applicant must have a master's degree
456 accredited by the Council for Accreditation of Counseling and
457 Related Educational Programs consisting of at least 60 semester
458 hours or 80 quarter hours to apply for licensure under this
459 subsection. The applicant's graduate program must have
460 emphasized the common core curricular experience to include at
461 least 3 semester hours or 4 quarter hours of coursework
462 specifically addressing the diagnostic process, including
463 differential diagnosis and the use of the current diagnostic
464 tools, such as the current edition of the Diagnostic and
465 Statistical Manual of Mental Disorders.
466 (c) Has had at least ~~not less than~~ 2 years of clinical
467 experience in mental health counseling, which must be at the
468 post-master's level under the supervision of a licensed mental
469 health counselor or the equivalent who is a qualified supervisor
470 as determined by the board. An individual who intends to
471 practice in Florida to satisfy the clinical experience
472 requirements must register pursuant to s. 491.0045 before ~~prior~~
473 ~~to~~ commencing practice. If a graduate has a master's degree in
474 ~~with a major related to the practice of~~ mental health counseling
475 or a closely related field that did not include all the
476 coursework required under sub-subparagraph (b)1.a. ~~sub-~~

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477 ~~subparagraphs (b)1.a.-b.~~, credit for the post-master's level
478 clinical experience shall not commence until the applicant has
479 completed a minimum of seven of the courses required under sub-
480 subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-b., as determined~~
481 ~~by the board, one of which must be a course in psychopathology~~
482 ~~or abnormal psychology~~. A doctoral internship may be applied
483 toward the clinical experience requirement. A licensed mental
484 health professional must be on the premises when clinical
485 services are provided by a registered intern in a private
486 practice setting. No registered intern may engage in his or her
487 own independent practice ~~The clinical experience requirement may~~
488 ~~be met by work performed on or off the premises of the~~
489 ~~supervising mental health counselor or the equivalent, provided~~
490 ~~the off-premises work is not the independent private practice~~
491 ~~rendering of services that does not have a licensed mental~~
492 ~~health professional, as determined by the board, on the premises~~
493 ~~at the same time the intern is providing services~~.
494 (d) Has passed a theory and practice examination designated
495 ~~provided~~ by the department ~~for this purpose~~.
496 (e) Has demonstrated~~, in a manner designated by rule of the~~
497 ~~board,~~ knowledge of the laws and rules governing the practice of
498 clinical social work, marriage and family therapy, and mental
499 health counseling as determined by the board.
500 ~~(5) INTERNSHIP.—An individual who is registered as an~~
501 ~~intern and has satisfied all of the educational requirements for~~
502 ~~the profession for which the applicant seeks licensure shall be~~
503 ~~certified as having met the educational requirements for~~
504 ~~licensure under this section.~~
505 (5)~~(6)~~ RULES.—The board may adopt rules necessary to

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506 implement any education or experience requirement of this
507 section for licensure as a clinical social worker, marriage and
508 family therapist, or mental health counselor.
509 Section 5. Section 491.0057, Florida Statutes, is amended
510 to read:
511 491.0057 Dual licensure as a marriage and family
512 therapist.—
513 (1) The department shall license as a marriage and family
514 therapist a ~~any~~ person who demonstrates to the board that he or
515 she:
516 (a) ~~(1)~~ Holds a valid, active license as a psychologist
517 under chapter 490 or as a clinical social worker or mental
518 health counselor under this chapter, or is certified under s.
519 464.012 as an advanced registered nurse practitioner who has
520 been determined by the Board of Nursing as a specialist in
521 psychiatric mental health.
522 (b) ~~(2)~~ Has held a valid, active license for at least 3
523 years.
524 (c) ~~(3)~~ Has passed the examination provided by the
525 department for marriage and family therapy.
526 (2) This section is repealed July 1, 2020.
527 Section 6. Subsection (1) of section 491.006, Florida
528 Statutes, is amended to read:
529 491.006 Licensure or certification by endorsement.—
530 (1) The department shall license or grant a certificate to
531 a person in a profession regulated by this chapter who, upon
532 applying to the department and remitting the appropriate fee,
533 demonstrates to the board that he or she:
534 (a) Has demonstrated~~, in a manner designated by rule of the~~

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535 ~~board,~~ knowledge of the laws and rules governing the practice of
536 clinical social work, marriage and family therapy, and mental
537 health counseling as defined by rule of the board.
538 (b)1. Holds an active valid license to practice in the
539 profession for which the applicant seeks licensure ~~and has~~
540 ~~actively practiced the profession for which licensure is applied~~
541 ~~in another state for 3 of the last 5 years immediately preceding~~
542 ~~licensure~~.
543 2. Meets the education requirements of this chapter for the
544 profession for which licensure is applied or has demonstrated
545 proof of substantially equivalent education as defined by rule
546 of the board.
547 3. Has passed the licensure examination designated by the
548 board or has passed a substantially equivalent licensing
549 examination in another state for the profession which the
550 applicant seeks licensure ~~a substantially equivalent licensing~~
551 ~~examination in another state or has passed the licensure~~
552 ~~examination in this state in the profession for which the~~
553 ~~applicant seeks licensure~~.
554 4. Holds a license in good standing, is not under
555 investigation for an act that would constitute a violation of
556 this chapter, and has not been found to have committed any act
557 that would constitute a violation of this chapter. ~~The fees paid~~
558 ~~by any applicant for certification as a master social worker~~
559 ~~under this section are nonrefundable.~~
560 Section 7. Subsections (2) and (3) of section 491.007,
561 Florida Statutes, are amended to read:
562 491.007 Renewal of license, registration, or certificate.—
563 (2) Each applicant for renewal shall present satisfactory

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564 evidence that, in the period since the license or certificate
565 was issued, the applicant has completed continuing education
566 requirements set by rule of the board or department. The board
567 may not require ~~Not~~ more than 25 classroom hours of continuing
568 education per year ~~shall be required~~. ~~A certified master social~~
569 ~~worker is exempt from the continuing education requirements for~~
570 ~~the first renewal of the certificate.~~
571 ~~(3) The board or department shall prescribe by rule a~~
572 ~~method for the biennial renewal of an intern registration at a~~
573 ~~fee set by rule, not to exceed $100.~~
574 Section 8. Paragraph (c) of subsection (1) and subsection
575 (2) of section 491.009, Florida Statutes, are amended to read:
576 491.009 Discipline.—
577 (1) The following acts constitute grounds for denial of a
578 license or disciplinary action, as specified in s. 456.072(2):
579 (c) Being convicted or found guilty of, or entering
580 ~~regardless of adjudication, or having entered~~ a plea of nolo
581 contendere to, a crime in any jurisdiction which directly
582 relates to the practice of his or her profession or the ability
583 to practice his or her profession, regardless of adjudication.
584 ~~However, in the case of a plea of nolo contendere, the board~~
585 ~~shall allow the person who is the subject of the disciplinary~~
586 ~~proceeding to present evidence in mitigation relevant to the~~
587 ~~underlying charges and circumstances surrounding the plea.~~
588 (2) The board ~~department~~, or, in the case of certified
589 master social workers ~~psychologists~~, the department ~~board~~, may
590 enter an order denying licensure or imposing any of the
591 penalties in s. 456.072(2) against any applicant for licensure
592 or licensee who is found guilty of violating any provision of

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593 subsection (1) of this section or who is found guilty of
594 violating any provision of s. 456.072(1).
595 Section 9. Subsection (1) of section 491.0112, Florida
596 Statutes, is amended to read:
597 491.0112 Sexual misconduct by a psychotherapist;
598 penalties.—
599 (1) Any psychotherapist who commits sexual misconduct with
600 a client~~,~~ or former client ~~when the professional relationship~~
601 ~~was terminated primarily for the purpose of engaging in sexual~~
602 ~~contact,~~ commits a felony of the third degree, punishable as
603 provided in s. 775.082 or s. 775.083; however, a second or
604 subsequent offense is a felony of the second degree, punishable
605 as provided in s. 775.082, s. 775.083, or s. 775.084.
606 Section 10. Paragraphs (c) and (n) of subsection (1) of
607 section 491.012, Florida Statutes, are amended to read:
608 491.012 Violations; penalty; injunction.—
609 (1) It is unlawful and a violation of this chapter for any
610 person to:
611 (c) Use the following titles or any combination thereof,
612 unless she or he holds a valid, active license as a mental
613 health counselor issued pursuant to this chapter:
614 1. “Licensed mental health counselor.”
615 2. “Mental health counselor.”
616 3. “Mental health therapist.”
617 4. “Mental health consultant.”
618 5. “Mental health counselor coach.”
619 (n) ~~Effective October 1, 2000,~~ Practice juvenile sexual
620 offender therapy in this state, as the practice is defined in s.
621 491.0144, for compensation, unless the person holds an active

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622 license issued under this chapter and meets the requirements to
623 practice juvenile sexual offender therapy. An unlicensed person
624 may be employed by a program operated by or under contract with
625 the Department of Juvenile Justice or the Department of Children
626 and Families ~~Family Services~~ if the program employs a
627 professional who is licensed under chapter 458, chapter 459, s.
628 490.0145, or s. 491.0144 who manages or supervises the treatment
629 services.
630 Section 11. Section 491.0145, Florida Statutes, is amended
631 to read:
632 491.0145 Certified master social worker.—
633 (1) The department may certify an applicant for a
634 designation as a certified master social worker upon the
635 following conditions:
636 (a) ~~(1)~~ The applicant completes an application to be
637 provided by the department and pays a nonrefundable fee not to
638 exceed $250 to be established by rule of the department. The
639 completed application must be received by the department at
640 least 60 days before the date of the examination in order for
641 the applicant to qualify to take the scheduled exam.
642 (b) ~~(2)~~ The applicant submits proof satisfactory to the
643 department that the applicant has received a doctoral degree in
644 social work, or a master's degree with a major emphasis or
645 specialty in clinical practice or administration, including, but
646 not limited to, agency administration and supervision, program
647 planning and evaluation, staff development, research, community
648 organization, community services, social planning, and human
649 service advocacy. Doctoral degrees must have been received from
650 a graduate school of social work which at the time the applicant

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651 was enrolled and graduated was accredited by an accrediting
652 agency approved by the United States Department of Education.
653 Master's degrees must have been received from a graduate school
654 of social work which at the time the applicant was enrolled and
655 graduated was accredited by the Council on Social Work Education
656 or the Canadian Association of Schools of Social Work or by one
657 that meets comparable standards.
658 (c) ~~(3)~~ The applicant has had at least 3 years' experience,
659 as defined by rule, including, but not limited to, clinical
660 services or administrative activities as defined in paragraph
661 (b) ~~subsection (2)~~, 2 years of which must be at the post-
662 master's level under the supervision of a person who meets the
663 education and experience requirements for certification as a
664 certified master social worker, as defined by rule, or licensure
665 as a clinical social worker under this chapter. A doctoral
666 internship may be applied toward the supervision requirement.
667 (d) ~~(4)~~ Any person who holds a master's degree in social
668 work from an institution ~~institutions~~ outside the United States
669 may apply to the department for certification if the academic
670 training in social work has been evaluated as equivalent to a
671 degree from a school accredited by the Council on Social Work
672 Education. Any such person shall submit a copy of the academic
673 training from the Foreign Equivalency Determination Service of
674 the Council on Social Work Education.
675 (e) ~~(5)~~ The applicant has passed an examination required by
676 the department for this purpose. The nonrefundable fee for such
677 examination may not exceed $250 as set by department rule.
678 (2) A certified master social worker is exempt from the
679 continuing education requirements for the first renewal of the

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680 certificate.
681 (3) ~~(6)~~ ~~Nothing in~~ This chapter does not ~~shall be construed~~
682 ~~to~~ authorize a certified master social worker to provide
683 clinical social work services.
684 Section 12. Section 491.0149, Florida Statutes, is amended
685 to read:
686 491.0149 Display of license; use of professional title ~~on~~
687 ~~promotional materials~~.~~—~~
688 (1)(a) A person licensed under this chapter as a clinical
689 social worker, marriage and family therapist, or mental health
690 counselor, or certified as a master social worker shall
691 conspicuously display the valid license issued by the department
692 or a true copy thereof at each location at which the licensee
693 practices his or her profession.
694 (b)1. A licensed clinical social worker shall include the
695 words “licensed clinical social worker” or the letters “LCSW” on
696 all promotional materials, including cards, brochures,
697 stationery, advertisements, ~~and~~ signs, and social media, naming
698 the licensee.
699 2. A licensed marriage and family therapist shall include
700 the words “licensed marriage and family therapist” or the
701 letters “LMFT” on all promotional materials, including cards,
702 brochures, stationery, advertisements, ~~and~~ signs, and social
703 media, naming the licensee.
704 3. A licensed mental health counselor shall include the
705 words “licensed mental health counselor” or the letters “LMHC”
706 on all promotional materials, including cards, brochures,
707 stationery, advertisements, ~~and~~ signs, and social media, naming
708 the licensee.

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709 (2)(a) A person registered under this chapter as a clinical
710 social worker intern, marriage and family therapist intern, or
711 mental health counselor intern shall conspicuously display the
712 valid registration issued by the department or a true copy
713 thereof at each location at which the registered intern is
714 completing the experience requirements.
715 (b) A registered clinical social worker intern shall
716 include the words "registered clinical social worker intern," a
717 registered marriage and family therapist intern shall include
718 the words "registered marriage and family therapist intern," and
719 a registered mental health counselor intern shall include the
720 words "registered mental health counselor intern" on all
721 records, reports, and promotional materials, including cards,
722 brochures, stationery, advertisements, ~~and~~ signs, and social
723 media, naming the registered intern.
724 (3)(a) A person provisionally licensed under this chapter
725 as a provisional clinical social worker licensee, provisional
726 marriage and family therapist licensee, or provisional mental
727 health counselor licensee shall conspicuously display the valid
728 provisional license issued by the department or a true copy
729 thereof at each location at which the provisional licensee is
730 providing services.
731 (b) A provisional clinical social worker licensee shall
732 include the words "provisional clinical social worker licensee,"
733 a provisional marriage and family therapist licensee shall
734 include the words "provisional marriage and family therapist
735 licensee," and a provisional mental health counselor licensee
736 shall include the words "provisional mental health counselor
737 licensee" on all promotional materials, including cards,

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738 brochures, stationery, advertisements, ~~and~~ signs, and social
739 media, naming the provisional licensee.
740 Section 13. Section 491.017, Florida Statutes, is created
741 to read:
742 491.017 Parenting plan recommendation; presumption of good
743 faith; prerequisite to parent's filing suit; award of fees,
744 costs, reimbursement.—
745 (1) A mental health professional licensed under this
746 chapter who has been appointed by the court to develop a
747 parenting plan recommendation in a dissolution of marriage, a
748 case of domestic violence, or a paternity matter involving the
749 relationship of a child and a parent, including time-sharing of
750 children, is presumed to be acting in good faith if the mental
751 health professional's recommendation has been reached under
752 standards that a reasonable mental health professional would use
753 to develop a parenting plan recommendation.
754 (2) An administrative complaint against a court-appointed
755 mental health professional which relates to a parenting plan
756 recommendation developed by the mental health professional may
757 not be filed anonymously. The individual who files an
758 administrative complaint must include in the complaint his or
759 her name, address, and telephone number.
760 (3) A parent who desires to file a legal action against a
761 court-appointed mental health professional who has acted in good
762 faith in developing a parenting plan recommendation must
763 petition the judge who presided over the dissolution of
764 marriage, case of domestic violence, or paternity matter
765 involving the relationship of a child and a parent, including
766 time-sharing of children, to appoint another mental health

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767 professional. Upon the parent's showing of good cause, the court
768 shall appoint another mental health professional. The court
769 shall determine who is responsible for all court costs and
770 attorney fees associated with making such an appointment.
771 (4) If a legal action, whether it be a civil action, a
772 criminal action, or an administrative proceeding, is filed
773 against a court-appointed mental health professional in a
774 dissolution of marriage, case of domestic violence, or paternity
775 matter involving the relationship of a child and a parent,
776 including time-sharing of children, the claimant is responsible
777 for all reasonable costs and reasonable attorney fees associated
778 with the action for both parties if the mental health
779 professional is held not liable. If the mental health
780 professional is held liable in civil court, the mental health
781 professional must pay all reasonable costs and reasonable
782 attorney fees for the claimant.
783 Section 14. This act shall take effect July 1, 2013.
784
785 ========== T I T L E A M E N D M E N T ==========
786 And the title is amended as follows:
787 Delete everything before the enacting clause
788 and insert:
789 A bill to be entitled
790 An act relating to clinical, counseling, and
791 psychotherapy services; amending s. 491.004, F.S.;
792 deleting an obsolete provision; conforming provisions;
793 amending s. 491.0045, F.S.; requiring registered
794 interns to remain under supervision while maintaining
795 registered intern status; providing for noncompliance;

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796 providing for the expiration of intern registrations
797 and registered intern licenses; prohibiting specified
798 persons from applying for an intern registration;
799 amending s. 491.0046, F.S.; correcting cross-
800 references; prohibiting specified persons from
801 applying for a provisional license; amending s.
802 491.005, F.S.; revising the requirements for a
803 clinical social worker license, a marriage and family
804 therapist license, and a mental health counselor
805 license; deleting a provision requiring certain
806 registered interns to be certified as having met
807 specified licensure requirements; amending s.
808 491.0057, F.S.; providing for future repeal of
809 provisions providing for dual licensure as a marriage
810 and family therapist; amending s. 491.006, F.S.;
811 revising requirements of licensure or certification by
812 endorsement; amending s. 491.007, F.S.; deleting a
813 provision providing certified master social workers a
814 limited exemption from continuing education
815 requirements; deleting a provision requiring the Board
816 of Clinical Social Work, Marriage and Family Therapy,
817 and Mental Health Counseling to establish a procedure
818 for the biennial renewal of intern registrations;
819 amending s. 491.009, F.S.; revising acts constituting
820 grounds for the denial of a license or disciplinary
821 action; authorizing the board and the Department of
822 Health to deny licensure or impose specified penalties
823 against an applicant or licensee for certain
824 violations; amending s. 491.0112, F.S.; revising a

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825 provision providing that a psychotherapist who commits
826 sexual misconduct with a client or former client
827 commits a felony of the third degree; amending s.
828 491.012, F.S.; prohibiting a person from using the
829 title “mental health counselor coach” without a valid
830 mental health counselor license; deleting an obsolete
831 provision; amending s. 491.0145, F.S.; providing
832 certified master social workers a limited exemption
833 from continuing education requirements; amending s.
834 491.0149, F.S.; requiring the use of applicable
835 professional titles by licensees, provisional
836 licensees, and registrants on social media and other
837 specified materials; creating s. 491.017, F.S.;
838 providing a presumption of good faith for the actions
839 of a court-appointed mental health professional who
840 develops a parenting plan recommendation; prohibiting
841 anonymous complaints; providing prerequisites for a
842 parent to bring a suit against a mental health
843 professional; providing for the awarding of attorney
844 fees and court costs; providing an effective date.

By Senator Ring

29-01120-13 20131368__

1 A bill to be entitled
2 An act relating to clinical, counseling, and
3 psychotherapy services; amending s. 491.004, F.S.;
4 deleting an obsolete provision; conforming provisions;
5 amending s. 491.0045, F.S.; requiring registered
6 interns to remain under supervision while maintaining
7 registered intern status; providing for noncompliance;
8 providing for the expiration of intern registrations
9 and registered intern licenses; prohibiting specified
10 persons from applying for an intern registration;
11 amending s. 491.0046, F.S.; correcting cross-
12 references; prohibiting specified persons from
13 applying for a provisional license; amending s.
14 491.005, F.S.; revising the requirements for a
15 clinical social worker license, a marriage and family
16 therapist license, and a mental health counselor
17 license; deleting a provision requiring certain
18 registered interns to be certified as having met
19 specified licensure requirements; amending s.
20 491.0057, F.S.; providing for future repeal of
21 provisions providing for dual licensure as a marriage
22 and family therapist; amending s. 491.006, F.S.;
23 revising requirements of licensure or certification by
24 endorsement; amending s. 491.007, F.S.; deleting a
25 provision providing certified master social workers a
26 limited exemption from continuing education
27 requirements; deleting a provision requiring the Board
28 of Clinical Social Work, Marriage and Family Therapy,
29 and Mental Health Counseling to establish a procedure

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30 for the biennial renewal of intern registrations;
31 amending s. 491.009, F.S.; revising acts constituting
32 grounds for the denial of a license or disciplinary
33 action; authorizing the board and the Department of
34 Health to deny licensure or impose specified penalties
35 against an applicant or licensee for certain
36 violations; amending s. 491.0112, F.S.; revising a
37 provision providing that a psychotherapist who commits
38 sexual misconduct with a client or former client
39 commits a felony of the third degree; amending s.
40 491.012, F.S.; prohibiting a person from using the
41 title "mental health counselor coach" without a valid
42 mental health counselor license; deleting an obsolete
43 provision; amending s. 491.0145, F.S.; providing
44 certified master social workers a limited exemption
45 from continuing education requirements; amending s.
46 491.0149, F.S.; requiring the use of applicable
47 professional titles by licensees, provisional
48 licensees, and registrants on social media and other
49 specified materials; creating s. 491.017, F.S.;
50 providing a presumption of good faith for the actions
51 of a court-appointed mental health professional who
52 develops a parenting plan recommendation; prohibiting
53 anonymous complaints; providing prerequisites for a
54 parent to bring a suit against a mental health
55 professional; providing for the awarding of attorney
56 fees and court costs; providing an effective date.
57
58 Be It Enacted by the Legislature of the State of Florida:

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59

60 Section 1. Subsections (3) through (7) of section 491.004,
61 Florida Statutes, are amended to read:
62 491.004 Board of Clinical Social Work, Marriage and Family
63 Therapy, and Mental Health Counseling.—
64 ~~(3) No later than January 1, 1988, the Governor shall~~
65 ~~appoint nine members of the board as follows:~~
66 ~~(a) Three members for terms of 2 years each.~~
67 ~~(b) Three members for terms of 3 years each.~~
68 ~~(c) Three members for terms of 4 years each.~~
69 (3)~~(4)~~ As the terms of the ~~initial~~ members expire, the
70 Governor shall appoint successors for terms of 4 years; and
71 those members shall serve until their successors are appointed.
72 (4)~~(5)~~ The board shall adopt rules ~~pursuant to ss.~~
73 ~~120.536(1) and 120.54~~ to implement and enforce the provisions of
74 this chapter.
75 (5)~~(6)~~ All applicable provisions of chapter 456 relating to
76 activities of regulatory boards shall apply to the board.
77 (6)~~(7)~~ The board shall maintain its official headquarters
78 in the City of Tallahassee.
79 Section 2. Section 491.0045, Florida Statutes, is amended
80 to read:
81 491.0045 Intern registration; requirements.—
82 (1) ~~Effective January 1, 1998,~~ An individual who has not
83 satisfied ~~intends to practice in Florida to satisfy~~ the
84 postgraduate or post-master's level experience requirements, as
85 specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register
86 as an intern in the profession for which he or she is seeking
87 licensure before ~~prior to~~ commencing the post-master's

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88 experience requirement. ~~or~~ An individual who intends to satisfy
89 part of the required graduate-level practicum, internship, or
90 field experience, outside the academic arena for any profession,
91 must register as an intern in the profession for which he or she
92 is seeking licensure before ~~prior to~~ commencing the practicum,
93 internship, or field experience.
94 (2) The department shall register as a clinical social
95 worker intern, marriage and family therapist intern, or mental
96 health counselor intern each applicant who the board certifies
97 has:
98 (a) Completed the application form and remitted a
99 nonrefundable application fee not to exceed $200, as set by
100 board rule;
101 (b)1. Completed the education requirements as specified in
102 s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which
103 he or she is applying for licensure, if needed; and
104 2. Submitted an acceptable supervision plan, as determined
105 by the board, for meeting the practicum, internship, or field
106 work required for licensure that was not satisfied in his or her
107 graduate program.
108 (c) Identified a qualified supervisor.
109 (3) An individual registered under this section must remain
110 under supervision while practicing under registered intern
111 status ~~until he or she is in receipt of a license or a letter~~
112 ~~from the department stating that he or she is licensed to~~
113 ~~practice the profession for which he or she applied~~.
114 ~~(4) An individual who has applied for intern registration~~
115 ~~on or before December 31, 2001, and has satisfied the education~~
116 ~~requirements of s. 491.005 that are in effect through December~~

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117 ~~31, 2000, will have met the educational requirements for~~
118 ~~licensure for the profession for which he or she has applied.~~
119 (4) ~~(5) Individuals who have commenced the experience~~
120 ~~requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c)~~
121 ~~but failed to register as required by subsection (1) shall~~
122 ~~register with the department before January 1, 2000.~~ Individuals
123 who fail to comply with this section ~~subsection~~ shall not be
124 granted a license under this chapter, and any time spent by the
125 individual completing the experience requirement as specified in
126 s. 491.005(1)(c), (3)(c), or (4)(c) before ~~prior to~~ registering
127 as an intern shall not count toward completion of the ~~such~~
128 requirement.
129 (5) Intern registration shall be valid for 5 years. Any
130 subsequent intern registration shall be as a result of applying
131 for and meeting all requirements imposed on an applicant for
132 initial registration.
133 (6) A registered intern license issued before July 1, 2013,
134 shall expire 60 months after the date it was issued and may not
135 be renewed or reissued. Any subsequent intern registration shall
136 be issued at the discretion of the board.
137 (7) A person who has held a provisional license issued by
138 the board may not apply for an intern registration in the same
139 profession.
140 Section 3. Paragraph (c) of subsection (2) of section
141 491.0046, Florida Statutes, is amended, and subsection (5) is
142 added to that section, to read:
143 491.0046 Provisional license; requirements.—
144 (2) The department shall issue a provisional clinical
145 social worker license, provisional marriage and family therapist

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146 license, or provisional mental health counselor license to each
147 applicant who the board certifies has:
148 (c) Has met the following minimum coursework requirements:
149 1. For clinical social work, a minimum of 15 semester hours
150 or 22 quarter hours of the coursework required by s.
151 491.005(1)(b)2.b.
152 2. For marriage and family therapy, 10 of the courses
153 required by s. 491.005(3)(b)1.a. ~~491.005(3)(b)1.a.-c.~~, as
154 determined by the board, and at least 6 semester hours or 9
155 quarter hours of the course credits must have been completed in
156 the area of marriage and family systems, theories, or
157 techniques.
158 3. For mental health counseling, a minimum of seven of the
159 courses required under s. 491.005(4)(b)1.a. ~~491.005(b)1.a.-c.~~
160 (5) A person who has held an intern registration issued by
161 the board may not apply for a provisional license in the same
162 profession.
163 Section 4. Section 491.005, Florida Statutes, is amended to
164 read:
165 491.005 Licensure by examination.—
166 (1) CLINICAL SOCIAL WORK.—Upon verification of
167 documentation and payment of a fee not to exceed $200, as set by
168 board rule, plus the actual per applicant cost to the department
169 for purchase of the examination from the American Association of
170 State Social Worker's Boards or a similar national organization,
171 the department shall issue a license as a clinical social worker
172 to an applicant who the board certifies:
173 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid the
174 appropriate fee.

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175 (b)1. Has received a doctoral degree in social work from a
176 graduate school of social work which at the time the applicant
177 graduated was accredited by an accrediting agency recognized by
178 the United States Department of Education or has received a
179 master's degree in social work from a graduate school of social
180 work which at the time the applicant graduated:
181 a. Was accredited by the Council on Social Work Education;
182 b. Was accredited by the Canadian Association of Schools of
183 Social Work; or
184 c. Has been determined to have been a program equivalent to
185 programs approved by the Council on Social Work Education by the
186 Foreign Equivalency Determination Service of the Council on
187 Social Work Education. An applicant who graduated from a program
188 at a university or college outside of the United States or
189 Canada must present documentation of the equivalency
190 determination from the council in order to qualify.
191 2. The applicant's graduate program must have emphasized
192 direct clinical patient or client health care services,
193 including, but not limited to, coursework in clinical social
194 work, psychiatric social work, medical social work, social
195 casework, psychotherapy, or group therapy. The applicant's
196 graduate program must have included all of the following
197 coursework:
198 a. A supervised field placement which was part of the
199 applicant's advanced concentration in direct practice, during
200 which the applicant provided clinical services directly to
201 clients.
202 b. Completion of 24 semester hours or 32 quarter hours in
203 theory of human behavior and practice methods as courses in

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204 clinically oriented services, including a minimum of one course
205 in psychopathology, and no more than one course in research,
206 taken in a school of social work accredited or approved pursuant
207 to subparagraph 1.
208 3. If the course title which appears on the applicant's
209 transcript does not clearly identify the content of the
210 coursework, the applicant shall be required to provide
211 additional documentation, including, but not limited to, a
212 syllabus or catalog description published for the course.
213 (c) Has had at least ~~not less than~~ 2 years of clinical
214 social work experience, which took place subsequent to
215 completion of a graduate degree in social work at an institution
216 meeting the accreditation requirements of this section, under
217 the supervision of a licensed clinical social worker or the
218 equivalent who is a qualified supervisor as determined by the
219 board. An individual who intends to practice in Florida to
220 satisfy clinical experience requirements must register pursuant
221 to s. 491.0045 before ~~prior to~~ commencing practice. If the
222 applicant's graduate program was not a program which emphasized
223 direct clinical patient or client health care services as
224 described in subparagraph (b)2., the supervised experience
225 requirement must take place after the applicant has completed a
226 minimum of 15 semester hours or 22 quarter hours of the
227 coursework required. A doctoral internship may be applied toward
228 the clinical social work experience requirement. A licensed
229 mental health professional must be on the premises when clinical
230 services are provided by a registered intern in a private
231 practice setting. A registered intern may not engage in his or
232 her own independent private practice. ~~The experience requirement~~

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233 ~~may be met by work performed on or off the premises of the~~
234 ~~supervising clinical social worker or the equivalent, provided~~
235 ~~the off-premises work is not the independent private practice~~
236 ~~rendering of clinical social work that does not have a licensed~~
237 ~~mental health professional, as determined by the board, on the~~
238 ~~premises at the same time the intern is providing services.~~
239 (d) Has passed a theory and practice examination provided
240 by the department for this purpose.
241 (e) Has demonstrated, in a manner designated by rule of the
242 board, knowledge of the laws and rules governing the practice of
243 clinical social work, marriage and family therapy, and mental
244 health counseling.
245 (2) CLINICAL SOCIAL WORK.—
246 (a) Notwithstanding the provisions of paragraph (1)(b),
247 coursework which was taken at a baccalaureate level shall not be
248 considered toward completion of education requirements for
249 licensure unless an official of the graduate program certifies
250 in writing on the graduate school's stationery that a specific
251 course, which students enrolled in the same graduate program
252 were ordinarily required to complete at the graduate level, was
253 waived or exempted based on completion of a similar course at
254 the baccalaureate level. If this condition is met, the board
255 shall apply the baccalaureate course named toward the education
256 requirements.
257 (b) An applicant from a master's or doctoral program in
258 social work which did not emphasize direct patient or client
259 services may complete the clinical curriculum content
260 requirement by returning to a graduate program accredited by the
261 Council on Social Work Education or the Canadian Association of

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262 Schools of Social Work, or to a clinical social work graduate
263 program with comparable standards, in order to complete the
264 education requirements for examination. However, a maximum of 6
265 semester or 9 quarter hours of the clinical curriculum content
266 requirement may be completed by credit awarded for independent
267 study coursework as defined by board rule.
268 (3) MARRIAGE AND FAMILY THERAPY.—Upon verification of
269 documentation and payment of a fee not to exceed $200, as set by
270 board rule, plus the actual cost to the department for the
271 purchase of the examination from the Association of Marital and
272 Family Therapy Regulatory Board, or its successor ~~similar~~
273 ~~national organization~~, the department shall issue a license as a
274 marriage and family therapist to an applicant who the board
275 certifies:
276 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid the
277 appropriate fee.
278 (b)1. Has a minimum of a master's degree from a program
279 accredited by the Commission on Accreditation for Marriage and
280 Family Therapy Education, from a mental health counseling
281 program with a marriage and family track from a university in
282 this state accredited by the Council for the Accreditation of
283 Counseling and Related Educational Programs, from a program
284 accepted by the board as meeting these coursework requirements
285 ~~with major emphasis in marriage and family therapy~~, or a program
286 in a closely related field as determined by the board, and has
287 completed all of the following requirements:
288 a. Sixty ~~Thirty-six~~ semester hours or 80 ~~48~~ quarter hours
289 ~~of graduate coursework, which must include a minimum of 3~~
290 ~~semester hours or 4 quarter hours~~ of graduate-level coursework

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291 ~~course credits~~ in ~~each of~~ the following ~~nine~~ areas: dynamics of
292 marriage and family systems; marriage therapy and counseling
293 theory and techniques; family therapy and counseling theory and
294 techniques; individual human development theories throughout the
295 life cycle; personality theory or general counseling theory and
296 techniques; psychopathology; human sexuality theory and
297 counseling techniques; psychosocial theory; ~~and~~ substance abuse
298 theory and counseling techniques; legal, ethical, and
299 professional standards issues in the practice of marriage and
300 family therapy; individual evaluation, assessment, and testing;
301 and behavioral research which focuses on the interpretation and
302 application of research data as it applies to clinical practice.
303 ~~Courses in research, evaluation, appraisal, assessment, or~~
304 ~~testing theories and procedures; thesis or dissertation work; or~~
305 ~~practicums, internships, or fieldwork may not be applied toward~~
306 ~~this requirement.~~
307 b. A minimum of one graduate-level course of 3 semester
308 hours or 4 quarter hours in legal, ethical, and professional
309 standards issues in the practice of marriage and family therapy
310 or a course determined by the board to be equivalent.
311 c. A minimum of one graduate-level course of 3 semester
312 hours or 4 quarter hours in diagnosis, appraisal, assessment,
313 and testing for individual or interpersonal disorder or
314 dysfunction; and a minimum of one 3-semester-hour or 4-quarter-
315 hour graduate-level course in behavioral research which focuses
316 on the interpretation and application of research data as it
317 applies to clinical practice. Credit for thesis or dissertation
318 work, practicums, internships, or fieldwork may not be applied
319 toward this requirement.

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320 d. A minimum of one supervised clinical practicum,
321 internship, or field experience in a marriage and family
322 counseling setting, during which the student provided 400 ~~180~~
323 direct client contact hours of marriage and family therapy
324 services under the supervision of an individual who met the
325 requirements for supervision under paragraph (c). This
326 requirement may be met by a supervised practice experience which
327 took place outside the academic arena, but which is certified as
328 equivalent to a graduate-level practicum or internship program
329 which required a minimum of 400 ~~180~~ direct client contact hours
330 of marriage and family therapy services currently offered within
331 an academic program of a college or university accredited by an
332 accrediting agency approved by the United States Department of
333 Education, or an institution which is publicly recognized as a
334 member in good standing with the Association of Universities and
335 Colleges of Canada or a training institution accredited by the
336 Commission on Accreditation for Marriage and Family Therapy
337 Education ~~recognized by the United States Department of~~
338 ~~Education~~. Certification shall be required from an official of
339 such college, university, or training institution.
340 2. If the course title which appears on the applicant's
341 transcript does not clearly identify the content of the
342 coursework, the applicant shall be required to provide
343 additional documentation, including, but not limited to, a
344 syllabus or catalog description published for the course.
345
346 The required master's degree must have been received in an
347 institution of higher education which at the time the applicant
348 graduated was: fully accredited by a regional accrediting body

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349 recognized by the Commission on Recognition of Postsecondary
350 Accreditation; publicly recognized as a member in good standing
351 with the Association of Universities and Colleges of Canada; or
352 an institution of higher education located outside the United
353 States and Canada, which at the time the applicant was enrolled
354 and at the time the applicant graduated maintained a standard of
355 training substantially equivalent to the standards of training
356 of those institutions in the United States which are accredited
357 by a regional accrediting body recognized by the Commission on
358 Recognition of Postsecondary Accreditation. Such foreign
359 education and training must have been received in an institution
360 or program of higher education officially recognized by the
361 government of the country in which it is located as an
362 institution or program to train students to practice as
363 professional marriage and family therapists or psychotherapists.
364 The burden of establishing that the requirements of this
365 provision have been met shall be upon the applicant, and the
366 board shall require documentation, such as, but not limited to,
367 an evaluation by a foreign equivalency determination service, as
368 evidence that the applicant's graduate degree program and
369 education were equivalent to an accredited program in this
370 country. An applicant with a master's degree from a program
371 which did not emphasize marriage and family therapy may complete
372 the coursework requirement in a training institution fully
373 accredited by the Commission on Accreditation for Marriage and
374 Family Therapy Education ~~recognized by the United States~~
375 ~~Department of Education~~.
376 (c) Has had at least ~~not less than~~ 2 years of clinical
377 experience during which 50 percent of the applicant's clients

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378 were receiving marriage and family therapy services, which must
379 be at the post-master's level under the supervision of a
380 licensed marriage and family therapist with at least 5 years of
381 experience, or the equivalent, who is a qualified supervisor as
382 determined by the board. An individual who intends to practice
383 in Florida to satisfy the clinical experience requirements must
384 register pursuant to s. 491.0045 before ~~prior to~~ commencing
385 practice. If a graduate has a master's degree with a major
386 emphasis in marriage and family therapy or a closely related
387 field that did not include all the coursework required under
388 sub-subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-c.~~, credit
389 for the post-master's level clinical experience shall not
390 commence until the applicant has completed coursework in at
391 least ~~a minimum of~~ 10 of the areas ~~courses~~ required under sub-
392 subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-c.~~, as determined
393 by the board, and at least 6 semester hours or 9 quarter hours
394 of the course credits must have been completed in the area of
395 marriage and family systems, theories, or techniques. Within the
396 2 ~~3~~ years of required experience, the applicant shall provide
397 direct individual, group, or family therapy and counseling, to
398 include the following categories of cases: unmarried dyads,
399 married couples, separating and divorcing couples, and family
400 groups including children. A doctoral internship may be applied
401 toward the clinical experience requirement. A licensed mental
402 health professional must be on the premises when clinical
403 services are provided by a registered intern in a private
404 practice setting. A registered intern may not engage in his or
405 her own independent private practice ~~The clinical experience~~
406 ~~requirement may be met by work performed on or off the premises~~

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407 ~~of the supervising marriage and family therapist or the~~
408 ~~equivalent, provided the off-premises work is not the~~
409 ~~independent private practice rendering of marriage and family~~
410 ~~therapy services that does not have a licensed mental health~~
411 ~~professional, as determined by the board, on the premises at the~~
412 ~~same time the intern is providing services~~.
413 (d) Has passed a theory and practice examination designated
414 ~~provided~~ by the board ~~department~~ for this purpose.
415 (e) Has demonstrated~~, in a manner designated by rule of the~~
416 ~~board,~~ knowledge of the laws and rules governing the practice of
417 clinical social work, marriage and family therapy, and mental
418 health counseling as determined by the board.
419 (f) For the purposes of dual licensure, the department
420 shall license as a marriage and family therapist any person who
421 meets the requirements of s. 491.0057. Fees for dual licensure
422 shall not exceed those stated in this subsection. This paragraph
423 expires July 1, 2020.
424 (4) MENTAL HEALTH COUNSELING.—Upon verification of
425 documentation and payment of a fee not to exceed $200, as set by
426 board rule, plus the actual per applicant cost to the department
427 for purchase of the National Clinical Mental Health Counselor
428 Examination ~~from the Professional Examination Service for the~~
429 ~~National Academy of Certified Clinical Mental Health Counselors~~
430 ~~or a similar national organization~~, an examination managed by
431 the National Board of Certified Counselors or its successor, the
432 department shall issue a license as a mental health counselor to
433 an applicant who the board certifies:
434 (a) Has submitted an ~~made~~ application ~~therefor~~ and paid the
435 appropriate fee.

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436 (b)1. Has a minimum of an earned master's degree from a
437 mental health counseling program accredited by the Council for
438 the Accreditation of Counseling and Related Educational Programs
439 that consists of at least 60 semester hours or 80 quarter hours
440 of clinical and didactic instruction, including a course in
441 human sexuality and a course in substance abuse. If the master's
442 degree is earned from a program related to the practice of
443 mental health counseling that is not accredited by the Council
444 for the Accreditation of Counseling and Related Educational
445 Programs, then the coursework and practicum, internship, or
446 fieldwork must consist of at least 60 semester hours or 80
447 quarter hours and meet the following requirements:
448 a. Thirty-three semester hours or 44 quarter hours of
449 graduate coursework, which must include a minimum of 3 semester
450 hours or 4 quarter hours of graduate-level coursework in each of
451 the following 11 content areas: counseling theories and
452 practice; human growth and development; diagnosis and treatment
453 of psychopathology; human sexuality; group theories and
454 practice; individual evaluation and assessment; career and
455 lifestyle assessment; research and program evaluation; social
456 and cultural foundations; ~~counseling in community settings; and~~
457 substance abuse; and legal, ethical, and professional standards
458 issues in the practice of mental health counseling. Courses in
459 research, thesis or dissertation work, practicums, internships,
460 or fieldwork may not be applied toward this requirement.
461 b. The applicant's graduate program must have emphasized
462 the common core curricular experience to include at least 3
463 semester hours or 4 quarter hours of coursework specifically
464 addressing the diagnostic process, including differential

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465 diagnosis and the use of the current diagnostic tools, such as
466 the current edition of the Diagnostic and Statistical Manual of
467 Mental Disorders ~~A minimum of 3 semester hours or 4 quarter~~
468 ~~hours of graduate-level coursework in legal, ethical, and~~
469 ~~professional standards issues in the practice of mental health~~
470 ~~counseling, which includes goals, objectives, and practices of~~
471 ~~professional counseling organizations, codes of ethics, legal~~
472 ~~considerations, standards of preparation, certifications and~~
473 ~~licensing, and the role identity and professional obligations of~~
474 ~~mental health counselors. Courses in research, thesis or~~
475 ~~dissertation work, practicums, internships, or fieldwork may not~~
476 ~~be applied toward this requirement~~.
477 c. The equivalent, as determined by the board, of at least
478 700 ~~1,000~~ hours of university-sponsored supervised clinical
479 practicum, internship, or field experience that includes at
480 least 280 hours of direct client services, as required in the
481 accrediting standards of the Council for Accreditation of
482 Counseling and Related Educational Programs for mental health
483 counseling programs. This experience may not be used to satisfy
484 the post-master's clinical experience requirement.
485 2. If the course title which appears on the applicant's
486 transcript does not clearly identify the content of the
487 coursework, the applicant shall be required to provide
488 additional documentation, including, but not limited to, a
489 syllabus or catalog description published for the course.
490
491 Education and training in mental health counseling must have
492 been received in an institution of higher education which at the
493 time the applicant graduated was: fully accredited by a regional

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494 accrediting body recognized by the Council for Higher Education
495 or its successor ~~Commission on Recognition of Postsecondary~~
496 ~~Accreditation~~; publicly recognized as a member in good standing
497 with the Association of Universities and Colleges of Canada; or
498 an institution of higher education located outside the United
499 States and Canada, which at the time the applicant was enrolled
500 and at the time the applicant graduated maintained a standard of
501 training substantially equivalent to the standards of training
502 of those institutions in the United States which are accredited
503 by a regional accrediting body recognized by the Council for
504 Higher Education or its successor ~~Commission on Recognition of~~
505 ~~Postsecondary Accreditation~~. Such foreign education and training
506 must have been received in an institution or program of higher
507 education officially recognized by the government of the country
508 in which it is located as an institution or program to train
509 students to practice as mental health counselors. The burden of
510 establishing that the requirements of this provision have been
511 met shall be upon the applicant, and the board shall require
512 documentation, such as, but not limited to, an evaluation by a
513 foreign equivalency determination service, as evidence that the
514 applicant's graduate degree program and education were
515 equivalent to an accredited program in this country. Effective
516 July 1, 2020, an applicant must have a master's degree
517 accredited by the Council for Accreditation of Counseling and
518 Related Educational Programs consisting of at least 60 semester
519 hours or 80 quarter hours to apply for licensure under this
520 subsection.
521 (c) Has had at least ~~not less than~~ 2 years of clinical
522 experience in mental health counseling, which must be at the

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523 post-master's level under the supervision of a licensed mental
524 health counselor or the equivalent who is a qualified supervisor
525 as determined by the board. An individual who intends to
526 practice in Florida to satisfy the clinical experience
527 requirements must register pursuant to s. 491.0045 before ~~prior~~
528 ~~to~~ commencing practice. If a graduate has a master's degree in
529 ~~with a major related to the practice of~~ mental health counseling
530 or a closely related field that did not include all the
531 coursework required under sub-subparagraph (b)1.a. ~~sub-~~
532 ~~subparagraphs (b)1.a.-b.~~, credit for the post-master's level
533 clinical experience shall not commence until the applicant has
534 completed a minimum of seven of the courses required under sub-
535 subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-b., as determined~~
536 ~~by the board, one of which must be a course in psychopathology~~
537 ~~or abnormal psychology~~. A doctoral internship may be applied
538 toward the clinical experience requirement. A licensed mental
539 health professional must be on the premises when clinical
540 services are provided by a registered intern in a private
541 practice setting. No registered intern may engage in his or her
542 own independent practice ~~The clinical experience requirement may~~
543 ~~be met by work performed on or off the premises of the~~
544 ~~supervising mental health counselor or the equivalent, provided~~
545 ~~the off-premises work is not the independent private practice~~
546 ~~rendering of services that does not have a licensed mental~~
547 ~~health professional, as determined by the board, on the premises~~
548 ~~at the same time the intern is providing services~~.
549 (d) Has passed a theory and practice examination designated
550 ~~provided~~ by the department ~~for this purpose~~.
551 (e) Has demonstrated~~, in a manner designated by rule of the~~

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552 ~~board,~~ knowledge of the laws and rules governing the practice of
553 clinical social work, marriage and family therapy, and mental
554 health counseling as determined by the board.
555 ~~(5) INTERNSHIP.—An individual who is registered as an~~
556 ~~intern and has satisfied all of the educational requirements for~~
557 ~~the profession for which the applicant seeks licensure shall be~~
558 ~~certified as having met the educational requirements for~~
559 ~~licensure under this section.~~
560 (5) ~~(6)~~ RULES.—The board may adopt rules necessary to
561 implement any education or experience requirement of this
562 section for licensure as a clinical social worker, marriage and
563 family therapist, or mental health counselor.
564 Section 5. Section 491.0057, Florida Statutes, is amended
565 to read:
566 491.0057 Dual licensure as a marriage and family
567 therapist.—
568 (1) The department shall license as a marriage and family
569 therapist a ~~any~~ person who demonstrates to the board that he or
570 she:
571 (a) ~~(1)~~ Holds a valid, active license as a psychologist
572 under chapter 490 or as a clinical social worker or mental
573 health counselor under this chapter, or is certified under s.
574 464.012 as an advanced registered nurse practitioner who has
575 been determined by the Board of Nursing as a specialist in
576 psychiatric mental health.
577 (b) ~~(2)~~ Has held a valid, active license for at least 3
578 years.
579 (c) ~~(3)~~ Has passed the examination provided by the
580 department for marriage and family therapy.

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581 (2) This section is repealed July 1, 2020.
582 Section 6. Subsection (1) of section 491.006, Florida
583 Statutes, is amended to read:
584 491.006 Licensure or certification by endorsement.—
585 (1) The department shall license or grant a certificate to
586 a person in a profession regulated by this chapter who, upon
587 applying to the department and remitting the appropriate fee,
588 demonstrates to the board that he or she:
589 (a) Has demonstrated~~, in a manner designated by rule of the~~
590 ~~board,~~ knowledge of the laws and rules governing the practice of
591 clinical social work, marriage and family therapy, and mental
592 health counseling as defined by rule of the board.
593 (b)1. Holds an active valid license to practice in the
594 profession for which the applicant seeks licensure ~~and has~~
595 ~~actively practiced the profession for which licensure is applied~~
596 ~~in another state for 3 of the last 5 years immediately preceding~~
597 ~~licensure~~.
598 2. Meets the education requirements of this chapter for the
599 profession for which licensure is applied or has demonstrated
600 proof of substantially equivalent education as defined by rule
601 of the board.
602 3. Has passed the licensure examination designated by the
603 board or has passed a substantially equivalent licensing
604 examination in another state for the profession which the
605 applicant seeks licensure ~~a substantially equivalent licensing~~
606 ~~examination in another state or has passed the licensure~~
607 ~~examination in this state in the profession for which the~~
608 ~~applicant seeks licensure~~.
609 4. Holds a license in good standing, is not under

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610 investigation for an act that would constitute a violation of
611 this chapter, and has not been found to have committed any act
612 that would constitute a violation of this chapter. ~~The fees paid~~
613 ~~by any applicant for certification as a master social worker~~
614 ~~under this section are nonrefundable.~~
615 Section 7. Subsections (2) and (3) of section 491.007,
616 Florida Statutes, are amended to read:
617 491.007 Renewal of license, registration, or certificate.—
618 (2) Each applicant for renewal shall present satisfactory
619 evidence that, in the period since the license or certificate
620 was issued, the applicant has completed continuing education
621 requirements set by rule of the board or department. The board
622 may not require ~~Not~~ more than 25 classroom hours of continuing
623 education per year ~~shall be required~~. ~~A certified master social~~
624 ~~worker is exempt from the continuing education requirements for~~
625 ~~the first renewal of the certificate.~~
626 ~~(3) The board or department shall prescribe by rule a~~
627 ~~method for the biennial renewal of an intern registration at a~~
628 ~~fee set by rule, not to exceed $100.~~
629 Section 8. Paragraph (c) of subsection (1) and subsection
630 (2) of section 491.009, Florida Statutes, are amended to read:
631 491.009 Discipline.—
632 (1) The following acts constitute grounds for denial of a
633 license or disciplinary action, as specified in s. 456.072(2):
634 (c) Being convicted or found guilty of, or entering
635 ~~regardless of adjudication, or having entered~~ a plea of nolo
636 contendere to, a crime in any jurisdiction which directly
637 relates to the practice of his or her profession or the ability
638 to practice his or her profession, regardless of adjudication.

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639 ~~However, in the case of a plea of nolo contendere, the board~~
640 ~~shall allow the person who is the subject of the disciplinary~~
641 ~~proceeding to present evidence in mitigation relevant to the~~
642 ~~underlying charges and circumstances surrounding the plea.~~
643 (2) The board ~~department~~, or, in the case of certified
644 master social workers ~~psychologists~~, the department ~~board~~, may
645 enter an order denying licensure or imposing any of the
646 penalties in s. 456.072(2) against any applicant for licensure
647 or licensee who is found guilty of violating any provision of
648 subsection (1) of this section or who is found guilty of
649 violating any provision of s. 456.072(1).
650 Section 9. Subsection (1) of section 491.0112, Florida
651 Statutes, is amended to read:
652 491.0112 Sexual misconduct by a psychotherapist;
653 penalties.—
654 (1) Any psychotherapist who commits sexual misconduct with
655 a client~~,~~ or former client ~~when the professional relationship~~
656 ~~was terminated primarily for the purpose of engaging in sexual~~
657 ~~contact,~~ commits a felony of the third degree, punishable as
658 provided in s. 775.082 or s. 775.083; however, a second or
659 subsequent offense is a felony of the second degree, punishable
660 as provided in s. 775.082, s. 775.083, or s. 775.084.
661 Section 10. Paragraphs (c) and (n) of subsection (1) of
662 section 491.012, Florida Statutes, are amended to read:
663 491.012 Violations; penalty; injunction.—
664 (1) It is unlawful and a violation of this chapter for any
665 person to:
666 (c) Use the following titles or any combination thereof,
667 unless she or he holds a valid, active license as a mental

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668 health counselor issued pursuant to this chapter:
669 1. “Licensed mental health counselor.”
670 2. “Mental health counselor.”
671 3. “Mental health therapist.”
672 4. “Mental health consultant.”
673 5. “Mental health counselor coach.”
674 (n) ~~Effective October 1, 2000,~~ Practice juvenile sexual
675 offender therapy in this state, as the practice is defined in s.
676 491.0144, for compensation, unless the person holds an active
677 license issued under this chapter and meets the requirements to
678 practice juvenile sexual offender therapy. An unlicensed person
679 may be employed by a program operated by or under contract with
680 the Department of Juvenile Justice or the Department of Children
681 and Families ~~Family Services~~ if the program employs a
682 professional who is licensed under chapter 458, chapter 459, s.
683 490.0145, or s. 491.0144 who manages or supervises the treatment
684 services.
685 Section 11. Section 491.0145, Florida Statutes, is amended
686 to read:
687 491.0145 Certified master social worker.—
688 (1) The department may certify an applicant for a
689 designation as a certified master social worker upon the
690 following conditions:
691 (a) ~~(1)~~ The applicant completes an application to be
692 provided by the department and pays a nonrefundable fee not to
693 exceed $250 to be established by rule of the department. The
694 completed application must be received by the department at
695 least 60 days before the date of the examination in order for
696 the applicant to qualify to take the scheduled exam.

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697 (b) ~~(2)~~ The applicant submits proof satisfactory to the
698 department that the applicant has received a doctoral degree in
699 social work, or a master's degree with a major emphasis or
700 specialty in clinical practice or administration, including, but
701 not limited to, agency administration and supervision, program
702 planning and evaluation, staff development, research, community
703 organization, community services, social planning, and human
704 service advocacy. Doctoral degrees must have been received from
705 a graduate school of social work which at the time the applicant
706 was enrolled and graduated was accredited by an accrediting
707 agency approved by the United States Department of Education.
708 Master's degrees must have been received from a graduate school
709 of social work which at the time the applicant was enrolled and
710 graduated was accredited by the Council on Social Work Education
711 or the Canadian Association of Schools of Social Work or by one
712 that meets comparable standards.
713 (c) ~~(3)~~ The applicant has had at least 3 years' experience,
714 as defined by rule, including, but not limited to, clinical
715 services or administrative activities as defined in paragraph
716 (b) ~~subsection (2)~~, 2 years of which must be at the post-
717 master's level under the supervision of a person who meets the
718 education and experience requirements for certification as a
719 certified master social worker, as defined by rule, or licensure
720 as a clinical social worker under this chapter. A doctoral
721 internship may be applied toward the supervision requirement.
722 (d) ~~(4)~~ Any person who holds a master's degree in social
723 work from an institution ~~institutions~~ outside the United States
724 may apply to the department for certification if the academic
725 training in social work has been evaluated as equivalent to a

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726 degree from a school accredited by the Council on Social Work
727 Education. Any such person shall submit a copy of the academic
728 training from the Foreign Equivalency Determination Service of
729 the Council on Social Work Education.
730 (e) ~~(5)~~ The applicant has passed an examination required by
731 the department for this purpose. The nonrefundable fee for such
732 examination may not exceed $250 as set by department rule.
733 (2) A certified master social worker is exempt from the
734 continuing education requirements for the first renewal of the
735 certificate.
736 (3) ~~(6)~~ ~~Nothing in~~ This chapter does not ~~shall be construed~~
737 ~~to~~ authorize a certified master social worker to provide
738 clinical social work services.
739 Section 12. Section 491.0149, Florida Statutes, is amended
740 to read:
741 491.0149 Display of license; use of professional title ~~on~~
742 ~~promotional materials~~.~~—~~
743 (1)(a) A person licensed under this chapter as a clinical
744 social worker, marriage and family therapist, or mental health
745 counselor, or certified as a master social worker shall
746 conspicuously display the valid license issued by the department
747 or a true copy thereof at each location at which the licensee
748 practices his or her profession.
749 (b)1. A licensed clinical social worker shall include the
750 words “licensed clinical social worker” or the letters “LCSW” on
751 all promotional materials, including cards, brochures,
752 stationery, advertisements, ~~and~~ signs, and social media, naming
753 the licensee.
754 2. A licensed marriage and family therapist shall include

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755 the words “licensed marriage and family therapist” or the
756 letters “LMFT” on all promotional materials, including cards,
757 brochures, stationery, advertisements, ~~and~~ signs, and social
758 media, naming the licensee.
759 3. A licensed mental health counselor shall include the
760 words “licensed mental health counselor” or the letters “LMHC”
761 on all promotional materials, including cards, brochures,
762 stationery, advertisements, ~~and~~ signs, and social media, naming
763 the licensee.
764 (2)(a) A person registered under this chapter as a clinical
765 social worker intern, marriage and family therapist intern, or
766 mental health counselor intern shall conspicuously display the
767 valid registration issued by the department or a true copy
768 thereof at each location at which the registered intern is
769 completing the experience requirements.
770 (b) A registered clinical social worker intern shall
771 include the words “registered clinical social worker intern,” a
772 registered marriage and family therapist intern shall include
773 the words “registered marriage and family therapist intern,” and
774 a registered mental health counselor intern shall include the
775 words “registered mental health counselor intern” on all
776 records, reports, and promotional materials, including cards,
777 brochures, stationery, advertisements, ~~and~~ signs, and social
778 media, naming the registered intern.
779 (3)(a) A person provisionally licensed under this chapter
780 as a provisional clinical social worker licensee, provisional
781 marriage and family therapist licensee, or provisional mental
782 health counselor licensee shall conspicuously display the valid
783 provisional license issued by the department or a true copy

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784 thereof at each location at which the provisional licensee is
785 providing services.
786 (b) A provisional clinical social worker licensee shall
787 include the words "provisional clinical social worker licensee,"
788 a provisional marriage and family therapist licensee shall
789 include the words "provisional marriage and family therapist
790 licensee," and a provisional mental health counselor licensee
791 shall include the words "provisional mental health counselor
792 licensee" on all promotional materials, including cards,
793 brochures, stationery, advertisements, ~~and~~ signs, and social
794 media, naming the provisional licensee.
795 Section 13. Section 491.017, Florida Statutes, is created
796 to read:
797 491.017 Parenting plan recommendation; presumption of good
798 faith; prerequisite to parent's filing suit; award of fees,
799 costs, reimbursement.—
800 (1) A mental health professional licensed under this
801 chapter who has been appointed by the court to develop a
802 parenting plan recommendation in a dissolution of marriage, a
803 case of domestic violence, or a paternity matter involving the
804 relationship of a child and a parent, including time-sharing of
805 children, is presumed to be acting in good faith if the mental
806 health professional's recommendation has been reached under
807 standards that a reasonable mental health professional would use
808 to develop a parenting plan recommendation.
809 (2) An administrative complaint against a court-appointed
810 mental health professional which relates to a parenting plan
811 recommendation developed by the mental health professional may
812 not be filed anonymously. The individual who files an

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

813 administrative complaint must include in the complaint his or
814 her name, address, and telephone number.
815 (3) A parent who desires to file a legal action against a
816 court-appointed mental health professional who has acted in good
817 faith in developing a parenting plan recommendation must
818 petition the judge who presided over the dissolution of
819 marriage, case of domestic violence, or paternity matter
820 involving the relationship of a child and a parent, including
821 time-sharing of children, to appoint another mental health
822 professional. Upon the parent's showing of good cause, the court
823 shall appoint another mental health professional. The court
824 shall determine who is responsible for all court costs and
825 attorney fees associated with making such an appointment.
826 (4) If a legal action, whether it be a civil action, a
827 criminal action, or an administrative proceeding, is filed
828 against a court-appointed mental health professional in a
829 dissolution of marriage, case of domestic violence, or paternity
830 matter involving the relationship of a child and a parent,
831 including time-sharing of children, the claimant is responsible
832 for all reasonable costs and reasonable attorney fees associated
833 with the action for both parties if the mental health
834 professional is held not liable. If the mental health
835 professional is held liable in civil court, the mental health
836 professional must pay all reasonable costs and reasonable
837 attorney fees for the claimant.
838 Section 14. This act shall take effect July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR JEREMY RING
29th District

March 7, 2013

Honorable Senator Aaron Bean
302 Senate Office Building
404 South Monroe Street
Tallahassee, Fl 32399

Dear Chairman Bean,

I am writing to respectfully request your cooperation in placing Senate Bill 1368, relating to Clinical, Counseling, and Psychotherapy Services on the Health Policy agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

Jeremy Ring

Jeremy Ring
Senator District 29

cc: Sandra Stovall

FLORIDA SENATE
MAR 06 2013
Health Policy Committee

REPLY TO:
❒ 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
❒ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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

ENTERED

DON GAETZ
President of the Senate

GARRETT RICHTER
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 Committee on Health Policy

BILL: CS/SB 1160

INTRODUCER: Health Policy Committee and Senator Bullard

SUBJECT: Onsite Sewage Treatment and Disposal Systems

DATE: March 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.			CA	
3.			EP	
4.			RC	
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:

CS/SB 1160 amends section 381.0065, F.S., to:

- Provide that inspection reports of aerobic treatment units (ATU) may be submitted electronically to the Department of Health (DOH);
- Clarify that a property owner of an owner-occupied single-family residence may be approved and permitted by the DOH as a maintenance entity for his or her own ATU system upon written certification from the manufacturer that they have received training on the proper installation and maintenance of the unit;
- Clarify that maintenance entities must conspicuously disclose that a property owner of a owner-occupied single-family residence has the right to maintain his or her own ATU system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on such a system, but is subject to all permitting requirements;
- Provide that a septic tank contractor license under ch. 489, part III, F.S., must not be denied the access to training and spare parts by the manufacturer for maintenance entities;
- Allow component parts for ATUs to be replaced with parts that meet the manufacturer's specifications but are manufactured by others after the original warranty period for the ATU expires;

- Require Monroe County property owners who are not scheduled to be served by a central sewer by December 31, 2015, to comply with certain concentration level standards;
- Provide that a tested and certified onsite sewage treatment and disposal system (OSTDS) that reduces nitrogen concentrations by at least 70 percent is deemed to be in compliance with current nitrogen standards;
- Allow Monroe County property owners that have recently installed OSTDS in areas scheduled to be served by central sewer systems to continue to use the systems until 2020; and
- Provide for the extension of building permits for property owners within the Florida Keys Area of Critical State Concern.

This bill substantially amends section 381.0065 of the Florida Statutes.

II. Present Situation:

The Bureau of Onsite Sewage Programs (Bureau), within the DOH, develops statewide rules and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of septic systems within the state.[1] The Bureau also licenses over 700 septic tank contractors[2] and oversees 2.5 million onsite wastewater systems in Florida.[3]

In Florida, septic systems are referred to as onsite sewage treatment and disposal systems (OSTDS). An OSTDS can contain any one of the following components: a septic tank; a subsurface drainfield; an ATU; a graywater tank; a laundry wastewater tank; a grease interceptor; a pump tank; a waterless, incinerating or organic waste-composting toilet; and a sanitary pit privy.[4] Septic tanks are tanks in the ground that treat sewage without the presence of oxygen. Sewage flows from a home or business through a pipe into the first chamber, where solids are removed. The liquid then flows into the second chamber where anaerobic bacteria in the sewage break down the organic matter, allowing cleaner water to flow out of the second chamber.[5]

---

[1] The DOH does not permit the use of onsite sewage treatment and disposal systems where the estimated domestic sewage flow from the establishment is over 10,000 gallons per day (gpd) or the commercial sewage flow is over 5,000 gpd; where there is a likelihood that the system will receive toxic, hazardous or industrial wastes; where a sewer system is available; or of any system or flow from the establishment is currently regulated by the DEP. The DEP issues the permits for systems that discharge more than 10,000 gpd.

[2] About the Division of Disease Control and Health Protection, found at: http://www.myfloridaeh.com/about/index.html, last visited on Mar. 15, 2013.

[3] Division of Disease Control and Health Protection fact sheet, found at: http://www.myfloridaeh.com/about/EHfactsheet2012.pdf , last visited on Mar. 15, 2013.

[4] Department of Environmental Protection (DEP) website on septic systems. *See* http://www.dep.state.fl.us/water/wastewater/dom/septic.htm

[5] The EPA's *Primer for Municipal Wastewater Treatment Systems*, 2005, p. 22, found at http://water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf, last visited on Mar. 15, 2013.

Aerobic Treatment Units

The ATUs are similar to septic tanks, except that air is introduced and mixed with the wastewater inside the tank.[6] Aerobic (requiring oxygen) bacteria consume the organic matter in the sewage.[7] The effluent discharge from an aerobic system is typically released through a sub-surface distribution system or may be disinfected and discharged directly into surface water.[8]

The ATUs require the removal and disposal of solids that accumulate in the tank. Therefore, routine maintenance is necessary for them to function properly. The National Sanitation Foundation requires ATU manufacturers to provide an initial two-year warranty with two inspections per year.[9] According to the DOH analysis, there are 11,600 ATUs in operation in Florida, with 8,770 in four counties: Brevard, Charlotte, Franklin, and Monroe.

Pursuant to s. 381.0065, F.S., and Rule 64E-6.012, F.A.C., owners of ATUs are required to enter into a maintenance entity service agreement with a maintenance entity that is permitted by the DOH. That agreement must initially be for a period of at least two years and subsequent maintenance agreement renewals must be for at least one-year periods for the life of the system. The maintenance entity must obtain a system operating permit from the DOH for each ATU under service contract. The maintenance entity, which sets the fee for service contracts, must inspect each ATU at least twice each year and report quarterly to the DOH the number of ATUs inspected and serviced.

Furthermore, maintenance entities are required to provide documentation that they have been trained by the ATU manufacturer, who sets the maintenance requirements, and have access to required manuals and spare repairs. Maintenance entities are also required to be registered as either a state-licensed septic tank contractor or a state-licensed plumber.

Homeowners are exempt from the requirement that a person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under ch. 489, part III, F.S.,[10] but the homeowner must be permitted as a maintenance entity by the DOH and be trained and certified by the manufacturer. The annual maintenance entity permit fee is $25.

Florida Keys Area of Critical State Concern

In 1972, the Florida Legislature adopted the Environmental Land and Water Management Act, which provided the basis for the state to designate an Area of Critical State Concern. To be designated, an area must contain, or have a significant impact upon, environmental or natural

[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] The National Sanitation Foundation is an "independent, not-for-profit organization that provides standards development, product certification, auditing, education, and risk management for public health and the environment". *See* http://www.nsf.org/business/about_NSF/
[10] s. 381.0065(4), F.S.

resources of regional or statewide importance where uncontrolled private or public development would cause substantial deterioration of such resources.[11]

In 1979, Monroe County, including its municipalities and the Florida Keys, was designated as an Area of Critical State Concern pursuant to the "Florida Keys Area Protection Act."[12] The legislative intent was to establish a land use management system for the Florida Keys that would:

- Protect the natural environment and improve the near shore water quality;
- Support a diverse economic base that promotes balanced growth in accordance with the capacity of public facilities;
- Promote public land acquisition and ensure that the population of the Florida Keys can be safely evacuated;
- Provide affordable housing in close proximity to places of employment; and
- Protect property rights and promote coordination among governmental agencies that have permitting jurisdiction.

In 1996, Administration Commission Rule 28-20, F.A.C., was adopted. The rule contained a Work Program which, when complete, would improve water quality and better protect habitats for threatened and endangered species, and resolve other challenges. Of particular concern was the declining water quality of the near shore environment due to a lack of central sewer facilities, the loss of habitat for state and federally listed endangered species, public safety in the event of hurricanes, and a deficit of affordable housing.[13]

Concerns about water quality resulted in legislative action[14] which required that by December 2015, all sewage disposal in the Florida Keys must be upgraded to meet advanced wastewater treatment standards that reduce the amount of nitrogen, phosphorus, biological oxygen demand and total suspended solids.[15] As a result, when the construction of the central sewage system is concluded, approximately 23,000 septic tanks will be eliminated.[16] The bond financing in the Save our Everglades Program, approved by the Florida Legislature in 2012, and the extension of the Monroe County Infrastructure Sales Tax will provide the foundation to complete the central sewer by 2015.

Nitrogen Reduction

The 2008 Legislature tasked the DOH with conducting a six-year study to develop passive strategies for nitrogen reduction for OSTDS. Regardless of the source, excessive nitrogen has negative effects on public health and the environment. The project is in its fourth year and is within the original $5.1 million budget. The final phase of the project is 2013-2015 and project tasks will be to complete monitoring and other field activities, perform additional testing as

[11] s. 380.05(2)(a), F.S.
[12] s. 380.0552(3), F.S.
[13] Florida Department of Economic Opportunity, *Florida Keys Area of Critical State Concern Annual Report*, p. 11, 2012, available at: www.floridajobs.org/fdcp/dcp/acsc/Files/2012FLKeysReport.pdf (last viewed on March 20, 2013).
[14] Chapter 2010-205, Laws of Florida.
[15] Section 381.0065(4)(l), F.S.
[16] *See supra* FN 13.

deemed appropriate by the Legislature, and make final reporting recommendations on onsite sewage nitrogen reduction strategies for Florida's future.[17]

Current law requires OSTDS to cease discharge by December 31, 2015, or comply with the DOH rules and provide the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:[18]

- Biochemical Oxygen Demand of 10 mg/l;
- Suspended Solids of 10 mg/l;
- Total Nitrogen of 10 mg/l; and
- Total Phosphorus of 1 mg/l.

Tests performed by the nitrogen reduction study have produced results of reduction in total nitrogen of over 95 percent with a final effluent concentration of 2.6 mg/l or less for several of the systems.[19]

III. Effect of Proposed Changes:

The CS amends s. 381.0065, F.S., to:

- Extend building permits and any permit issued pursuant to part IV of ch. 373, F.S., regarding management and storage of surface waters, which expire between January 1, 2012, and January 1, 2016, for a period of three years after the expiration date of the permit. This extension also applies local government-issued permits and does not prohibit conversion from the construction phase to the operation phase of a permit. Also, the bill sets a maximum extension of seven total years for the listed extensions in combination with this extension.
- Exclude Monroe County property owners who are scheduled to be served by a central sewer by December 31, 2015, from the requirement to comply with the listed concentration level standards.[20]
- Provide that a tested and certified OSTDS in areas not scheduled to be served by a central sewer by December 31, 2015 that reduces nitrogen concentrations by at least 70 percent is deemed to be in compliance with current nitrogen standards.
- Allow Monroe County property owners that have recently installed OSTDS in areas scheduled to be served by central sewer systems to continue to use the systems until 2020.
- Provide that inspection reports of ATUs may be submitted electronically to the DOH.
- Clarify that a property owner of an owner-occupied single-family residence may be approved and permitted by the DOH as a maintenance entity for his or her own system upon written certification from the manufacturer that the owner has received training on the proper installation and maintenance of the unit.
- Clarify that maintenance entities must conspicuously disclose that a property owner of a owner-occupied single-family residence has the right to maintain his or her own system and

[17] *See* Florida Department of Health, *Status Report on Phase II and Phase III of the Florida Onsite Sewage Nitrogen Reduction Strategies Study*, February 1, 2013, available at: http://www.myfloridaeh.com/ostds/research/Nitrogen.html (last viewed on March 15, 2013).
[18] Section 381.0065(4)(l), F.S.
[19] *Id.*, n. 17
[20] s. 381.0065(4)(l)2.b., F.S.

is exempt from contractor registration requirements for performing construction, maintenance, or repairs on such a system, but is subject to all permitting requirements.

- Provide that a septic tank contractor license under ch. 489 part III, F.S., must not be denied the access to training and spare parts by the manufacturer for maintenance entities.
- Allow component parts for ATUs to be replaced with parts that meet the manufacturer's specifications but are manufactured by others after the original warranty period for the ATU expires.

The effective date of the bill is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1160 may have a positive fiscal impact on owners with ATU systems by allowing them to maintain their own systems however, home-owners may see an up-front cost for the training necessary to maintain their own systems.

C. Government Sector Impact:

The DOH would have to amend Rule 64E-6.012, F.A.C., to comply with the changes in the bill and the DOH estimates the cost of notices and meetings will be $5,000, which can be absorbed within their 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 Policy Committee on March 20, 2013:

The CS substantially amends SB 1160 to:

- Provide that inspection reports may be submitted electronically to the DOH.
- Clarify that a property owner of an owner-occupied single-family residence may be approved and permitted by the DOH as a maintenance entity for his or her own system upon written certification from the manufacturer that they have received training on the proper installation and maintenance of the unit.
- Clarify that maintenance entities must conspicuously disclose that a property owner of a owner-occupied single-family residence has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on such a system, but is subject to all permitting requirements.
- Provide that a septic tank contractor license under ch. 489, part III, F.S., must not be denied the access to training and spare parts by the manufacturer for maintenance entities.
- Allow component parts for ATUs to be replaced with parts that meet the manufacturer's specifications but are manufactured by others after the original warranty period for the ATU expires.
- Exclude Monroe County property owners who are scheduled to be served by a central sewer by December 31, 2015, from the requirement to comply with certain concentration level standards.
- Provide that a tested and certified OSTDS that reduces nitrogen concentrations by at least 70 percent is deemed to be in compliance with current nitrogen standards.
- Allow Monroe County property owners that have recently installed OSTDS in areas scheduled to be served by central sewer systems to continue to use the systems until 2020.
- Provide for the extension of building permits for property owners within the Florida Keys Area of Critical State Concern.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

The Committee on Health Policy (Braynon) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Paragraphs (l) and (u) of subsection (4) of
6 section 381.0065, Florida Statutes, are amended to read:
7 381.0065 Onsite sewage treatment and disposal systems;
8 regulation.—
9 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not
10 construct, repair, modify, abandon, or operate an onsite sewage
11 treatment and disposal system without first obtaining a permit
12 approved by the department. The department may issue permits to

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13 carry out this section, but shall not make the issuance of such
14 permits contingent upon prior approval by the Department of
15 Environmental Protection, except that the issuance of a permit
16 for work seaward of the coastal construction control line
17 established under s. 161.053 shall be contingent upon receipt of
18 any required coastal construction control line permit from the
19 Department of Environmental Protection. A construction permit is
20 valid for 18 months from the issuance date and may be extended
21 by the department for one 90-day period under rules adopted by
22 the department. A repair permit is valid for 90 days from the
23 date of issuance. An operating permit must be obtained prior to
24 the use of any aerobic treatment unit or if the establishment
25 generates commercial waste. Buildings or establishments that use
26 an aerobic treatment unit or generate commercial waste shall be
27 inspected by the department at least annually to assure
28 compliance with the terms of the operating permit. The operating
29 permit for a commercial wastewater system is valid for 1 year
30 from the date of issuance and must be renewed annually. The
31 operating permit for an aerobic treatment unit is valid for 2
32 years from the date of issuance and must be renewed every 2
33 years. If all information pertaining to the siting, location,
34 and installation conditions or repair of an onsite sewage
35 treatment and disposal system remains the same, a construction
36 or repair permit for the onsite sewage treatment and disposal
37 system may be transferred to another person, if the transferee
38 files, within 60 days after the transfer of ownership, an
39 amended application providing all corrected information and
40 proof of ownership of the property. There is no fee associated
41 with the processing of this supplemental information. A person

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42 may not contract to construct, modify, alter, repair, service,
43 abandon, or maintain any portion of an onsite sewage treatment
44 and disposal system without being registered under part III of
45 chapter 489. A property owner who personally performs
46 construction, maintenance, or repairs to a system serving his or
47 her own owner-occupied single-family residence is exempt from
48 registration requirements for performing such construction,
49 maintenance, or repairs on that residence, but is subject to all
50 permitting requirements. A municipality or political subdivision
51 of the state may not issue a building or plumbing permit for any
52 building that requires the use of an onsite sewage treatment and
53 disposal system unless the owner or builder has received a
54 construction permit for such system from the department. A
55 building or structure may not be occupied and a municipality,
56 political subdivision, or any state or federal agency may not
57 authorize occupancy until the department approves the final
58 installation of the onsite sewage treatment and disposal system.
59 A municipality or political subdivision of the state may not
60 approve any change in occupancy or tenancy of a building that
61 uses an onsite sewage treatment and disposal system until the
62 department has reviewed the use of the system with the proposed
63 change, approved the change, and amended the operating permit.
64 (l) 1. Within the Florida Keys area, which is a critical
65 state concern, any building permit and any permit issued by the
66 Department of Environmental Protection or by a water management
67 district pursuant to part IV of chapter 373, which has an
68 expiration date of January 1, 2012, through January 1, 2016, is
69 extended and renewed for a period of 3 years after its
70 previously scheduled expiration date. This extension includes

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71 any local government-issued development order or building
72 permit, including certificates of levels of service. This
73 section does not prohibit conversion from the construction phase
74 to the operation phase upon completion of construction and is in
75 addition to any permit extension. Extensions granted under this
76 section; s. 14, chapter 2009-96, Laws of Florida, as
77 reauthorized by s. 47, chapter 2010-147, Laws of Florida; s. 46,
78 chapter 2010-147, Laws of Florida; s. 74, chapter 2011-139, Laws
79 of Florida; or s. 79, chapter 2011-139, Laws of Florida, may not
80 exceed 7 years in total. Specific development order extensions
81 granted pursuant to s. 380.06(19)(c)2., may not be further
82 extended by this section.
83 2. For the Florida Keys, the department shall adopt a
84 special rule for the construction, installation, modification,
85 operation, repair, maintenance, and performance of onsite sewage
86 treatment and disposal systems which considers the unique soil
87 conditions and water table elevations, densities, and setback
88 requirements. On lots where a setback distance of 75 feet from
89 surface waters, saltmarsh, and buttonwood association habitat
90 areas cannot be met, an injection well, approved and permitted
91 by the department, may be used for disposal of effluent from
92 onsite sewage treatment and disposal systems. The following
93 additional requirements apply to onsite sewage treatment and
94 disposal systems in Monroe County:
95 a.~~1.~~ The county, each municipality, and those special
96 districts established for the purpose of the collection,
97 transmission, treatment, or disposal of sewage shall ensure, in
98 accordance with the specific schedules adopted by the
99 Administration Commission under s. 380.0552, the completion of

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100 onsite sewage treatment and disposal system upgrades to meet the
101 requirements of this paragraph.
102 b.~~2.~~ In areas not scheduled to go to a centralized sewer,
103 onsite sewage treatment and disposal systems must ~~cease~~
104 ~~discharge~~ by December 31, 2015, ~~or must~~ comply with department
105 rules and provide the level of treatment which, on a permitted
106 annual average basis, produces an effluent that contains no more
107 than the following concentrations:
108 (I)~~a.~~ Biochemical Oxygen Demand (CBOD5) of 10 mg/l.
109 (II)~~b.~~ Suspended Solids of 10 mg/l.
110 (III)~~c.~~ Total Nitrogen, expressed as N, of 10 mg/l. A
111 system tested and certified to provide at least a 70 percent
112 reduction in Nitrogen is in compliance with this standard.
113 (IV)~~d.~~ Total Phosphorus, expressed as P, of 1 mg/l.
114
115 In addition, onsite sewage treatment and disposal systems
116 discharging to an injection well must provide basic disinfection
117 as defined by department rule.
118 c.~~3.~~ ~~On or after July 1, 2010, all new, modified, and~~
119 ~~repaired onsite sewage treatment and disposal systems must~~
120 ~~provide the level of treatment described in subparagraph 2.~~
121 ~~However,~~ In areas scheduled to be served by central sewer by
122 December 31, 2015, if the property owner has paid a connection
123 fee or assessment for connection to the central sewer system, an
124 onsite sewage treatment and disposal system may be repaired to
125 the following minimum standards:
126 (I)~~a.~~ The existing tanks must be pumped and inspected and
127 certified as being watertight and free of defects in accordance
128 with department rule; and

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129 (II)~~b.~~ A sand-lined drainfield or injection well in
130 accordance with department rule must be installed.
131 d.~~4.~~ Onsite sewage treatment and disposal systems must be
132 monitored for total nitrogen and total phosphorus concentrations
133 as required by department rule.
134 e.~~5.~~ The department shall enforce proper installation,
135 operation, and maintenance of onsite sewage treatment and
136 disposal systems pursuant to this chapter, including ensuring
137 that the appropriate level of treatment described in sub-
138 subparagraph b. ~~subparagraph 2.~~ is met.
139 f.~~6.~~ The authority of a local government, including a
140 special district, to mandate connection of an onsite sewage
141 treatment and disposal system is governed by s. 4, chapter 99-
142 395, Laws of Florida. Notwithstanding any other provision of law
143 to the contrary, an onsite sewage treatment and disposal system,
144 installed after July 1, 2010, which meets the standards in sub-
145 subparagraph b., is not required to connect to a sewer until
146 December 31, 2020.
147 (u)1. The owner of an aerobic treatment unit system shall
148 maintain a current maintenance service agreement with an aerobic
149 treatment unit maintenance entity permitted by the department.
150 The maintenance entity shall obtain a system operating permit
151 from the department for each aerobic treatment unit under
152 service contract. The maintenance entity shall inspect each
153 aerobic treatment unit system at least twice each year and shall
154 report quarterly to the department on the number of aerobic
155 treatment unit systems inspected and serviced. The reports may
156 be submitted electronically.
157 2. The department may approve and permit a property owner

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158 of an owner-occupied, single-family residence as a maintenance
159 entity for the property owner's own aerobic treatment unit
160 system if the system manufacturer's approved representative
161 certifies in writing that the property owner has received
162 training on the proper installation and service of the system.
163 The maintenance entity service agreement must conspicuously
164 disclose that the property owner has the right to maintain his
165 or her own system and is exempt from contractor registration
166 requirements for performing construction, maintenance, or
167 repairs on the system. However, the property owner is subject to
168 all permitting requirements.
169 3. A manufacture may not deny a septic tank contractor
170 licensed under part III of chapter 489 access to aerobic
171 treatment unit system training or spare parts for maintenance
172 entities. After the original warranty period, component parts
173 for an aerobic treatment unit system may be replaced with parts
174 that meet manufacturer's specifications but are manufactured by
175 others. The maintenance entity shall maintain documentation for
176 a period of 2 years of the substitute part's equivalency and
177 shall provide such documentation to the department upon request.
178 4. The owner of an aerobic treatment unit system shall
179 allow the department to inspect during reasonable hours each
180 aerobic treatment unit system at least annually, and such
181 inspection may include collection and analysis of system-
182 effluent samples for performance criteria established by rule of
183 the department.
184 Section 2. This act shall take effect July 1, 2013.
185
186 ========== T I T L E A M E N D M E N T ==========

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187 And the title is amended as follows:
188 Delete everything before the enacting clause
189 and insert:
190 A bill to be entitled
191 An act relating to onsite sewage treatment and
192 disposal systems; amending s. 381.0065, F.S.;
193 extending the expiration date of building permits and
194 permits issued by the Department of Environmental
195 Protection or by a water management district;
196 providing that the extension of the expiration date
197 does not prohibit conversion from the construction
198 phase to the operation phase upon completion of
199 construction; providing that certain extensions may
200 not exceed a specified number of years; prohibiting
201 certain extensions; requiring onsite sewage treatment
202 and disposal systems to comply with department rules
203 and provide a certain level of treatment; providing
204 that certain onsite sewage treatment and disposal
205 systems installed after a specified date are not
206 required to connect to a sewer until a specified date;
207 authorizing the department to approve and permit a
208 property owner of an owner-occupied, single-family
209 residence as a maintenance entity for the property
210 owner’s own aerobic treatment unit system under
211 certain circumstances; requiring the maintenance
212 entity service agreement to conspicuously disclose
213 that the property owner has the right to maintain his
214 or her own system and is exempt from certain
215 contractor registration requirements; prohibiting a

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216 septic tank contractor from being denied access by the
217 manufacturer to aerobic treatment unit system training
218 or spare parts for maintenance entities; providing
219 that component parts for an aerobic treatment unit
220 system may be replaced with parts that meet
221 manufacturer’s specifications; requiring the
222 maintenance entity to maintain documentation for a
223 specified period of time and to provide the
224 documentation to the department upon request;
225 requiring an owner of an aerobic treatment unit system
226 to allow the department to annually inspect each
227 aerobic treatment unit system; providing an effective
228 date.

By Senator Bullard

39-01040-13 20131160__

A bill to be entitled

An act relating to onsite sewage treatment and disposal systems; amending s. 381.0065, F.S.; revising the frequency of inspections that owners of aerobic treatment unit systems must provide for under service agreements with certain maintenance entities permitted by the Department of Health; providing an effective date.

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

Section 1. Paragraph (u) of subsection (4) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 date of issuance. An operating permit must be obtained prior to
31 the use of any aerobic treatment unit or if the establishment
32 generates commercial waste. Buildings or establishments that use
33 an aerobic treatment unit or generate commercial waste shall be
34 inspected by the department at least annually to assure
35 compliance with the terms of the operating permit. The operating
36 permit for a commercial wastewater system is valid for 1 year
37 from the date of issuance and must be renewed annually. The
38 operating permit for an aerobic treatment unit is valid for 2
39 years from the date of issuance and must be renewed every 2
40 years. If all information pertaining to the siting, location,
41 and installation conditions or repair of an onsite sewage
42 treatment and disposal system remains the same, a construction
43 or repair permit for the onsite sewage treatment and disposal
44 system may be transferred to another person, if the transferee
45 files, within 60 days after the transfer of ownership, an
46 amended application providing all corrected information and
47 proof of ownership of the property. There is no fee associated
48 with the processing of this supplemental information. A person
49 may not contract to construct, modify, alter, repair, service,
50 abandon, or maintain any portion of an onsite sewage treatment
51 and disposal system without being registered under part III of
52 chapter 489. A property owner who personally performs
53 construction, maintenance, or repairs to a system serving his or
54 her own owner-occupied single-family residence is exempt from
55 registration requirements for performing such construction,
56 maintenance, or repairs on that residence, but is subject to all
57 permitting requirements. A municipality or political subdivision
58 of the state may not issue a building or plumbing permit for any

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

59 building that requires the use of an onsite sewage treatment and
60 disposal system unless the owner or builder has received a
61 construction permit for such system from the department. A
62 building or structure may not be occupied and a municipality,
63 political subdivision, or any state or federal agency may not
64 authorize occupancy until the department approves the final
65 installation of the onsite sewage treatment and disposal system.
66 A municipality or political subdivision of the state may not
67 approve any change in occupancy or tenancy of a building that
68 uses an onsite sewage treatment and disposal system until the
69 department has reviewed the use of the system with the proposed
70 change, approved the change, and amended the operating permit.
71 (u) The owner of an aerobic treatment unit system shall
72 maintain a current maintenance service agreement with an aerobic
73 treatment unit maintenance entity permitted by the department.
74 The maintenance entity shall obtain a system operating permit
75 from the department for each aerobic treatment unit under
76 service contract. The maintenance entity shall inspect each
77 aerobic treatment unit system at least twice each year for the
78 initial 2 years of the maintenance service agreement and at
79 least once a year thereafter and shall report semiannually
80 ~~quarterly~~ to the department ~~on~~ the number of aerobic treatment
81 unit systems inspected and serviced. Maintenance entity service
82 agreements must conspicuously disclose that a property owner of
83 an owner-occupied single-family residence is exempt from
84 registration requirements for performing such construction,
85 maintenance, or repairs on such residence, but is subject to all
86 permitting requirements. The owner shall allow the department to
87 inspect during reasonable hours each aerobic treatment unit

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

88 system at least annually, and such inspection may include
89 collection and analysis of system-effluent samples for
90 performance criteria established by rule of the department.
91 Section 2. This act shall take effect July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 5, 2013

I respectfully request that **Senate Bill #1160**, relating to Onsite Sewage Treatment and Disposal Systems, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Dwight Bullard
Florida Senate, District 39

FLORIDA SENATE
MAR 06 2013
Health Policy Committee

File signed original with committee office

S-020 (03/2004)

ENTERED

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 Committee on Health Policy

BILL: SB 732

INTRODUCER: Senator Grimsley

SUBJECT: Prescription Drugs

DATE: March 12, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HP	**Pre-meeting**
2.			RI	
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

SB 732 allows pharmacists to provide biosimilar products to patients in place of biologics under certain conditions. Such a substitution may occur if:

- The Federal Food and Drug Administration (FDA) has determined that the biologic and the biosimilar are interchangeable for the specified, indicated use;
- The prescriber does not express any preference against such a substitution;
- The person presenting the prescription is notified of the substitution in a manner consistent with s. 465.025(3), F.S.;
- The pharmacist or pharmacist's agent notifies the prescriber of the substitution via electronic means within ten business days of receiving the prescription; and
- The pharmacist and the prescriber retain written record of the substitution for at least four years.

The bill defines various relevant terms.

The bill creates one new section of the Florida Statutes.

II. Present Situation:

"Brand Name" Chemical Drugs and Generic Chemical Drugs

A "brand name" chemical drug is manufactured with simple chemical ingredients that have uniform, predictable structures which are easy to characterize and replicate. The potency of a "brand name" chemical drug is determined by a defined chemical process. A generic chemical

drug has the identical active substance and biological effect as its "brand name" counterpart. A generic chemical drug differs from a "brand name" chemical drug by inactive ingredients contained in the chemical structure and the rate and extent of absorption by the human body.

The Federal Food, Drug and Cosmetic Act, as amended by the Drug Price Competition and Patent Term Restoration Act of 1984 (the Hatch-Waxman Act), established the Abbreviated New Drug Application process, creating a pathway for approval of generic medications, primarily for chemical drugs.[1] Since 1984, the FDA has approved more than 8,000 generic drugs, which has resulted in hundreds of billions of dollars in cost savings to consumers.[2] In 2009, almost 75 percent of pharmaceutical prescriptions dispensed in the U.S. were generic medications.[3]

Biological Products and Biosimilar Biological Products

A biological product (biologic), in contrast to a chemical drug, is a large and complex protein, generally produced using a living system or organism.[4] It is heterogeneous and difficult to characterize. The effectiveness of a biologic is expressed in a biological system, meaning the biologic interacts with the human body, or an animal's body, to produce the desired effect. A biologic can be manufactured through a biotechnological process, derived from natural sources, or completely synthesized in a laboratory setting.[5]

A biosimilar biological product (biosimilar) has a similar, but not identical, active substance to another biologic. The biological activity of a biosimilar may vary as compared to another biologic. Because of the variable nature of a biosimilar, it is critical to identify the differences and determine which differences matter clinically. The determination of clinically meaningful differences between a biologic and its biosimilar can be exhibited through animal studies that measure toxicity, clinical studies on humans, and other scientifically accepted metrics.

In 2011, roughly 25 percent of the $320 billion spent on drugs in the U.S., was spent on biologics.[6] Each year, patients in the U.S. receive over 200 million vaccinations, 29 million transfusions of blood and blood components, and 1.6 million transplants of musculoskeletal tissue, all of which require the use of biologics.[7]

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[1] The Federal Food, Drug and Cosmetic Act, s. 505(b)(2); 21 U.S.C. 355(b)(2).
[2] U.S. Dept. of Health and Human Services, Food and Drug Administration, Regulatory Information, *Fact Sheet: New "Biosimilars" User Fees Will Enhance Americans' Access to Alternatives to Biologic Drugs*, July 16, 2012, available at www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FDASIA/ucm311121.htm. (last viewed on February 14, 2013).
[3] Kozlowski, S., Woodcock, J., et al., *Developing the Nation's Biosimilar Program*, N Engl J Med 365:5, 385 (August 4, 2011).
[4] U.S. Dept. of Health and Human Services, Food and Drug Administration, Sherman, M.D., Rachel, *Biosimilar Biological Products-Biosimilar Guidance Webinar*, February 15, 2012, slide 3, available at www.fda.gov/downloads/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/ucm292463.pdf.
[5] Id.
[6] IMS Health, *Top Therapeutic Classes by U.S. Spending-2011*, available at www.imshealth.com/deployedfiles/ims/Global/Content/Corporate/Press%20Room/Top_Therapy_Classes_by_Sales[1].pdf.
[7] U.S. Dept. of Health and Human Services, Food and Drug Administration, *About FDA*, available at www.fda.gov/AboutFDA/CentersOffices/ucm193951.htm. (last viewed on Feb. 13, 2013).

There is no existing market for biosimilars currently in the U.S.[8] Twelve biologics with global sales exceeding $67 billion will lose patent protection by 2020 and will be open to biosimilar competition.[9] By 2015, sales of biosimilars worldwide are expected to reach between $1.9 billion and $2.6 billion, up from $378 million in the first half of 2011.[10] The U.S. is forecast to be the largest opportunity for biosimilar sales by 2020, with a market value between $11 billion and $25 billion, which represents a 4 percent to 10 percent share of the total biologics market.[11] Biosimilars are forecast to comprise up to 50 percent of the off-patent biological market by 2020, with an assumed price discount between 20 percent and 30 percent when compared to biologics.[12]

The U.S. Federal Trade Commission predicts that the availability of biosimilars will significantly reduce the cost of biologics and increase their accessibility.[13]

The Biologics Price Competition and Innovation Act of 2010

The Biologics Price Competition and Innovation Act (BPCIA) was enacted as part of the Patient Protection and Affordable Care Act on March 23, 2010.[14] The BPCIA amends the Public Health Service Act and other statutes to create an abbreviated licensure pathway for biologics demonstrated to be biosimilar to or interchangeable with a reference biologic.[15] The BPCIA establishes the requirements for an application for a proposed biosimilar and an application for a proposed interchangeable product.[16]

The application must include information demonstrating biosimilarity, based on data derived from, among other things, "analytical studies that demonstrate that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components,"[17] animal studies that include an assessment of toxicity,[18] and a clinical study or studies sufficient to establish safety, purity, and potency of the biosimilar.[19] Biosimilarity means that a biologic is highly similar to the reference biologic, even when considering the differences

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[8] One product exists in the U.S. that may meet the current definition of "biosimilar" contained in the BPCIA. Omnitrope, a form of synthetic human growth hormone used to treat long-term growth failure in children and adult onset growth deficiency, and manufactured by Sandoz, was approved for sale in the U.S. under a special ruling from FDA in 2007.
[9] Genetics and Biosimilar Initiative, *US$67 billion worth of biosimilar patents expiring before 2020*, June 29, 2012 (on file with the Health Quality subcommittee staff).
[10] IMS Health, *Shaping the biosimilars opportunity: A global perspective on the evolving biosimilars landscape*, December 2011, page 1, available at www.imshealth.com/deployedfiles/ims/Global/Content/Insights/IMS%20Institute%20for%20Healthcare%20Informatics/Documents/Biosimilars_White_Paper.pdf.
[11] Id. at pages 3 and 6.
[12] Id. at page 6.
[13] U.S. Federal Trade Commission, *Emerging health care issues: follow-on biologic drug competition*, 2009, available at www.ftc.gov/os/2009/06/P083901biologicsreport.pdf.
[14] PPACA (Pub. L. 111-148), title VII, subtitle A, §§7001 to 7003.
[15] A reference product is an existing biological product against which another biological product is compared to determine biosimilarity and interchangeability.
[16] S. 351(k) of the PHS Act (42 U.S.C. 262(k)).
[17] 42 U.S.C. §262(k)(2)(A)(i)(I)(aa).
[18] 42 U.S.C. §262(k)(2)(A)(i)(I)(bb).
[19] 42 U.S.C. §262(k)(2)(A)(i)(I)(cc).

in clinically inactive components, and that there are no clinically meaningful differences between the biologic and the reference biologic in terms of safety, purity, and potency.[20]

The FDA will use a totality-of-the evidence approach in reviewing biosimilar applications, meaning all available data and information submitted in support of biosimilarity and the proposed biosimilar will be evaluated before a determination is made regarding biosimilarity and interchangeability.[21] To meet the standard of interchangeability, an applicant must provide sufficient information to demonstrate biosimilarity, and also demonstrate that the biologic can be expected to produce the same clinical result as the reference product in any given patient. In addition, an applicant must demonstrate that, if the biologic is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between the use of the biosimilar and the reference product is not greater than the risk of using the reference product without an alternation or switch in products.[22]

Pending FDA Rules on Biosimilars and Interchangeability

On February 9, 2012, the FDA issued three draft guidance documents regarding biosimilars and interchangeability. The documents, referenced as *Guidance for Industry*, answered questions regarding implementation of the BPCIA[23] and detailed scientific and quality considerations to be addressed in demonstrating biosimilarity.[24] The guidance documents have not yet been finalized by the FDA.

The Federal Food, Drug, and Cosmetic Act, as amended by the Biosimilar User Fee Act of 2012 (BsUFA), authorizes the FDA to assess and collect fees for biosimilars from October 2012 through September 2017.[25] The FDA dedicates these fees to expediting the review process for approval of biosimilars. The FDA has determined that biosimilars represent an important public health benefit, with the potential to offer life-saving or life-altering benefits at reduced cost to the patient. According to the FDA, BsUFA facilitates the development of safe and effective biosimilars for the American public.[26]

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[20] 42 U.S.C. §262(i)(2).

[21] U.S. Dept. of Health and Human Services, Food and Drug Administration, *Biosimilars Fact Sheet: Issuance of Draft Guidances on Biosimilar Products*, available at www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/ucm291197.htm .

[22] 42 U.S.C. §262(i)(3).

[23] U.S. Dept. of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research, *Guidance for Industry, Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009*, February 2012, available at www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm259797.htm. (last viewed on February 15, 2013).

[24] U.S. Dept. of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research, *Guidance for Industry, Scientific Considerations in Demonstrating Biosimilarity to a Reference Product* and *Guidance for Industry, Quality Considerations in Demonstrating Biosimilarity to a Reference Protein Product*, February 2012, both documents available at www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm290967.htm. (last viewed on February 15, 2013).

[25] Biosimilar User Fee Act of 2012, Pub. L. 112-144, title IV, ss. 401-408 (21 U.S.C. 379j-51 through 53).

[26] U.S. Dept. of Health and Human Services, Food and Drug Administration, *For Industry: Biosimilar User Fee Act (BsUFA)*, available at www.fda.gov/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/default.htm. (last viewed on February 16, 2013).

The FDA is currently meeting with sponsors of proposed biosimilars, receiving 50 requests for meetings and fulfilling 37 of those requests.[27] In addition, the FDA has approved 14 Investigative New Drug applications (INDs) for clinical development of proposed biosimilars.[28] The FDA has also noted that they are in active discussions with many sponsors at the pre-IND stage, indicating further clinical development of biosimilars in the near future.[29] The FDA also does not expect to diverge greatly from the policies established by the European Medicines Agency for approval of biosimilars for sale in the European Union and other specific countries.[30]

Biosimilars in Europe

The European Medicines Agency (EMA) is a decentralized agency of the European Union (EU), located in London, England. It is the scientific body of the European Commission (EC).[31] The EMA's primary responsibility is the "protection and promotion of public and animal health through the evaluation and supervision of medicines for human and veterinary use."[32]

The EMA is responsible for the scientific evaluation of applications for EU marketing authorizations for human and veterinary medicines governed by the "centralised procedure."[33] Under the "centralised procedure," pharmaceutical companies submit a single marketing-authorization application to the EMA.[34] Medicines are then approved by the EC based on the positive scientific opinion of the EMA and its expert committee, the Committee on Human Medicinal Products.[35] Once granted by the EC, a centralized marketing authorization is valid in all EU Member States, as well as Iceland, Liechtenstein and Norway.[36] By law, a company can only market a medicine once it has received a marketing authorization.[37]

The "centralised procedure" is mandatory for:

- Human medicines for the treatment of HIV/AIDS, cancer, diabetes, neurodegenerative diseases, auto-immune and other immune dysfunctions, and viral diseases;
- Veterinary medicines for use as growth or yield enhancers;
- Medicines derived from biotechnology processes, such as genetic engineering;

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[27] Comments of Dr. Janet Woodcock, Director, Center for Drug Evaluation and Research, Food and Drug Administration, at Bloomberg State of Health Care 2013 Summit, February 11, 2013 (video available at www.bloomberg.com/video/fda-sees-more-breakthrough-drugs-woodcock-says-~Obd9FUMQ7qWka0CfYq3dg.html) (last viewed on February 15, 2013).
[28] Id.
[29] Id.
[30] Id.
[31] European Generic Medicines Association, *EGA FACT SHEET on generic medicines, FAQs about Biosimilar Medicines*, July 2011, available at www.egagenerics.com/index.php/biosimilar-medicines/faq-on-biosimilars. (last viewed on February 15, 2013).
[32] European Medicines Agency, *What we do*, available at http://www.ema.europa.eu/ema/index.jsp?curl=pages/about_us/general/general_content_000091.jsp&mid=WC0b01ac058002 8a42. (last viewed on February 15, 2013)
[33] Id.
[34] Id.
[35] *See supra*, FN 23.
[36] Id.
[37] Id.

- Advanced-therapy medicines, such as gene-therapy, somatic cell-therapy or tissue-engineered medicines; and
- Officially designated medicines used for rare human diseases.[38]

Biologics and biosimilars fall within the mandatory "centralised procedure" for approval and marketing within the EU and other specified European countries.

In 2003, the EMA created a new pathway for approving biosimilar medicines.[39] The central feature of the evaluation process is the comparison of the biosimilar with its reference product to show that there are no significant differences between them.[40] The EMA further explains the evaluation process to determine biosimilarity, which is very similar to the proposed pathway process in the U.S.:

> The relevant regulatory authority applies stringent criteria in their evaluation of the studies comparing the quality, safety and effectiveness of the two medicines. The studies on quality include comprehensive comparisons of the structure and biological activity of their active substances, while the studies on safety and effectiveness should show that there are no significant differences in their benefits and risks, including the risk of immune reactions.

One critical difference between the approval process established by the EMA and the proposed pathway outlined by the FDA is that the EMA does not make recommendations on whether a biosimilar can be used interchangeably with its reference product.[41] The FDA will determine interchangeability, which in turn will determine whether or not a biosimilar can be substituted for a prescription biologic by a pharmacist.

The EMA published general guidelines on biosimilars in 2005 and approved its first biosimilar in 2006.[42] As of February 2012, the EMA had approved 14 biosimilar products,[43] with reference products including filgrastim,[44] epoetin,[45] and somatropin.[46]

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[38] European Medicines Agency, *Central authorization of medicines*, available at http://www.ema.europa.eu/ema/index.jsp?curl=pages/about_us/general/general_content_000109.jsp&mid=WC0b01ac058002 8a47. (last viewed on February 15, 2013).
[39] European Medicines Agency, *Questions and answers on biosimilar medicines (similar biological medicinal products)*, available at www.ema.europa.eu/docs/en_GB/document_library/Medicine_QA/2009/12/WC500020062.pdf. (last viewed on February 15, 2013).
[40] *See supra*, FN 38.
[41] *See supra*, FN 39.
[42] European Medicines Agency, *Guideline on similar biological medicinal products*, 2005, available at www.emea.europa.eu/pdfs/human/biosimilar/043704en.pdf .
[43] *See supra*, FN 4 at slide 23.
[44] A white blood cell booster used to reduce infection risks in persons receiving strong chemotherapy treatment.
[45] Also known as EPO, it treats anemia caused by chronic kidney disease in dialysis patients by promoting red blood cell production.
[46] Synthetic human growth hormone (hGH).

Institutional Pharmacy

Florida statute requires any institution, such as a hospital, seeking to operate a pharmacy to obtain a permit from the Department of Health (DOH).[47] DOH has established three classes of permit for institutional pharmacies:

- Class I:[48] All medicinal drugs are administered from individual prescription containers to individual patients. Medicinal drugs are not dispensed on premises. An exception is noted to allow licensed nursing homes to purchase and administer oxygen to residents.
- Class II:[49] The pharmacy employs a licensed pharmacist to dispense medication to patients in the institution for use on the premises. Class II institutional pharmacies are most often located in hospitals.
- Modified Class II:[50] The pharmacy is located in a short-term, primary care treatment center which meets all the requirements for a Class II permit. Modified Class II pharmacies are classified according to the type of pharmaceutical delivery system, either a patient-specific or bulk drug system, as Type A, Type B, and Type C.[51]

Medicinal drugs can only be dispensed from an institutional pharmacy with a community pharmacy permit from DOH.[52] In a Class II institutional pharmacy, medical staff of the institution may approve a formulary system that identifies medicinal drugs and proprietary preparations that may be dispensed by the institutional pharmacist.[53] Any facility with a Class II institutional pharmacy permit must develop policies and procedures regarding the formulary that are consistent with established standards by the American Hospital Association and the American Society of Hospital Pharmacists.[54]

Pharmacist Substitution in Florida

In general, a pharmacist in Florida is required to substitute a less expensive generic medication for a prescribed brand name medication.[55] The presenter of the prescription may specifically request the brand name medication.[56] Also, the prescriber may prevent substitution by indicating the brand name medication is "medically necessary" in writing, orally, or, in the case of an electronic transmission of the prescription, by making an overt act to indicate the brand name medication is "medically necessary."[57] The pharmacist must inform the presenter of the prescription that a substitution has been made, advise the presenter that he or she may refuse the substitution and request the brand name medication, and pass on to the consumer the full amount of any savings realized by the substitution.[58]

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[47] S. 465.019(1), F.S.
[48] S. 465.019(2)(a), F.S.
[49] S. 465.019(2)(b), F.S.
[50] S. 465.019(2)(c), F.S.
[51] Rule 64B-16-28.702(2)(b)-(d), F.A.C.
[52] S. 465.019(4), F.S.; see also s. 465.018, F.S., regarding community pharmacy permits.
[53] S. 465.019(6), F.S.
[54] Id.
[55] S. 465.025(2), F.S.
[56] Id.
[57] Id.
[58] S. 465.025(3)(a), F.S.; *see also* Rule 64B-16-27.530, F.A.C.

Each pharmacy is required to establish a formulary of brand name medications and generic medications which, if selected as the drug product of choice, pose no threat to patient health and safety.[59] The Board of Pharmacy and the Board of Medicine are required to establish a formulary which lists brand name medications and generic medications that are determined to be clinically different so as to be biologically and therapeutically inequivalent.[60] Substitution of the drugs included in this formulary would pose a threat to patient health and safety.[61] The boards are required to distribute the formulary to licensed and registered pharmacies and pharmacists.[62] Each board that regulates practitioners licensed by the state to prescribe medications must incorporate the formulary into its rules.[63] No pharmacist may substitute a generic medication for a brand name medication if either medication is included in the formulary.[64]

There is no provision in Florida law regarding substitution for biosimilars.

III. Effect of Proposed Changes:

Section 1 creates a new section of law. The bill provides definitions for "biological product," "biosimilar," "interchangeable," and "prescriber." The bill offers guidelines for when pharmacists may substitute a biosimilar product for a prescribed biologic. This substitution may occur if:

- The FDA has determined that the biologic and the biosimilar are interchangeable for the specified, indicated use;
- The prescriber does not express any preference against such a substitution;
- The person presenting the prescription is notified of the substitution in a manner consistent with s. 465.025(3), F.S.;
- The pharmacist or pharmacist's agent notifies the prescriber of the substitution via electronic means within ten business days of receiving the prescription; and
- The pharmacist and the prescriber retain written record of the substitution for at least four years.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[59] S. 465.025(5), F.S.; *see also* Rule 64B-16.27.520, F.A.C.
[60] S. 465.025(6), F.S.; *see also* Rule 64B-16.27.500, F.A.C.
[61] Id.
[62] S. 465.025(6)(b), F.S.
[63] Id.
[64] Id.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 732 provides a pathway to establish a broader market for biosimilars in Florida through interchangeability with biologics. Once the FDA approves a biosimilar, it may be prescribed in Florida without intervention from the Legislature if the prescriber writes specifically for that biosimilar. However, this bill allows a biosimilar which the FDA approves to be interchangeable with a biologic to be lawfully substituted for a prescribed biologic. Patients will have the opportunity to use biosimilars in place of biologic products, potentially at a reduced cost.

C. Government Sector Impact:

While a biosimilar market does not currently exist in the U.S., it is anticipated that once biosimilars are approved by the FDA and deemed interchangeable with prescription biologics, Medicaid and the State Group Insurance program may realize cost savings due to substitution of less expensive biosimilars for prescription biologics. The estimate of cost savings is undetermined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDA has yet to approve any biosimilars. It may be premature for the state to pass legislation allowing biosimilars to be interchanged with biologics when such products do not exist.

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.

178606

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Health Policy (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (6) of section 465.019, Florida Statutes, is amended to read:

465.019 Institutional pharmacies; permits.—

(6) In a Class II institutional pharmacy, an institutional formulary system may be adopted with approval of the medical staff for the purpose of identifying those medicinal drugs, ~~and~~ proprietary preparations, biological products, biosimilars, and biosimilar interchangeables that may be dispensed by the

178606

13 pharmacists employed in such institution. A facility with a
14 Class II institutional permit which is operating under the
15 formulary system shall establish policies and procedures for the
16 development of the system in accordance with the joint standards
17 of the American Hospital Association and American Society of
18 Hospital Pharmacists for the utilization of a hospital formulary
19 system, which formulary shall be approved by the medical staff.
20 Section 2. Section 465.0252, Florida Statutes, is created
21 to read:
22 465.0252 Substitution of interchangeable biosimilar
23 products.—
24 (1) As used in this section, the terms “biological
25 product,” “biosimilar,” and “interchangeable” have the same
26 meanings as defined in s. 351 of the federal Public Health
27 Service Act, 42 U.S.C. s. 262.
28 (2) A pharmacist may only dispense a substitute biological
29 product for the prescribed biological product if:
30 (a) The United States Food and Drug Administration has
31 determined that the substitute biological product is biosimilar
32 to and interchangeable for the prescribed biological product.
33 (b) The practitioner ordering the prescription does not
34 express a preference against substitution in writing, verbally,
35 or electronically.
36 (c) The pharmacist notifies the person presenting the
37 prescription of the substitution in the same manner as provided
38 in s. 465.025(3)(a).
39 (d) The pharmacist or the pharmacist’s agent, within 5
40 business days after dispensing the substitute biological product
41 in lieu of the prescribed biological product, notifies the

178606

42 practitioner ordering the prescription of the substitution by
43 facsimile, telephone, voicemail, e-mail, electronic medical
44 record, or other electronic means.
45 (e) The pharmacist and the practitioner ordering the
46 prescription each retain a written or electronic record of the
47 substitution for at least 2 years.
48 (3) A pharmacist who practices in a class II or modified
49 class II institutional pharmacy shall comply with the
50 notification provisions of paragraphs (2)(c) and (d) by entering
51 the substitution in the institution's written medical record
52 system or electronic medical record system.
53 (4) The board shall maintain on its public website a
54 current list of biological products that the United States Food
55 and Drug Administration has determined are biosimilar and
56 interchangeable as provided in paragraph (2)(a).
57 Section 3. This act shall take effect July 1, 2013.
58
59 ========== T I T L E A M E N D M E N T ==========
60 And the title is amended as follows:
61 Delete everything before the enacting clause
62 and insert:
63 A bill to be entitled
64 An act relating to pharmacy; amending s. 465.019,
65 F.S.; permitting a class II institutional pharmacy
66 formulary to include biologics, biosimilars, and
67 biosimilar interchangeables; creating s. 465.0252,
68 F.S.; providing definitions; providing requirements
69 for a pharmacist to dispense a substitute biological
70 product that is determined to be biosimilar to and

178606

71 interchangeable for the prescribed biological product;
72 providing notification requirements for a pharmacist
73 in a class II or modified class II institutional
74 pharmacy; requiring the Board of Pharmacy to maintain
75 a current list of interchangeable biosimilar products;
76 providing an effective date.

834332

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (178606)**
2
3 Delete lines 39 - 40
4 and insert:
5 (d) The pharmacist or the pharmacist's agent, within 24
6 hours after dispensing the substitute biological product

831282

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Health Policy (Brandes) recommended the following:

Senate Amendment to Amendment (178606) (with title amendment)

Delete line 44
and insert:
record, or other electronic means. This paragraph expires on July 1 after the fifth anniversary of the approval of the first biosimilar as interchangeable for a biological product by the federal Food and Drug Administration.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

831282

13 Delete line 71
14 and insert:
15 interchangeable for the prescribed biological product;
16 providing an expiration date for the provision
17 requiring a pharmacist to report such as substitution
18 to the practitioner ordering the prescription;

401462

LEGISLATIVE ACTION

Senate	.	House
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	.	
	.	

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

Senate Amendment to Amendment (178606) (with title amendment)

Delete line 57
and insert:
Section 3. This act shall take effect July 1, 2013, and expire June 30, 2018.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 76
and insert:

401462

13 providing effective and expiration dates.

By Senator Grimsley

21-00224-13 2013732__

A bill to be entitled

An act relating to prescription drugs; providing definitions; authorizing a pharmacist to substitute a biosimilar product for a prescribed product if certain requirements are met; providing an effective date.

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

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

(a) "Biological product" means a virus; therapeutic serum; toxin; antitoxin; vaccine; blood; blood component or derivative; allergenic product; protein, except any chemically synthesized polypeptide, or analogous product; arsphenamine or derivative of arsphenamine, or any other trivalent organic arsenic compound, which is used to prevent, treat, or cure a disease or condition of a human being.

(b) "Biosimilar" means that a biological product is highly similar to a prescribed product notwithstanding minor differences in clinically inactive components. There must not be any clinically meaningful differences between the biological product and the prescribed product with regard to the safety, purity, and potency of the product.

(c) "Interchangeable" means a biological product may be substituted for the prescribed product without the intervention of the prescriber.

(d) "Prescriber" means a practitioner licensed to prescribe medicinal drugs.

(2) A pharmacist may substitute a biosimilar product for a prescribed product if:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 (a) The United States Food and Drug Administration has
31 determined that the biosimilar product is interchangeable with
32 the prescribed product for the specified, indicated use;
33 (b) The prescriber does not express in writing, verbally,
34 or electronically a preference against the substitution;
35 (c) The person presenting the prescription is notified of
36 the substitution in a manner consistent with the requirements of
37 section 465.025(3), Florida Statutes;
38 (d) The pharmacist or pharmacist's agent notifies the
39 prescriber or the prescriber's agent by facsimile, telephone,
40 voicemail, e-mail, or other electronic means of the substitution
41 within 10 business days after receiving the prescription; and
42 (e) The pharmacist and prescriber retain a written record
43 of the biosimilar substitution for at least 4 years.
44 Section 2. This act shall take effect July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 Committee on Health Policy

BILL: CS/SB 1192

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Pharmacy and Controlled Substance Prescription

DATE: March 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.			AHS	
3.			AP	
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:

CS/SB 1192 substantially amends various sections of the Florida Statutes to:

- Revise the requirement to register as a controlled substance providing practitioner to practitioners who prescribe more than a 30 day supply of certain controlled substances over a six-month period to one patient;
- Require certain physicians to check the Prescription Drug Monitoring Program database before prescribing certain controlled substances to a new patient;
- Exclude certain physicians from the standards of practice for prescribing controlled substances contained within s. 456.44, F.S.;
- Include certain clinics in the definition of pain management clinic in chs. 458 and 459, F.S.;
- Mandate that the Department of Health (DOH) deny the registration of pain management clinics that are not fully owned by a physician or group of physicians;
- Preempt to the state all regulation of the licensure, activity, and operation regarding certain health care facilities and practitioners, with some exceptions;
- Define the term “abandoned” as it relates to pharmacy permits;

- Mandate that the DOH serve notices to pharmacy permitees and licensees in writing and by an agent of the DOH or certified mail;
- Clarify and add to the types of activities that are grounds for licensure denial, revocation, or suspension, or for disciplinary action for pharmacies;
- Require that pharmacies commence operations within 180 days of receiving a permit;
- Require that pharmacies be supervised by a prescription department manager or consultant pharmacist of record at all times;
- Authorize state funds to fund the PDMP program; and
- Exclude pharmaceutical companies from those organizations that may be considered inappropriate sources of funds for the PDMP program.

This bill substantially amends sections 409.9201, 456.44, 458.326, 458.3265, 458.331, 459.0137, 459.015, 465.003, 465.0065, 465.014, 465.015, 465.016, 465.0156, 465.0197, 465.022, 465.023, 465.1901, 499.003, 893.02, and 893.055, F.S., and creates sections 465.0065, 400.996, 408.833, 465.1092, Florida Statutes.

II. Present Situation:

Controlled Substances

Controlled substances are drugs with the potential for abuse. Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. The distinguishing factors between the different drug schedules are the "potential for abuse"[1] of the substance contained therein and whether there is a currently accepted medical use for the substance. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances.[2]

Schedule I controlled substances currently have no accepted medical use in treatment in the United States and therefore may not be prescribed, administered, or dispensed for medical use. These substances have a high potential for abuse and include heroin, peyote, lysergic acid diethylamide (LSD), and cannabis.[3]

Schedule II controlled substances have severely restricted medical uses and a high potential for abuse, which may lead to severe psychological or physical dependence. These drugs include morphine and its derivatives, amphetamines, cocaine, and pentobarbital.[4]

Schedule III controlled substances have lower abuse potential than Schedule II substances and have some accepted medical use, but they may still cause psychological or physical dependence. Schedule III substances include products containing less than 15 milligrams (mg) of hydrocodone (such as Vicodin) or less than 90 mg of dihydrocodeine per dose (such as Tylenol #3), ketamine, and anabolic steroids.[5]

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[1] S. 893.02(20), F.S.
[2] DEA, Office of Diversion Control, Controlled Substance Schedules, available at: www.deadiversion.usdoj.gov/21cfr/cfr/2108cfrt.htm (last visited March 18, 2013).
[3] S. 893.03(1), F.S.
[4] S. 893.03(2), F.S.
[5] S. 893.03(3), F.S.

Schedule IV substances have a low potential for abuse and include propoxyphene (Darvocet), alprazolam (Xanax), and lorazepam (Ativan).[6]

Schedule V controlled substances have an extremely low potential for abuse and primarily consist of preparations containing limited quantities of certain narcotics, such as cough syrup.[7]

Any health care professional wishing to prescribe controlled substances must apply for a prescribing number from the federal Drug Enforcement Administration (DEA). Prescribing numbers are linked to state licenses and may be suspended or revoked upon any disciplinary action taken against a licensee.

Controlled Substance Prescribing

As of January 1, 2012, every physician, podiatrist, or dentist who prescribes controlled substances in the state for the treatment of chronic nonmalignant pain[8] must register as a controlled substance prescribing practitioner and comply with certain practice standards specified in statute and rule.[9]

Before prescribing any controlled substances for the treatment of chronic nonmalignant pain, a practitioner must document certain characteristics about the nature of the pain, success of past treatments, any underlying health problems, and history of alcohol and substance abuse.[10] The practitioner must develop a written plan for assessing the patient's risk for aberrant drug-related behavior and monitor such behavior throughout the course of controlled substance treatment.[11] Each practitioner must also enter into a controlled substance agreement with their patients; such agreements must include:

- The risks and benefits of controlled substance use, including the risk for addiction or dependence;
- The number and frequency of permitted prescriptions and refills;
- A statement of reasons for discontinuation of therapy, including violation of the agreement; and
- The requirement that a patient's chronic nonmalignant pain only be treated by one practitioner at a time unless otherwise authorized and documented.[12]

Patients treated for nonmalignant pain with controlled substances must be seen by their prescribing practitioners at least once every three months to monitor progress and compliance, and detailed medical records relating to such treatment must be maintained.[13] Patients at special

[6] S. 893.03(4), F.S.
[7] S. 893.03 (5), F.S.
[8] "Chronic nonmalignant pain" is defined as pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery. Section 456.44(1)(e), F.S.
[9] s. 456.44(2)(a) and (b), F.S.
[10] s. 456.44(3)(a), F.S.
[11] s. 456.44(3)(b), F.S.
[12] s. 456.44(3)(c)1.-3., F.S.
[13] s. 456.44(3)(d), F.S.

risk for drug abuse or diversion may require co-monitoring by an addiction medicine physician or a psychiatrist.[14] Anyone with signs or symptoms of substance abuse must be immediately referred to a pain-management physician, an addiction medicine specialist, or an addiction medicine facility.[15]

Anesthesiologists, physiatrists, neurologists, and surgeons are exempt from these provisions.[16] Physicians who hold certain credentials relating to pain medicine are also exempt.[17]

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.[18] Pain-management clinics are regulated by the practice acts for medical doctors and osteopathic physicians. Until January 1, 2016, all pain-management clinics must register with the DOH and meet certain provisions concerning staffing, sanitation, recordkeeping, and quality assurance.[19] 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;
- 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.[20]

All clinics must be owned by at least one licensed physician or be licensed as a health care clinic under ch. 400, part X, F.S., to be eligible for registration.[21] The DOH is prohibited from registering a pain management clinic:

- Not owned by a physician or not a health care clinic licensed under part X of ch. 400, F.S.;
- Owned by a physician whose DEA number has ever been revoked;
- Owned by a physician whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction; or

[14] s. 456.44(3)(e), F.S.
[15] s. 456.44(3)(g), F.S.
[16] Id.
[17] Id.
[18] S. 458.3265(1)(a)1.c. and 459.0137(1)(a)1.c., F.S.
[19] S. 458.3265 and 459.0137, F.S.
[20] S. 458.3265(1)(a)2.a.-h. and 459.0137(1)(a)2.a.-h., F.S.
[21] S. 458.3265(1)(d) and 459.0137(1)(d), F.S.

- Owned by a physician who has been convicted of certain drug-related crimes in any jurisdiction.[22]

Pain-management clinics are inspected annually by DOH unless they hold current certification from a DOH-approved national accrediting agency.[23] The DOH 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.[24]

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.[25] No owner or operator of the clinic may own or operate another pain-management clinic for five years after revocation of registration.[26]

Prescription Drug Monitoring Program

Chapter 2009-197, L.O.F, established the Prescription Drug Monitoring Program (PDMP) in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.[27] Dispensers of certain controlled substances must report specified information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed.[28]

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists.[29] Indirect access to the PDMP database is provided to:

- The DOH or its relevant health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- A law enforcement agency; and
- A patient or the legal guardian, or designated health care surrogate of an incapacitated patient.[30]

Restrictions on how DOH may fund implementation and operation of the PDMP are also included in statute. The DOH is prohibited from using state funds and any money received

[22] S. 458.3265(1)(d) and (e) and 459.0137(1)(d) and (e), F.S.
[23] S. 458.3265(3)(a) and 459.0137(3)(a), F.S.
[24] S. 458.3265(5) and 459.0137(5), F.S.
[25] S. 458.3265(1)(h)-(j) and 459.0137(1)(h)-(j), F.S.
[26] S. 458.3265(1)(k) and 459.0137(1)(k), F.S.
[27] S. 893.055(2)(a), F.S.
[28] S. 893.055(3)(a)-(c), F.S.
[29] S. 893.055(7)(b), F.S.
[30] S. 893.055(7)(c)1.-4., F.S.

directly or indirectly from prescription drug manufacturers to implement the PDMP.[31] Funding for the PDMP comes from three funding sources:[32]

- Donations procured by the Florida PDMP Foundation, Inc. (Foundation), the direct-support organization authorized by s. 893.055, F.S., to fund the continuing operation of the PDMP;
- Federal grants; and
- Private grants and donations.

Section 893.0551, F.S., provides an exemption from public records for personal information of a patient and certain information concerning health care professionals outlined in the statute.[33] The statute details exceptions for disclosure of information after DOH ensures the legitimacy of the person's request for the information.[34]

The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.[35] Health care practitioners began accessing the PDMP on October 17, 2011.[36] Law enforcement began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.[37]

Currently, prescribers are not required to consult the PDMP database prior to prescribing a controlled substance for a patient, but may do so. Between 2011 and 2012, physicians and pharmacists used the PDMP database at least 2.6 million times.[38] Nearly 5,000 pharmacists entered 56 million prescriptions into the database.[39] Law enforcement queried the PDMP database more than 20,000 times in conjunction with active criminal investigations.[40]

Prescription Drug Monitoring Programs in Other States

At least 43 states have passed laws enabling PDMPs.[41] The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) examined the PDMPs of 26 of those states, including Florida.[42] All PDMPs examined are either run by the states in-house or by contract with private vendors. Most states do not require prescribers to register in order to use the

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[31] S. 893.055(10) and (11)(c), F.S.
[32] Florida Department of Health, Electronic-Florida Online Reporting of Controlled Substances Evaluation (E-FORCSE), *2011-2012 Prescription Drug Monitoring Program Annual Report*, page 7 (available at www.eforcse.com/docs/2012AnnualReport.pdf, last visited on Mar. 18, 2013. (information also came from Florida Department of Health document detailing the funding history of the PDMP, also on file with Health Quality Subcommittee staff.
[33] s. 893.0551(2)(a)-(h), F.S.
[34] s. 893.0551(3)(a)-(g), F.S.
[35] Supra, n. 33 at page 4.
[36] Id.
[37] Id.
[38] Id. at page 3.
[39] Id.
[40] Id.
[41] The National Conference of State Legislatures, *Prevention of Prescription Drug Overdose and Abuse*, found at: http://www.ncsl.org/issues-research/health/prevention-of-prescription-drug-overdose-and-abuse.aspx, last visited on Mar. 21, 2013.
[42] *OPPAGA Review of State Prescription Drug Monitoring Programs*, Jan. 31, 2013, on file with the Senate Health Policy Committee.

PDMP and primarily encourage prescribers to use the database through education and outreach programs.[43] Only three of the 26 states require prescribers to access the database prior to prescribing most or all controlled substances.[44, 45] In 17 of 23 states, including Florida, accessing the database is strictly voluntary and in the remaining six states accessing the database is only required under limited circumstances.[46] All states reviewed have the authority to take punitive action against dispensers of prescription drugs that do not comply with their state's respective laws and rules on their state's PDMP. These punitive actions can come in the form of fines, licensure disciplinary action, and / or criminal charges, however, states rarely use these punitive measures when dispensers do not comply with PDMP requirements.

State Preemption

There is currently no statutory provision that expressly preempts the regulation of operations in pharmacies, health care clinics, health care facilities and pain management clinics to the state of Florida. Some counties and municipalities have created ordinances for the regulation of the operation of these clinics based upon the powers and duties conveyed upon these entities in Florida Statutes.[47]

III. Effect of Proposed Changes:

Section 1 creates s. 400.996, F.S., to:

- Preempt to the state all regulation of the licensure, activity, and operation of clinics under ch. 400, part X, F.S., excluding the registration and licensing for pain-management clinics.
- Restrict local governments or political subdivisions of the state from enacting or enforcing ordinances that imposes a levies, charges, or fees upon, or that otherwise regulate, clinics under ch. 400, part X, F.S., including services provided within such facilities; and
- Allow local governments and political subdivisions to enact ordinances regarding:
  - Local business taxes adopted pursuant to ch. 205, F.S.; and
  - Land use development regulations adopted pursuant to ch. 163, F.S., which include regulation of any aspect of development, including a subdivision, building construction, sign regulation, and any other regulation concerning the development of land, landscaping, or tree protection, and which do not include restrictions on pain-management services, health care services, or the prescribing of controlled substances. However, a health care facility or clinic that treats pain or provides pain-management services is a permissible use in a land use or zoning category that permits hospitals, other health care facilities, or clinics as defined in ch. 395, F.S., s. 408.907, F.S., or under ch. 400, part X, F.S.

Section 2 creates 408.833, F.S., to:

- Preempt to the state all regulation of the licensure, activity, and operation of health care facilities as defined in s. 408.07, F.S.

[43] Id., p. 8
[44] Kentucky, New Mexico, and New York.
[45] Id., p. 4
[46] These circumstances typically revolve around how often a drug is prescribed, if the drug is in a specific class or schedule, if the drug has a specific agreement, or if there is a reasonable suspicion that the patient it abusing drugs. Id.
[47] DOH bill analysis on SB 1192, dated Mar. 1, 2013, on file with the Senate Health Policy Committee.

- Restrict local governments or political subdivisions of the state from enacting or enforcing ordinances that imposes a levies, charges, or fees upon, or that otherwise regulate, health care facilities as defined in s. 408.07, F.S., including services provided within such facilities; and
- Allow local governments and political subdivisions to enact ordinances regarding:
  - Local business taxes adopted pursuant to ch. 205, F.S.; and
  - Land use development regulations adopted pursuant to ch. 163, F.S., which include regulation of any aspect of development, including a subdivision, building construction, sign regulation, and any other regulation concerning the development of land, landscaping, or tree protection, and which do not include restrictions on pain-management services, health care services, or the prescribing of controlled substances. However, a health care facility or clinic that treats pain or provides pain-management services is a permissible use in a land use or zoning category that permits hospitals, other health care facilities, or clinics as defined in ch. 395, F.S., s. 408.907, F.S., or under ch. 400, part X, F.S.

Section 3 amends s. 456.44, F.S. to:
- Restrict the requirement to register as a controlled substance providing practitioner to physicians[48] who prescribe more than a 30-day supply of any Schedule I, II, or III controlled substance over a six-month period to any one patient for the treatment of chronic malignant pain;
- To require that physicians who treat new patients in a pain management clinic, pursuant to s. 458.326, F.S., consult the PDMP database before prescribing a Schedule II or III controlled substance;
- Allow the physician to designate an agent to check the PDMP database; and
- Mandate the board adopt rules to establish a penalty for not checking the PDMP database.
- Exclude physicians who prescribe medically necessary controlled substances to residents in a nursing home and a physician licensed under ch. 458 or 459, F.S., who writes fewer than 50 total prescriptions for controlled substances for all of his or her patients during a one-year period from the standards of practice established in this section.

Section 4 amends s. 458.326, F.S., to require that physicians who treat new patients for intractable pain, pursuant to s. 458.326, F.S., consult the PDMP database before prescribing a Schedule II or III controlled substance, to allow the physician to designate an agent to check the PDMP database, and to mandate that the board must adopt rules to establish a penalty for not checking the PDMP database.

Section 5 and 6 amend ss. 458.3265 and 459.0137, F.S., respectively to:
- Include clinics that are owned by publicly held corporations 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 exceed $50 million in the definition of pain management clinic;
- Include clinics that are owned by corporate entities exempt from federal taxation under 26 U.S.C. s. 501(c)(3) in the definition of pain management clinic;

[48] Registered under ch. 458, 459, 461, or 466, F.S.

- Mandate that the DOH deny the registration of any clinic licensed under ch. 400, part X, F.S., which is not fully owned by a physician or group of physicians licensed under ch. 458 or ch. 459, F.S.
- Preempt to the state all regulation of the licensure and activity of physicians licensed under chs. 458 and 459, respectively, F.S., who own, operate, or work in pain-management clinics;
- Restrict local governments or political subdivisions of the state from enacting or enforcing ordinances that imposes a levies, charges, or fees upon, or that otherwise regulate such physicians; and
- Allow local governments and political subdivisions to enact ordinances regarding:
  - Registered pain-management clinics as defined in s. 458.3265(1) and 459.3265(1), F.S.;
  - Local business taxes adopted pursuant to ch. 205, F.S.; and
  - Land use development regulations adopted pursuant to ch. 163, F.S., which include regulation of any aspect of development, including a subdivision, building construction, sign regulation, and any other regulation concerning the development of land, landscaping, or tree protection, and which do not include restrictions on pain-management services, health care services, or the prescribing of controlled substances. However, a health care facility or clinic that treats pain or provides pain-management services is a permissible use in a land use or zoning category that permits hospitals, other health care facilities, or clinics as defined in ch. 395, F.S., s. 408.907, F.S., or under part X of ch. 400, F.S.

Section 7 amends s. 465.003, F.S., to define the term "abandoned" as used in ch. 465, F.S., relating to pharmacies, as the status of a permit of a person or entity that was issued a pharmacy permit but fails to commence pharmacy operations within 180 days after issuance of the permit without good cause or fails to follow pharmacy closure requirements as set by the board.

Section 8 creates s. 465.0065, F.S., to mandate that each notice served by the DOH under ch. 465, F.S., must be in writing and delivered personally by an agent of the DOH or by certified mail to the pharmacy permitee or licensee. If the pharmacy permitee refuses to accept service or evades service or if the agent is otherwise unable to carry out service after due diligence, the DOH may post the notice in a conspicuous place at the pharmacy or at the licensee's home or business address.

Section 9 amends s. 465.016, F.S., to clarify that violating rules adopted under ch. 893, F.S., relating to drug abuse prevention and control, and misappropriating drugs, supplies, or equipment from a pharmacy permitee constitutes grounds for denial of a license or disciplinary action.

Section 10 amends s. 465.022, F.S., to:

- Require that a pharmacy permitee commence pharmacy operations within 180 days after issuance of the permit or show good cause why operations were not commenced;
- Define commencement of operations as including, but is not limited to, acts within the scope of practice of pharmacy, ordering or receiving drugs, and other similar activities;
- Mandate that the DOH establish rules regarding the commencement of pharmacy operations; and

- Clarify that a pharmacy permitee must be supervised by a prescription department manager or consultant pharmacist of record at all times.

Section 11 amends s. 465.023, F.S., to clarify that violating rules adopted under ch. 893, F.S., relating to drug abuse prevention and control, is grounds for the DOH to revoke or suspend a permit of any pharmacy permitee.

Section 12 creates s. 465.1902, F.S., to:
- Preempt to the state all regulation of the licensure, activity, and operation of pharmacies and pharmacists as defined in ch. 465, F.S.;
- Restrict local governments or political subdivisions of the state from enacting or enforcing ordinances that imposes a levies, charges, or fees upon, or that otherwise regulate pharmacies and pharmacists as defined in ch. 465, F.S.; and
- Allow local governments and political subdivisions to enact ordinances regarding:
  - Local business taxes adopted pursuant to ch. 205, F.S.; and
  - Land use development regulations adopted pursuant to ch. 163, F.S., which include regulation of any aspect of development, including a subdivision, building construction, sign regulation, and any other regulation concerning the development of land, landscaping, or tree protection, and which do not include restrictions on pain-management services, health care services, or the prescribing of controlled substances.

Section 13 amends s. 893.055, F.S., to allow the DOH to fund the PDMP program with state funds and maintain the PDMP program. This section also excludes pharmaceutical companies from those organizations that may be considered inappropriate sources of funds for the PDMP program.

Sections 14-23 amend various sections of the Florida Statutes to conform those sections to changes made in section 7 of the bill.

Section 24 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some physicians and health care practices may be negatively impacted from a time management perspective by the additional requirement to consult the PDMP prior to dispensing. However, to the extent that inappropriate prescribing of controlled substances is avoided, overall health care costs may be lessened and lives saved.

C. Government Sector Impact:

The DOH will incur non-recurring costs for rulemaking which are within their current budget.

Also, the DOH may experience an indeterminate increase in workload implementing the requirements of this bill.

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 Policy on Mar. 21, 2013:

The CS amends SB 1192 to:

- Place language preempting the regulation of the licensure, activity, and operation of various health care facilities and practitioners in the chapters that pertain to those facilities and practitioners;
- Allow local governments to pass ordinances which regulate pain-management clinics;
- Allow the DOH to send notices, in the manner prescribed in the bill, to pharmacy licensees;
- Amend the title to conform to the bill's contents; and
- Make technical changes.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2013	.	
	.	
	.	
	.	

The Committee on Health Policy (Grimsley) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Section 400.996, Florida Statutes, is created to
6 read:
7 400.996 Preemption.—This chapter preempts to the state all
8 regulation of the licensure, activity, and operation of clinics
9 under part X of chapter 400, excluding registration and
10 licensing for pain-management clinics. A local government or
11 political subdivision of the state may not enact or enforce an
12 ordinance that imposes a levy, charge, or fee upon, or that

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13 otherwise regulates, clinics under part X of chapter 400,
14 including services provided within such facilities, except that
15 this preemption does not prohibit a local government or
16 political subdivision from enacting an ordinance regarding the
17 following:
18 (1) Local business taxes adopted pursuant to chapter 205.
19 (2) Land use development regulations adopted pursuant to
20 chapter 163, which include regulation of any aspect of
21 development, including a subdivision, building construction,
22 sign regulation, and any other regulation concerning the
23 development of land, landscaping, or tree protection, and which
24 do not include restrictions on pain-management services, health
25 care services, or the prescribing of controlled substances.
26 However, a clinic that treats pain or provides pain-management
27 services is a permissible use in a land use or zoning category
28 that permits hospitals, other health care facilities, or clinics
29 as defined in chapter 395, s. 408.07, or part X of chapter 400.
30 Section 2. Section 408.833, Florida Statutes, is created to
31 read:
32 408.833 Preemption.—This chapter preempts to the state all
33 regulation of the licensure, activity, and operation of health
34 care facilities as defined in s. 408.07. A local government or
35 political subdivision of the state may not enact or enforce an
36 ordinance that imposes a levy, charge, or fee upon, or that
37 otherwise regulates health care facilities as defined in s.
38 408.07, including services provided within such facilities,
39 except that this preemption does not prohibit a local government
40 or political subdivision from enacting an ordinance regarding
41 the following:

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42 (1) Local business taxes adopted pursuant to chapter 205.
43 (2) Land use development regulations adopted pursuant to
44 chapter 163, which include regulation of any aspect of
45 development, including a subdivision, building construction,
46 sign regulation, and any other regulation concerning the
47 development of land, landscaping, or tree protection, and which
48 do not include restrictions on pain-management services, health
49 care services, or the prescribing of controlled substances.
50 However, a health care facility or clinic that treats pain or
51 provides pain-management services is a permissible use in a land
52 use or zoning category that permits hospitals, other health care
53 facilities, or clinics as defined in chapter 395, s. 408.07, or
54 part X of chapter 400.
55 Section 3. Subsections (2) and (3) of section 456.44,
56 Florida Statutes, are amended to read:
57 456.44 Controlled substance prescribing.—
58 (2) REGISTRATION.—~~Effective January 1, 2012,~~ A physician
59 licensed under chapter 458, chapter 459, chapter 461, or chapter
60 466 who prescribes more than a 30-day supply of any controlled
61 substance, listed in Schedule II, Schedule III, or Schedule IV
62 as defined in s. 893.03, over a 6-month period to any one
63 patient for the treatment of chronic nonmalignant pain, must:
64 (a) Designate himself or herself as a controlled substance
65 prescribing practitioner on the physician's practitioner
66 profile.
67 (b) Comply with the requirements of this section and
68 applicable board rules.
69 (3) STANDARDS OF PRACTICE.—The standards of practice in
70 this section do not supersede the level of care, skill, and

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71 treatment recognized in general law related to health care
72 licensure.
73 (a) A complete medical history and a physical examination
74 must be conducted before beginning any treatment and must be
75 documented in the medical record. The exact components of the
76 physical examination shall be left to the judgment of the
77 clinician who is expected to perform a physical examination
78 proportionate to the diagnosis that justifies a treatment. The
79 medical record must, at a minimum, document the nature and
80 intensity of the pain, current and past treatments for pain,
81 underlying or coexisting diseases or conditions, the effect of
82 the pain on physical and psychological function, a review of
83 previous medical records, previous diagnostic studies, and
84 history of alcohol and substance abuse. The medical record shall
85 also document the presence of one or more recognized medical
86 indications for the use of a controlled substance. Each
87 registrant must develop a written plan for assessing each
88 patient’s risk of aberrant drug-related behavior, which may
89 include patient drug testing. Registrants must assess each
90 patient’s risk for aberrant drug-related behavior and monitor
91 that risk on an ongoing basis in accordance with the plan.
92 (b) Before or during a new patient’s visit for pain-
93 treatment services at a pain-management clinic registered under
94 s. 458.3265 or s. 459.0137, a physician shall consult the
95 prescription drug monitoring program database provided under s.
96 893.055(2)(a) before prescribing a controlled substance listed
97 in Schedule II or Schedule III in s. 893.03. The physician may
98 designate an agent under his or her supervision to consult the
99 database. The board shall adopt rules to establish a penalty for

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100 a physician who does not comply with this subsection.
101 (c) ~~(b)~~ Each registrant must develop a written
102 individualized treatment plan for each patient. The treatment
103 plan shall state objectives that will be used to determine
104 treatment success, such as pain relief and improved physical and
105 psychosocial function, and shall indicate if any further
106 diagnostic evaluations or other treatments are planned. After
107 treatment begins, the physician shall adjust drug therapy to the
108 individual medical needs of each patient. Other treatment
109 modalities, including a rehabilitation program, shall be
110 considered depending on the etiology of the pain and the extent
111 to which the pain is associated with physical and psychosocial
112 impairment. The interdisciplinary nature of the treatment plan
113 shall be documented.
114 (d) ~~(c)~~ The physician shall discuss the risks and benefits
115 of the use of controlled substances, including the risks of
116 abuse and addiction, as well as physical dependence and its
117 consequences, with the patient, persons designated by the
118 patient, or the patient’s surrogate or guardian if the patient
119 is incompetent. The physician shall use a written controlled
120 substance agreement between the physician and the patient
121 outlining the patient’s responsibilities, including, but not
122 limited to:
123 1. Number and frequency of controlled substance
124 prescriptions and refills.
125 2. Patient compliance and reasons for which drug therapy
126 may be discontinued, such as a violation of the agreement.
127 3. An agreement that controlled substances for the
128 treatment of chronic nonmalignant pain shall be prescribed by a

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129 single treating physician unless otherwise authorized by the
130 treating physician and documented in the medical record.
131 (e) ~~(d)~~ The patient shall be seen by the physician at
132 regular intervals, not to exceed 3 months, to assess the
133 efficacy of treatment, ensure that controlled substance therapy
134 remains indicated, evaluate the patient's progress toward
135 treatment objectives, consider adverse drug effects, and review
136 the etiology of the pain. Continuation or modification of
137 therapy shall depend on the physician's evaluation of the
138 patient's progress. If treatment goals are not being achieved,
139 despite medication adjustments, the physician shall reevaluate
140 the appropriateness of continued treatment. The physician shall
141 monitor patient compliance in medication usage, related
142 treatment plans, controlled substance agreements, and
143 indications of substance abuse or diversion at a minimum of 3-
144 month intervals.
145 (f) ~~(e)~~ The physician shall refer the patient as necessary
146 for additional evaluation and treatment in order to achieve
147 treatment objectives. Special attention shall be given to those
148 patients who are at risk for misusing their medications and
149 those whose living arrangements pose a risk for medication
150 misuse or diversion. The management of pain in patients with a
151 history of substance abuse or with a comorbid psychiatric
152 disorder requires extra care, monitoring, and documentation and
153 requires consultation with or referral to an addiction medicine
154 specialist or psychiatrist.
155 (g) ~~(f)~~ A physician registered under this section must
156 maintain accurate, current, and complete records that are
157 accessible and readily available for review and comply with the

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158 requirements of this section, the applicable practice act, and
159 applicable board rules. The medical records must include, but
160 are not limited to:
161 1. The complete medical history and a physical examination,
162 including history of drug abuse or dependence.
163 2. Diagnostic, therapeutic, and laboratory results.
164 3. Evaluations and consultations.
165 4. Treatment objectives.
166 5. Discussion of risks and benefits.
167 6. Treatments.
168 7. Medications, including date, type, dosage, and quantity
169 prescribed.
170 8. Instructions and agreements.
171 9. Periodic reviews.
172 10. Results of any drug testing.
173 11. A photocopy of the patient's government-issued photo
174 identification.
175 12. If a written prescription for a controlled substance is
176 given to the patient, a duplicate of the prescription.
177 13. The physician's full name presented in a legible
178 manner.
179 (h) ~~(g)~~ Patients with signs or symptoms of substance abuse
180 shall be immediately referred to a board-certified pain
181 management physician, an addiction medicine specialist, or a
182 mental health addiction facility as it pertains to drug abuse or
183 addiction unless the physician is board-certified or board-
184 eligible in pain management. Throughout the period of time
185 before receiving the consultant's report, a prescribing
186 physician shall clearly and completely document medical

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187 justification for continued treatment with controlled substances
188 and those steps taken to ensure medically appropriate use of
189 controlled substances by the patient. Upon receipt of the
190 consultant’s written report, the prescribing physician shall
191 incorporate the consultant’s recommendations for continuing,
192 modifying, or discontinuing controlled substance therapy. The
193 resulting changes in treatment shall be specifically documented
194 in the patient’s medical record. Evidence or behavioral
195 indications of diversion shall be followed by discontinuation of
196 controlled substance therapy, and the patient shall be
197 discharged, and all results of testing and actions taken by the
198 physician shall be documented in the patient’s medical record.
199
200 This subsection does not apply to a board-eligible or board-
201 certified anesthesiologist, physiatrist, rheumatologist, or
202 neurologist, or to a board-certified physician who has surgical
203 privileges at a hospital or ambulatory surgery center and
204 primarily provides surgical services. This subsection does not
205 apply to a board-eligible or board-certified medical specialist
206 who has also completed a fellowship in pain medicine approved by
207 the Accreditation Council for Graduate Medical Education or the
208 American Osteopathic Association, or who is board eligible or
209 board certified in pain medicine by the American Board of Pain
210 Medicine or a board approved by the American Board of Medical
211 Specialties or the American Osteopathic Association and performs
212 interventional pain procedures of the type routinely billed
213 using surgical codes. This subsection does not apply to a
214 physician who prescribes medically necessary controlled
215 substances for a patient during an inpatient stay in a hospital

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216 licensed under chapter 395 or to a resident in a facility
217 licensed under part II of chapter 400. This subsection does not
218 apply to any physician licensed under chapter 458 or chapter 459
219 who writes fewer than 50 prescriptions for a controlled
220 substance for all of his or her patients during a 1-year period.
221 Section 4. Subsection (3) of section 458.326, Florida
222 Statutes, is amended to read:
223 458.326 Intractable pain; authorized treatment.—
224 (3)(a) Notwithstanding any other provision of law, a
225 physician may prescribe or administer any controlled substance
226 under Schedules II-V, as provided for in s. 893.03, to a person
227 for the treatment of intractable pain, provided the physician
228 does so in accordance with that level of care, skill, and
229 treatment recognized by a reasonably prudent physician under
230 similar conditions and circumstances.
231 (b) Before or during a new patient's visit for pain-
232 treatment services, a physician shall consult the prescription
233 drug monitoring program database provided under s. 893.055(2)(a)
234 before prescribing a controlled substance listed in Schedule II
235 or Schedule III in s. 893.03. The physician may designate an
236 agent under his or her supervision to consult the database. The
237 board shall adopt rules to establish a penalty for a physician
238 who does not comply with this paragraph.
239 Section 5. Paragraphs (a) and (d) of subsection (1) of
240 section 458.3265, Florida Statutes, are amended, present
241 subsections (5) and (6) of that section are renumbered as
242 subsections (6) and (7), respectively, and a new subsection (5)
243 is added to that section, to read:
244 458.3265 Pain-management clinics.—

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245 (1) REGISTRATION.—
246 (a)1. As used in this section, the term:
247 a. “Board eligible” means successful completion of an
248 anesthesia, physical medicine and rehabilitation, rheumatology,
249 or neurology residency program approved by the Accreditation
250 Council for Graduate Medical Education or the American
251 Osteopathic Association for a period of 6 years from successful
252 completion of such residency program.
253 b. “Chronic nonmalignant pain” means pain unrelated to
254 cancer which persists beyond the usual course of disease or the
255 injury that is the cause of the pain or more than 90 days after
256 surgery.
257 c. “Pain-management clinic” or “clinic” means any publicly
258 or privately owned facility:
259 (I) That advertises in any medium for any type of pain-
260 management services; or
261 (II) Where in any month a majority of patients are
262 prescribed opioids, benzodiazepines, barbiturates, or
263 carisoprodol for the treatment of chronic nonmalignant pain.
264 2. Each pain-management clinic must register with the
265 department unless:
266 a. That clinic is licensed as a facility pursuant to
267 chapter 395;
268 b. The majority of the physicians who provide services in
269 the clinic primarily provide surgical services;
270 ~~c. The clinic is owned by a publicly held corporation whose~~
271 ~~shares are traded on a national exchange or on the over-the-~~
272 ~~counter market and whose total assets at the end of the~~
273 ~~corporation’s most recent fiscal quarter exceeded $50 million;~~

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274 c.~~d.~~ The clinic is affiliated with an accredited medical
275 school at which training is provided for medical students,
276 residents, or fellows;
277 d.~~e.~~ The clinic does not prescribe controlled substances
278 for the treatment of pain;
279 ~~f. The clinic is owned by a corporate entity exempt from~~
280 ~~federal taxation under 26 U.S.C. s. 501(c)(3);~~
281 e.~~g.~~ The clinic is wholly owned and operated by one or more
282 board-eligible or board-certified anesthesiologists,
283 physiatrists, rheumatologists, or neurologists; or
284 f.~~h.~~ The clinic is wholly owned and operated by a physician
285 multispecialty practice where one or more board-eligible or
286 board-certified medical specialists who have also completed
287 fellowships in pain medicine approved by the Accreditation
288 Council for Graduate Medical Education, or who are also board-
289 certified in pain medicine by the American Board of Pain
290 Medicine or a board approved by the American Board of Medical
291 Specialties, the American Association of Physician Specialists,
292 or the American Osteopathic Association and perform
293 interventional pain procedures of the type routinely billed
294 using surgical codes.
295 (d) The department shall deny registration to any clinic
296 that is not fully owned by a physician licensed under this
297 chapter or chapter 459 or a group of physicians, each of whom is
298 licensed under this chapter or chapter 459; or that is not a
299 health care clinic licensed under part X of chapter 400 which is
300 fully owned by such physician or group of physicians.
301 (5) PREEMPTION.—This chapter preempts to the state all
302 regulation of the licensure and activity of a physician licensed

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303 under this chapter who owns, operates, or works in a pain-
304 management clinic or provides pain-management services. A local
305 government or political subdivision of the state may not enact
306 or enforce an ordinance that imposes a levy, charge, or fee
307 upon, or that otherwise regulates, a physician licensed under
308 this chapter who owns, operates, or works in a pain-management
309 clinic or provides pain-management services, except that this
310 preemption does not prohibit a local government or political
311 subdivision from enacting an ordinance regarding the following:
312 (a) A registered pain-management clinic as defined in
313 subsection (1).
314 (b) Local business taxes adopted pursuant to chapter 205.
315 (c) Land use development regulations adopted pursuant to
316 chapter 163, which include regulation of any aspect of
317 development, including a subdivision, building construction,
318 sign regulation, and any other regulation concerning the
319 development of land, landscaping, or tree protection, and which
320 do not include restrictions on pain-management services, health
321 care services, or the prescribing of controlled substances.
322 However, a health care facility or clinic that treats pain or
323 provides pain-management services is a permissible use in a land
324 use or zoning category that permits hospitals, other health care
325 facilities, or clinics as defined in chapter 395, s. 408.07, or
326 part X of chapter 400.
327 Section 6. Paragraphs (a) and (d) of subsection (1) of
328 section 459.0137, Florida Statutes, are amended, present
329 subsections (5) and (6) of that section are renumbered as
330 subsections (6) and (7), respectively, and a new subsection (5)
331 is added to that section, to read:

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332 459.0137 Pain-management clinics.—
333 (1) REGISTRATION.—
334 (a)1. As used in this section, the term:
335 a. “Board eligible” means successful completion of an
336 anesthesia, physical medicine and rehabilitation, rheumatology,
337 or neurology residency program approved by the Accreditation
338 Council for Graduate Medical Education or the American
339 Osteopathic Association for a period of 6 years from successful
340 completion of such residency program.
341 b. “Chronic nonmalignant pain” means pain unrelated to
342 cancer which persists beyond the usual course of disease or the
343 injury that is the cause of the pain or more than 90 days after
344 surgery.
345 c. “Pain-management clinic” or “clinic” means any publicly
346 or privately owned facility:
347 (I) That advertises in any medium for any type of pain-
348 management services; or
349 (II) Where in any month a majority of patients are
350 prescribed opioids, benzodiazepines, barbiturates, or
351 carisoprodol for the treatment of chronic nonmalignant pain.
352 2. Each pain-management clinic must register with the
353 department unless:
354 a. That clinic is licensed as a facility pursuant to
355 chapter 395;
356 b. The majority of the physicians who provide services in
357 the clinic primarily provide surgical services;
358 ~~c. The clinic is owned by a publicly held corporation whose~~
359 ~~shares are traded on a national exchange or on the over-the-~~
360 ~~counter market and whose total assets at the end of the~~

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361 ~~corporation's most recent fiscal quarter exceeded $50 million;~~
362 c.~~d.~~ The clinic is affiliated with an accredited medical
363 school at which training is provided for medical students,
364 residents, or fellows;
365 d.~~e.~~ The clinic does not prescribe controlled substances
366 for the treatment of pain;
367 ~~f. The clinic is owned by a corporate entity exempt from~~
368 ~~federal taxation under 26 U.S.C. s. 501(c)(3);~~
369 e.~~g.~~ The clinic is wholly owned and operated by one or more
370 board-eligible or board-certified anesthesiologists,
371 physiatrists, rheumatologists, or neurologists; or
372 f.~~h.~~ The clinic is wholly owned and operated by a physician
373 multispecialty practice where one or more board-eligible or
374 board-certified medical specialists who have also completed
375 fellowships in pain medicine approved by the Accreditation
376 Council for Graduate Medical Education or the American
377 Osteopathic Association, or who are also board-certified in pain
378 medicine by the American Board of Pain Medicine or a board
379 approved by the American Board of Medical Specialties, the
380 American Association of Physician Specialists, or the American
381 Osteopathic Association and perform interventional pain
382 procedures of the type routinely billed using surgical codes.
383 (d) The department shall deny registration to any clinic
384 that is not fully owned by a physician licensed under chapter
385 458 or this chapter or a group of physicians, each of whom is
386 licensed under chapter 458 or this chapter; or that is not a
387 health care clinic licensed under part X of chapter 400 which is
388 fully owned by such physician or group of physicians.
389 (5) PREEMPTION.—This chapter preempts to the state all

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390 regulation of the licensure and activity of an osteopathic
391 physician licensed under this chapter who owns, operates, or
392 works in a pain-management clinic or provides pain-management
393 services. A local government or political subdivision of the
394 state may not enact or enforce an ordinance that imposes a levy,
395 charge, or fee upon, or that otherwise regulates, an osteopathic
396 physician licensed under this chapter who owns, operates, or
397 works in a pain-management clinic, except that this preemption
398 does not prohibit a local government or political subdivision
399 from enacting an ordinance regarding the following:
400 (a) A registered pain-management clinic as defined in
401 subsection (1).
402 (b) Local business taxes adopted pursuant to chapter 205.
403 (c) Land use development regulations adopted pursuant to
404 chapter 163, which include regulation of any aspect of
405 development, including a subdivision, building construction,
406 sign regulation, and any other regulation concerning the
407 development of land, landscaping, or tree protection, and which
408 do not include restrictions on pain-management services, health
409 care services, and the prescribing of controlled substances.
410 However, a health care facility or clinic that treats pain or
411 provides pain-management services is a permissible use in a land
412 use or zoning category that permits hospitals, other health care
413 facilities, or clinics as defined in chapter 395, s. 408.07, or
414 part X of chapter 400.
415 Section 7. Present subsections (1) through (17) of section
416 465.003, Florida Statutes, are renumbered as subsections (2)
417 through (18), respectively, paragraph (a) of present subsection
418 (11) of that section is amended, and a new subsection (1) is

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419 added to that section, to read:
420 465.003 Definitions.—As used in this chapter, the term:
421 (1) "Abandoned" means the status of a pharmacy permit of a
422 person or entity that was issued the permit but fails to
423 commence pharmacy operations within 180 days after issuance of
424 the permit without good cause or fails to follow pharmacy
425 closure requirements as set by the board.
426 (12) ~~(11)~~(a) "Pharmacy" includes a community pharmacy, an
427 institutional pharmacy, a nuclear pharmacy, a special pharmacy,
428 and an Internet pharmacy.
429 1. The term "community pharmacy" includes every location
430 where medicinal drugs are compounded, dispensed, stored, or sold
431 or where prescriptions are filled or dispensed on an outpatient
432 basis.
433 2. The term "institutional pharmacy" includes every
434 location in a hospital, clinic, nursing home, dispensary,
435 sanitarium, extended care facility, or other facility,
436 hereinafter referred to as "health care institutions," where
437 medicinal drugs are compounded, dispensed, stored, or sold.
438 3. The term "nuclear pharmacy" includes every location
439 where radioactive drugs and chemicals within the classification
440 of medicinal drugs are compounded, dispensed, stored, or sold.
441 The term "nuclear pharmacy" does not include hospitals licensed
442 under chapter 395 or the nuclear medicine facilities of such
443 hospitals.
444 4. The term "special pharmacy" includes every location
445 where medicinal drugs are compounded, dispensed, stored, or sold
446 if such locations are not otherwise defined in this subsection.
447 5. The term "Internet pharmacy" includes locations not

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448 otherwise licensed or issued a permit under this chapter, within
449 or outside this state, which use the Internet to communicate
450 with or obtain information from consumers in this state and use
451 such communication or information to fill or refill
452 prescriptions or to dispense, distribute, or otherwise engage in
453 the practice of pharmacy in this state. Any act described in
454 this definition constitutes the practice of pharmacy as defined
455 in subsection (14) ~~(13)~~.
456 Section 8. Section 465.0065, Florida Statutes, is created
457 to read:
458 465.0065 Notices; form and service.—Each notice served by
459 the department pursuant to this chapter must be in writing and
460 must be delivered personally by an agent of the department or by
461 certified mail to the pharmacy permittee or licensee. If the
462 pharmacy permittee or licensee refuses to accept service or
463 evades service or if the agent is otherwise unable to carry out
464 service after due diligence, the department may post the notice
465 in a conspicuous place at the pharmacy or at the home or
466 business address for the licensee.
467 Section 9. Paragraphs (e) and (s) of subsection (1) of
468 section 465.016, Florida Statutes, are amended, and paragraph
469 (u) is added to that subsection to read:
470 465.016 Disciplinary actions.—
471 (1) The following acts constitute grounds for denial of a
472 license or disciplinary action, as specified in s. 456.072(2):
473 (e) Violating chapter 499; 21 U.S.C. ss. 301-392, known as
474 the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et
475 seq., known as the Comprehensive Drug Abuse Prevention and
476 Control Act; or chapter 893 or rules adopted thereunder.

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477 (s) Dispensing any medicinal drug based upon a
478 communication that purports to be a prescription as defined by
479 s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows
480 or has reason to believe that the purported prescription is not
481 based upon a valid practitioner-patient relationship.
482 (u) Misappropriating drugs, supplies, or equipment from a
483 pharmacy permittee.
484 Section 10. Paragraph (j) of subsection (5) of section
485 465.022, Florida Statutes, is amended, present subsections (10)
486 through (14) are renumbered as subsections (11) through (15),
487 respectively, present subsection (10) of that section is
488 amended, and a new subsection (10) is added to that section, to
489 read:
490 465.022 Pharmacies; general requirements; fees.—
491 (5) The department or board shall deny an application for a
492 pharmacy permit if the applicant or an affiliated person,
493 partner, officer, director, or prescription department manager
494 or consultant pharmacist of record of the applicant:
495 (j) Has dispensed any medicinal drug based upon a
496 communication that purports to be a prescription as defined by
497 s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows
498 or has reason to believe that the purported prescription is not
499 based upon a valid practitioner-patient relationship that
500 includes a documented patient evaluation, including history and
501 a physical examination adequate to establish the diagnosis for
502 which any drug is prescribed and any other requirement
503 established by board rule under chapter 458, chapter 459,
504 chapter 461, chapter 463, chapter 464, or chapter 466.
505

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506 For felonies in which the defendant entered a plea of guilty or
507 nolo contendere in an agreement with the court to enter a
508 pretrial intervention or drug diversion program, the department
509 shall deny the application if upon final resolution of the case
510 the licensee has failed to successfully complete the program.
511 (10) The permittee shall commence pharmacy operations
512 within 180 days after issuance of the permit, or show good cause
513 to the department why pharmacy operations were not commenced.
514 Commencement of pharmacy operations includes, but is not limited
515 to, acts within the scope of the practice of pharmacy, ordering
516 or receiving drugs, and other similar activities. The board
517 shall establish rules regarding commencement of pharmacy
518 operations.
519 (11) ~~(10)~~ A pharmacy permittee shall be supervised by a
520 prescription department manager or consultant pharmacist of
521 record at all times. A permittee must notify the department, on
522 a form approved by the board, within 10 days after any change in
523 prescription department manager or consultant pharmacist of
524 record.
525 Section 11. Subsection (1) of section 465.023, Florida
526 Statutes, is amended to read:
527 465.023 Pharmacy permittee; disciplinary action.—
528 (1) The department or the board may revoke or suspend the
529 permit of any pharmacy permittee, and may fine, place on
530 probation, or otherwise discipline any pharmacy permittee if the
531 permittee, or any affiliated person, partner, officer, director,
532 or agent of the permittee, including a person fingerprinted
533 under s. 465.022(3), has:
534 (a) Obtained a permit by misrepresentation or fraud or

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535 through an error of the department or the board;
536 (b) Attempted to procure, or has procured, a permit for any
537 other person by making, or causing to be made, any false
538 representation;
539 (c) Violated any of the requirements of this chapter or any
540 of the rules of the Board of Pharmacy; of chapter 499, known as
541 the "Florida Drug and Cosmetic Act"; of 21 U.S.C. ss. 301-392,
542 known as the "Federal Food, Drug, and Cosmetic Act"; of 21
543 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse
544 Prevention and Control Act; or of chapter 893 or rules adopted
545 thereunder;
546 (d) Been convicted or found guilty, regardless of
547 adjudication, of a felony or any other crime involving moral
548 turpitude in any of the courts of this state, of any other
549 state, or of the United States;
550 (e) Been convicted or disciplined by a regulatory agency of
551 the Federal Government or a regulatory agency of another state
552 for any offense that would constitute a violation of this
553 chapter;
554 (f) Been convicted of, or entered a plea of guilty or nolo
555 contendere to, regardless of adjudication, a crime in any
556 jurisdiction which relates to the practice of, or the ability to
557 practice, the profession of pharmacy;
558 (g) Been convicted of, or entered a plea of guilty or nolo
559 contendere to, regardless of adjudication, a crime in any
560 jurisdiction which relates to health care fraud; or
561 (h) Dispensed any medicinal drug based upon a communication
562 that purports to be a prescription as defined by s. 465.003 ~~s.~~
563 ~~465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason

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564 to believe that the purported prescription is not based upon a
565 valid practitioner-patient relationship that includes a
566 documented patient evaluation, including history and a physical
567 examination adequate to establish the diagnosis for which any
568 drug is prescribed and any other requirement established by
569 board rule under chapter 458, chapter 459, chapter 461, chapter
570 463, chapter 464, or chapter 466.
571 Section 12. Section 465.1902, Florida Statutes, is created
572 to read:
573 465.1902 Preemption.—This chapter preempts to the state all
574 regulation of the licensure, activity, and operation of
575 pharmacies and pharmacists as defined in this chapter. A local
576 government or political subdivision of the state may not enact
577 or enforce an ordinance that imposes a levy, charge, or fee
578 upon, or that otherwise regulates, pharmacies and pharmacists as
579 defined in this chapter, except that this preemption does not
580 prohibit a local government or political subdivision from
581 enacting an ordinance regarding the following:
582 (1) Local business taxes adopted pursuant to chapter 205.
583 (2) Land use development regulations adopted pursuant to
584 chapter 163, which include regulation of any aspect of
585 development, including a subdivision, building construction,
586 sign regulation, and any other regulation concerning the
587 development of land, landscaping, or tree protection, and which
588 do not include restrictions on pain-management services, health
589 care services, or the prescribing of controlled substances.
590 Section 13. Paragraph (b) of subsection (2), subsection
591 (10), and paragraph (c) of subsection (11) of section 893.055,
592 Florida Statutes, are amended to read:

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593 893.055 Prescription drug monitoring program.—
594 (2)
595 (b) The department~~, when the direct support organization~~
596 ~~receives at least $20,000 in nonstate moneys or the state~~
597 ~~receives at least $20,000 in federal grants for the prescription~~
598 ~~drug monitoring program,~~ shall adopt rules as necessary
599 concerning the reporting, accessing the database, evaluation,
600 management, development, implementation, operation, security,
601 and storage of information within the system, including rules
602 for when patient advisory reports are provided to pharmacies and
603 prescribers. The patient advisory report shall be provided in
604 accordance with s. 893.13(7)(a)8. The department shall work with
605 the professional health care licensure boards, such as the Board
606 of Medicine, the Board of Osteopathic Medicine, and the Board of
607 Pharmacy; other appropriate organizations, such as the Florida
608 Pharmacy Association, the Florida Medical Association, the
609 Florida Retail Federation, and the Florida Osteopathic Medical
610 Association, including those relating to pain management; and
611 the Attorney General, the Department of Law Enforcement, and the
612 Agency for Health Care Administration to develop rules
613 appropriate for the prescription drug monitoring program.
614 (10) All costs incurred by the department in administering
615 the prescription drug monitoring program shall be funded through
616 state funds, federal grants, or private funding applied for or
617 received by the state. The department may not commit funds for
618 the monitoring program without ensuring funding is available.
619 ~~The prescription drug monitoring program and the implementation~~
620 ~~thereof are contingent upon receipt of the nonstate funding.~~ The
621 department and state government shall cooperate with the direct-

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622 support organization established pursuant to subsection (11) in
623 seeking state funds, federal grant funds, other nonstate grant
624 funds, gifts, donations, or other private moneys for the
625 department if ~~so long as~~ the costs of doing so are not
626 considered material. Nonmaterial costs for this purpose include,
627 but are not limited to, the costs of mailing and personnel
628 assigned to research or apply for a grant. Notwithstanding the
629 exemptions to competitive-solicitation requirements under s.
630 287.057(3)(f), the department shall comply with the competitive-
631 solicitation requirements under s. 287.057 for the procurement
632 of any goods or services required by this section. Funds
633 provided, directly or indirectly, by prescription drug
634 manufacturers may not be used to implement the program.
635 (11) The department may establish a direct-support
636 organization that has a board consisting of at least five
637 members to provide assistance, funding, and promotional support
638 for the activities authorized for the prescription drug
639 monitoring program.
640 (c) The State Surgeon General shall appoint a board of
641 directors for the direct-support organization. Members of the
642 board shall serve at the pleasure of the State Surgeon General.
643 The State Surgeon General shall provide guidance to members of
644 the board to ensure that moneys received by the direct-support
645 organization are not received from inappropriate sources.
646 Inappropriate sources include, but are not limited to, donors,
647 grantors, persons, and ~~or~~ organizations, excluding
648 pharmaceutical companies, that may monetarily or substantively
649 benefit from the purchase of goods or services by the department
650 in furtherance of the prescription drug monitoring program.

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651 Section 14. Subsection (1) of section 409.9201, Florida
652 Statutes, is amended to read:
653 409.9201 Medicaid fraud.—
654 (1) As used in this section, the term:
655 (a) "Prescription drug" means any drug, including, but not
656 limited to, finished dosage forms or active ingredients that are
657 subject to, defined by, or described by s. 503(b) of the Federal
658 Food, Drug, and Cosmetic Act or by s. 465.003 ~~s. 465.003(8)~~, s.
659 499.003(46) or (53) or s. 499.007(13).
660 (b) "Value" means the amount billed to the Medicaid program
661 for the property dispensed or the market value of a legend drug
662 or goods or services at the time and place of the offense. If
663 the market value cannot be determined, the term means the
664 replacement cost of the legend drug or goods or services within
665 a reasonable time after the offense.
666
667 The value of individual items of the legend drugs or goods or
668 services involved in distinct transactions committed during a
669 single scheme or course of conduct, whether involving a single
670 person or several persons, may be aggregated when determining
671 the punishment for the offense.
672 Section 15. Paragraph (pp) of subsection (1) of section
673 458.331, Florida Statutes, is amended to read:
674 458.331 Grounds for disciplinary action; action by the
675 board and department.—
676 (1) The following acts constitute grounds for denial of a
677 license or disciplinary action, as specified in s. 456.072(2):
678 (pp) Applicable to a licensee who serves as the designated
679 physician of a pain-management clinic as defined in s. 458.3265

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680 or s. 459.0137:
681 1. Registering a pain-management clinic through
682 misrepresentation or fraud;
683 2. Procuring, or attempting to procure, the registration of
684 a pain-management clinic for any other person by making or
685 causing to be made, any false representation;
686 3. Failing to comply with any requirement of chapter 499,
687 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the
688 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,
689 the Drug Abuse Prevention and Control Act; or chapter 893, the
690 Florida Comprehensive Drug Abuse Prevention and Control Act;
691 4. Being convicted or found guilty of, regardless of
692 adjudication to, a felony or any other crime involving moral
693 turpitude, fraud, dishonesty, or deceit in any jurisdiction of
694 the courts of this state, of any other state, or of the United
695 States;
696 5. Being convicted of, or disciplined by a regulatory
697 agency of the Federal Government or a regulatory agency of
698 another state for, any offense that would constitute a violation
699 of this chapter;
700 6. Being convicted of, or entering a plea of guilty or nolo
701 contendere to, regardless of adjudication, a crime in any
702 jurisdiction of the courts of this state, of any other state, or
703 of the United States which relates to the practice of, or the
704 ability to practice, a licensed health care profession;
705 7. Being convicted of, or entering a plea of guilty or nolo
706 contendere to, regardless of adjudication, a crime in any
707 jurisdiction of the courts of this state, of any other state, or
708 of the United States which relates to health care fraud;

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709 8. Dispensing any medicinal drug based upon a communication
710 that purports to be a prescription as defined in s. 465.003 ~~s.~~
711 ~~465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or
712 has reason to believe that the purported prescription is not
713 based upon a valid practitioner-patient relationship; or
714 9. Failing to timely notify the board of the date of his or
715 her termination from a pain-management clinic as required by s.
716 458.3265(2).
717 Section 16. Paragraph (rr) of subsection (1) of section
718 459.015, Florida Statutes, is amended to read:
719 459.015 Grounds for disciplinary action; action by the
720 board and department.—
721 (1) The following acts constitute grounds for denial of a
722 license or disciplinary action, as specified in s. 456.072(2):
723 (rr) Applicable to a licensee who serves as the designated
724 physician of a pain-management clinic as defined in s. 458.3265
725 or s. 459.0137:
726 1. Registering a pain-management clinic through
727 misrepresentation or fraud;
728 2. Procuring, or attempting to procure, the registration of
729 a pain-management clinic for any other person by making or
730 causing to be made, any false representation;
731 3. Failing to comply with any requirement of chapter 499,
732 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the
733 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,
734 the Drug Abuse Prevention and Control Act; or chapter 893, the
735 Florida Comprehensive Drug Abuse Prevention and Control Act;
736 4. Being convicted or found guilty of, regardless of
737 adjudication to, a felony or any other crime involving moral

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738 turpitude, fraud, dishonesty, or deceit in any jurisdiction of
739 the courts of this state, of any other state, or of the United
740 States;
741 5. Being convicted of, or disciplined by a regulatory
742 agency of the Federal Government or a regulatory agency of
743 another state for, any offense that would constitute a violation
744 of this chapter;
745 6. Being convicted of, or entering a plea of guilty or nolo
746 contendere to, regardless of adjudication, a crime in any
747 jurisdiction of the courts of this state, of any other state, or
748 of the United States which relates to the practice of, or the
749 ability to practice, a licensed health care profession;
750 7. Being convicted of, or entering a plea of guilty or nolo
751 contendere to, regardless of adjudication, a crime in any
752 jurisdiction of the courts of this state, of any other state, or
753 of the United States which relates to health care fraud;
754 8. Dispensing any medicinal drug based upon a communication
755 that purports to be a prescription as defined in s. 465.003 ~~s.~~
756 ~~465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or
757 has reason to believe that the purported prescription is not
758 based upon a valid practitioner-patient relationship; or
759 9. Failing to timely notify the board of the date of his or
760 her termination from a pain-management clinic as required by s.
761 459.0137(2).
762 Section 17. Subsection (1) of section 465.014, Florida
763 Statutes, is amended to read:
764 465.014 Pharmacy technician.—
765 (1) A person other than a licensed pharmacist or pharmacy
766 intern may not engage in the practice of the profession of

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767 pharmacy, except that a licensed pharmacist may delegate to
768 pharmacy technicians who are registered pursuant to this section
769 those duties, tasks, and functions that do not fall within the
770 purview of s. 465.003 ~~s. 465.003(13)~~. All such delegated acts
771 shall be performed under the direct supervision of a licensed
772 pharmacist who shall be responsible for all such acts performed
773 by persons under his or her supervision. A pharmacy registered
774 technician, under the supervision of a pharmacist, may initiate
775 or receive communications with a practitioner or his or her
776 agent, on behalf of a patient, regarding refill authorization
777 requests. A licensed pharmacist may not supervise more than one
778 registered pharmacy technician unless otherwise permitted by the
779 guidelines adopted by the board. The board shall establish
780 guidelines to be followed by licensees or permittees in
781 determining the circumstances under which a licensed pharmacist
782 may supervise more than one but not more than three pharmacy
783 technicians.
784 Section 18. Paragraph (c) of subsection (2) of section
785 465.015, Florida Statutes, is amended to read:
786 465.015 Violations and penalties.—
787 (2) It is unlawful for any person:
788 (c) To sell or dispense drugs as defined in s. 465.003 ~~s.~~
789 ~~465.003(8)~~ without first being furnished with a prescription.
790 Section 19. Subsection (8) of section 465.0156, Florida
791 Statutes, is amended to read:
792 465.0156 Registration of nonresident pharmacies.—
793 (8) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes
794 of this section, the registered pharmacy and the pharmacist
795 designated by the registered pharmacy as the prescription

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796 department manager or the equivalent must be licensed in the
797 state of location in order to dispense into this state.
798 Section 20. Subsection (4) of section 465.0197, Florida
799 Statutes, is amended to read:
800 465.0197 Internet pharmacy permits.—
801 (4) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes
802 of this section, the Internet pharmacy and the pharmacist
803 designated by the Internet pharmacy as the prescription
804 department manager or the equivalent must be licensed in the
805 state of location in order to dispense into this state.
806 Section 21. Section 465.1901, Florida Statutes, is amended
807 to read:
808 465.1901 Practice of orthotics and pedorthics.—The
809 provisions of chapter 468 relating to orthotics or pedorthics do
810 not apply to any licensed pharmacist or to any person acting
811 under the supervision of a licensed pharmacist. The practice of
812 orthotics or pedorthics by a pharmacist or any of the
813 pharmacist's employees acting under the supervision of a
814 pharmacist shall be construed to be within the meaning of the
815 term "practice of the profession of pharmacy" as set forth in s.
816 465.003 ~~s. 465.003(13)~~, and shall be subject to regulation in
817 the same manner as any other pharmacy practice. The Board of
818 Pharmacy shall develop rules regarding the practice of orthotics
819 and pedorthics by a pharmacist. Any pharmacist or person under
820 the supervision of a pharmacist engaged in the practice of
821 orthotics or pedorthics is not precluded from continuing that
822 practice pending adoption of these rules.
823 Section 22. Subsection (43) of section 499.003, Florida
824 Statutes, is amended to read:

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825 499.003 Definitions of terms used in this part.—As used in
826 this part, the term:
827 (43) "Prescription drug" means a prescription, medicinal,
828 or legend drug, including, but not limited to, finished dosage
829 forms or active pharmaceutical ingredients subject to, defined
830 by, or described by s. 503(b) of the Federal Food, Drug, and
831 Cosmetic Act or s. 465.003 ~~s. 465.003(8)~~, s. 499.007(13), or
832 subsection (11), subsection (46), or subsection (53), except
833 that an active pharmaceutical ingredient is a prescription drug
834 only if substantially all finished dosage forms in which it may
835 be lawfully dispensed or administered in this state are also
836 prescription drugs.
837 Section 23. Subsection (22) of section 893.02, Florida
838 Statutes, is amended to read:
839 893.02 Definitions.—The following words and phrases as used
840 in this chapter shall have the following meanings, unless the
841 context otherwise requires:
842 (22) "Prescription" means and includes an order for drugs
843 or medicinal supplies written, signed, or transmitted by word of
844 mouth, telephone, telegram, or other means of communication by a
845 duly licensed practitioner licensed by the laws of the state to
846 prescribe such drugs or medicinal supplies, issued in good faith
847 and in the course of professional practice, intended to be
848 filled, compounded, or dispensed by another person licensed by
849 the laws of the state to do so, and meeting the requirements of
850 s. 893.04. The term also includes an order for drugs or
851 medicinal supplies so transmitted or written by a physician,
852 dentist, veterinarian, or other practitioner licensed to
853 practice in a state other than Florida, but only if the

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854 pharmacist called upon to fill such an order determines, in the
855 exercise of his or her professional judgment, that the order was
856 issued pursuant to a valid patient-physician relationship, that
857 it is authentic, and that the drugs or medicinal supplies so
858 ordered are considered necessary for the continuation of
859 treatment of a chronic or recurrent illness. However, if the
860 physician writing the prescription is not known to the
861 pharmacist, the pharmacist shall obtain proof to a reasonable
862 certainty of the validity of said prescription. A prescription
863 order for a controlled substance shall not be issued on the same
864 prescription blank with another prescription order for a
865 controlled substance which is named or described in a different
866 schedule, nor shall any prescription order for a controlled
867 substance be issued on the same prescription blank as a
868 prescription order for a medicinal drug, as defined in s.
869 465.003 ~~s. 465.003(8)~~, which does not fall within the definition
870 of a controlled substance as defined in this act.
871 Section 24. This act shall take effect July 1, 2013.
872
873 ========== T I T L E A M E N D M E N T ==========
874 And the title is amended as follows:
875 Delete everything before the enacting clause
876 and insert:
877 A bill to be entitled
878 An act relating to the provision of health care with
879 controlled substances; creating ss. 400.996 and
880 408.833, F.S.; providing that regulation of the
881 licensure, activity, and operation of clinics and
882 health care facilities is preempted to the state;

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883 prohibiting a local government or political
884 subdivision of the state from enacting or enforcing an
885 ordinance that imposes a levy, charge, or fee upon, or
886 that otherwise regulates, clinics and health care
887 facilities, except for ordinances regarding local
888 business taxes and land development; amending s.
889 456.44, F.S.; limiting the application of requirements
890 for prescribing controlled substances; requiring a
891 physician to consult the prescription drug monitoring
892 program database before prescribing certain controlled
893 substances; authorizing the board to adopt a penalty
894 for failure to consult the database; exempting nursing
895 home residents and certain physicians from
896 requirements regarding prescriptions of controlled
897 substances; amending s. 458.326, F.S.; requiring a
898 physician to consult the prescription drug monitoring
899 program database or designate an agent to consult the
900 database before prescribing certain controlled
901 substances; authorizing the board to adopt a penalty
902 for failure to consult the database; amending ss.
903 458.3265 and 459.0137, F.S.; requiring that owners of
904 pain-management clinics be licensed physicians;
905 removing language regarding nonphysician-owned pain-
906 management clinics; providing that regulation of the
907 licensure and activity of certain physicians and
908 osteopathic physicians is preempted to the state;
909 prohibiting a local government or political
910 subdivision of the state from enacting or enforcing an
911 ordinance that imposes a levy, charge, or fee upon, or

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912 that otherwise regulates, physicians and osteopathic
913 physicians, except for ordinances regarding local
914 business taxes and land development; amending s.
915 465.003, F.S.; defining a term; conforming a cross-
916 reference; creating s. 465.0065, F.S.; providing
917 notice requirements for inspection of a pharmacy;
918 amending s. 465.016, F.S.; providing additional
919 grounds for disciplinary action; conforming a cross-
920 reference; amending s. 465.022, F.S.; conforming a
921 cross-reference; requiring a pharmacy permittee to
922 commence operations within 180 days after permit
923 issuance or show good cause why operations were not
924 commenced; requiring the board to establish rules;
925 requiring a pharmacy permittee to be supervised by a
926 prescription department manager or consultant
927 pharmacist of record; amending s. 465.023, F.S.;
928 providing additional grounds for disciplinary action;
929 conforming a cross-reference; creating s. 465.1902,
930 F.S.; providing that regulation of the licensure,
931 activity, and operation of pharmacies and pharmacists
932 is preempted to the state; prohibiting a local
933 government or political subdivision of the state from
934 enacting or enforcing an ordinance that imposes a
935 levy, charge, or fee upon, or that otherwise
936 regulates, pharmacies and pharmacists, except for
937 ordinances regarding local business taxes and land
938 development; amending s. 893.055, F.S.; deleting an
939 obsolete provision; authorizing the prescription drug
940 monitoring program to be funded by state funds and

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941 pharmaceutical company donations; amending ss.
942 409.9201, 458.331, 459.015, 465.014, 465.015,
943 465.0156, 465.0197, 465.1901, 499.003, and 893.02,
944 F.S.; conforming cross-references; providing an
945 effective date.

By Senator Grimsley

21-00222-13 20131192__

1 A bill to be entitled
2 An act relating to pharmacy and controlled substance
3 prescription; amending s. 456.44, F.S.; limiting the
4 application of requirements for prescribing controlled
5 substances; requiring a physician to consult the
6 prescription drug monitoring program database before
7 prescribing certain controlled substances; authorizing
8 the board to adopt a penalty for failure to consult
9 the database; exempting nursing home residents and
10 certain physicians from requirements regarding
11 prescriptions of controlled substances; amending s.
12 458.326, F.S.; requiring a physician to consult the
13 prescription drug monitoring program database or
14 designate an agent to consult the database before
15 prescribing certain controlled substances; authorizing
16 the board to adopt a penalty for failure to consult
17 the database; amending ss. 458.3265 and 459.0137,
18 F.S.; requiring that owners of pain-management clinics
19 be licensed physicians; removing language regarding
20 nonphysician-owned pain-management clinics; providing
21 that regulation of the licensure, activity, and
22 operation of pharmacies, pharmacists, and health care
23 facilities and clinics is preempted to the state;
24 prohibiting a local government or political
25 subdivision of the state from enacting or enforcing an
26 ordinance that imposes a levy, charge, or fee upon, or
27 that otherwise regulates, pharmacies, pharmacists, and
28 health care clinics and facilities, except for
29 ordinances regarding local business taxes and land

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30 development; amending s. 465.003, F.S.; defining a
31 term; conforming a cross-reference; creating s.
32 465.0065, F.S.; providing notice requirements for
33 inspection of a pharmacy; amending s. 465.016, F.S.;
34 providing additional grounds for disciplinary action;
35 conforming a cross-reference; amending s. 465.022,
36 F.S.; conforming a cross-reference; requiring a
37 pharmacy permittee to commence operations within 180
38 days after permit issuance or show good cause why
39 operations were not commenced; requiring the board to
40 establish rules; requiring a pharmacy permittee to be
41 supervised by a prescription department manager or
42 consultant pharmacist of record; amending s. 465.023,
43 F.S.; providing additional grounds for disciplinary
44 action; conforming a cross-reference; amending s.
45 893.055, F.S.; deleting an obsolete provision;
46 authorizing the prescription drug monitoring program
47 to be funded by state funds and pharmaceutical company
48 donations; amending ss. 409.9201, 458.331, 459.015,
49 465.014, 465.015, 465.0156, 465.0197, 465.1901,
50 499.003, and 893.02, F.S.; conforming cross-
51 references; providing an effective date.
52
53 Be It Enacted by the Legislature of the State of Florida:
54
55 Section 1. Subsections (2) and (3) of section 456.44,
56 Florida Statutes, are amended to read:
57 456.44 Controlled substance prescribing.—
58 (2) REGISTRATION. ~~Effective January 1, 2012,~~ A physician

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59 licensed under chapter 458, chapter 459, chapter 461, or chapter
60 466 who prescribes more than a 30-day supply of any controlled
61 substance, listed in Schedule II, Schedule III, or Schedule IV
62 as defined in s. 893.03, over a 6-month period to any one
63 patient for the treatment of chronic nonmalignant pain, must:
64 (a) Designate himself or herself as a controlled substance
65 prescribing practitioner on the physician's practitioner
66 profile.
67 (b) Comply with the requirements of this section and
68 applicable board rules.
69 (3) STANDARDS OF PRACTICE.—The standards of practice in
70 this section do not supersede the level of care, skill, and
71 treatment recognized in general law related to health care
72 licensure.
73 (a) A complete medical history and a physical examination
74 must be conducted before beginning any treatment and must be
75 documented in the medical record. The exact components of the
76 physical examination shall be left to the judgment of the
77 clinician who is expected to perform a physical examination
78 proportionate to the diagnosis that justifies a treatment. The
79 medical record must, at a minimum, document the nature and
80 intensity of the pain, current and past treatments for pain,
81 underlying or coexisting diseases or conditions, the effect of
82 the pain on physical and psychological function, a review of
83 previous medical records, previous diagnostic studies, and
84 history of alcohol and substance abuse. The medical record shall
85 also document the presence of one or more recognized medical
86 indications for the use of a controlled substance. Each
87 registrant must develop a written plan for assessing each

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88 patient's risk of aberrant drug-related behavior, which may
89 include patient drug testing. Registrants must assess each
90 patient's risk for aberrant drug-related behavior and monitor
91 that risk on an ongoing basis in accordance with the plan.
92 (b) Pursuant to s. 458.326, before or during a new
93 patient's visit for pain-treatment services, a physician shall
94 consult the prescription drug monitoring program database
95 provided under s. 893.055(2)(a) before prescribing a controlled
96 substance listed in Schedule II or Schedule III in s. 893.03.
97 The physician may designate an agent under his or her
98 supervision to consult the database. The board shall adopt rules
99 to establish a penalty for a physician who does not comply with
100 this subsection.
101 (c) ~~(b)~~ Each registrant must develop a written
102 individualized treatment plan for each patient. The treatment
103 plan shall state objectives that will be used to determine
104 treatment success, such as pain relief and improved physical and
105 psychosocial function, and shall indicate if any further
106 diagnostic evaluations or other treatments are planned. After
107 treatment begins, the physician shall adjust drug therapy to the
108 individual medical needs of each patient. Other treatment
109 modalities, including a rehabilitation program, shall be
110 considered depending on the etiology of the pain and the extent
111 to which the pain is associated with physical and psychosocial
112 impairment. The interdisciplinary nature of the treatment plan
113 shall be documented.
114 (d) ~~(c)~~ The physician shall discuss the risks and benefits
115 of the use of controlled substances, including the risks of
116 abuse and addiction, as well as physical dependence and its

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117 consequences, with the patient, persons designated by the
118 patient, or the patient's surrogate or guardian if the patient
119 is incompetent. The physician shall use a written controlled
120 substance agreement between the physician and the patient
121 outlining the patient's responsibilities, including, but not
122 limited to:
123 1. Number and frequency of controlled substance
124 prescriptions and refills.
125 2. Patient compliance and reasons for which drug therapy
126 may be discontinued, such as a violation of the agreement.
127 3. An agreement that controlled substances for the
128 treatment of chronic nonmalignant pain shall be prescribed by a
129 single treating physician unless otherwise authorized by the
130 treating physician and documented in the medical record.
131 (e) ~~(d)~~ The patient shall be seen by the physician at
132 regular intervals, not to exceed 3 months, to assess the
133 efficacy of treatment, ensure that controlled substance therapy
134 remains indicated, evaluate the patient's progress toward
135 treatment objectives, consider adverse drug effects, and review
136 the etiology of the pain. Continuation or modification of
137 therapy shall depend on the physician's evaluation of the
138 patient's progress. If treatment goals are not being achieved,
139 despite medication adjustments, the physician shall reevaluate
140 the appropriateness of continued treatment. The physician shall
141 monitor patient compliance in medication usage, related
142 treatment plans, controlled substance agreements, and
143 indications of substance abuse or diversion at a minimum of 3-
144 month intervals.
145 (f) ~~(e)~~ The physician shall refer the patient as necessary

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146 for additional evaluation and treatment in order to achieve
147 treatment objectives. Special attention shall be given to those
148 patients who are at risk for misusing their medications and
149 those whose living arrangements pose a risk for medication
150 misuse or diversion. The management of pain in patients with a
151 history of substance abuse or with a comorbid psychiatric
152 disorder requires extra care, monitoring, and documentation and
153 requires consultation with or referral to an addiction medicine
154 specialist or psychiatrist.
155 (g) ~~(f)~~ A physician registered under this section must
156 maintain accurate, current, and complete records that are
157 accessible and readily available for review and comply with the
158 requirements of this section, the applicable practice act, and
159 applicable board rules. The medical records must include, but
160 are not limited to:
161 1. The complete medical history and a physical examination,
162 including history of drug abuse or dependence.
163 2. Diagnostic, therapeutic, and laboratory results.
164 3. Evaluations and consultations.
165 4. Treatment objectives.
166 5. Discussion of risks and benefits.
167 6. Treatments.
168 7. Medications, including date, type, dosage, and quantity
169 prescribed.
170 8. Instructions and agreements.
171 9. Periodic reviews.
172 10. Results of any drug testing.
173 11. A photocopy of the patient’s government-issued photo
174 identification.

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175 12. If a written prescription for a controlled substance is
176 given to the patient, a duplicate of the prescription.
177 13. The physician's full name presented in a legible
178 manner.
179 (h) ~~(g)~~ Patients with signs or symptoms of substance abuse
180 shall be immediately referred to a board-certified pain
181 management physician, an addiction medicine specialist, or a
182 mental health addiction facility as it pertains to drug abuse or
183 addiction unless the physician is board-certified or board-
184 eligible in pain management. Throughout the period of time
185 before receiving the consultant's report, a prescribing
186 physician shall clearly and completely document medical
187 justification for continued treatment with controlled substances
188 and those steps taken to ensure medically appropriate use of
189 controlled substances by the patient. Upon receipt of the
190 consultant's written report, the prescribing physician shall
191 incorporate the consultant's recommendations for continuing,
192 modifying, or discontinuing controlled substance therapy. The
193 resulting changes in treatment shall be specifically documented
194 in the patient's medical record. Evidence or behavioral
195 indications of diversion shall be followed by discontinuation of
196 controlled substance therapy, and the patient shall be
197 discharged, and all results of testing and actions taken by the
198 physician shall be documented in the patient's medical record.
199
200 This subsection does not apply to a board-eligible or board-
201 certified anesthesiologist, physiatrist, rheumatologist, or
202 neurologist, or to a board-certified physician who has surgical
203 privileges at a hospital or ambulatory surgery center and

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204 primarily provides surgical services. This subsection does not
205 apply to a board-eligible or board-certified medical specialist
206 who has also completed a fellowship in pain medicine approved by
207 the Accreditation Council for Graduate Medical Education or the
208 American Osteopathic Association, or who is board eligible or
209 board certified in pain medicine by the American Board of Pain
210 Medicine or a board approved by the American Board of Medical
211 Specialties or the American Osteopathic Association and performs
212 interventional pain procedures of the type routinely billed
213 using surgical codes. This subsection does not apply to a
214 physician who prescribes medically necessary controlled
215 substances for a patient during an inpatient stay in a hospital
216 licensed under chapter 395 <u>or to a resident in a facility</u>
217 <u>licensed under part II of chapter 400. This subsection does not</u>
218 <u>apply to any physician licensed under chapter 458 or chapter 459</u>
219 <u>who writes fewer than 50 prescriptions for a controlled</u>
220 <u>substance for all of his or her patients during a 1-year period</u>.
221 Section 2. Subsection (3) of section 458.326, Florida
222 Statutes, is amended to read:
223 458.326 Intractable pain; authorized treatment.—
224 (3)<u>(a)</u> Notwithstanding any other provision of law, a
225 physician may prescribe or administer any controlled substance
226 under Schedules II-V, as provided for in s. 893.03, to a person
227 for the treatment of intractable pain, provided the physician
228 does so in accordance with that level of care, skill, and
229 treatment recognized by a reasonably prudent physician under
230 similar conditions and circumstances.
231 <u>(b) Before or during a new patient's visit for pain-</u>
232 <u>treatment services, a physician shall consult the prescription</u>

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233 drug monitoring program database provided under s. 893.055(2)(a)
234 before prescribing a controlled substance listed in Schedule II
235 or Schedule III in s. 893.03. The physician may designate an
236 agent under his or her supervision to consult the database. The
237 board shall adopt rules to establish a penalty for a physician
238 who does not comply with this paragraph.
239 Section 3. Paragraphs (a) and (d) of subsection (1) of
240 section 458.3265, Florida Statutes, are amended, present
241 subsections (5) and (6) of that section are renumbered as
242 subsections (6) and (7), respectively, and a new subsection (5)
243 is added to that section, to read:
244 458.3265 Pain-management clinics.—
245 (1) REGISTRATION.—
246 (a)1. As used in this section, the term:
247 a. “Board eligible” means successful completion of an
248 anesthesia, physical medicine and rehabilitation, rheumatology,
249 or neurology residency program approved by the Accreditation
250 Council for Graduate Medical Education or the American
251 Osteopathic Association for a period of 6 years from successful
252 completion of such residency program.
253 b. “Chronic nonmalignant pain” means pain unrelated to
254 cancer which persists beyond the usual course of disease or the
255 injury that is the cause of the pain or more than 90 days after
256 surgery.
257 c. “Pain-management clinic” or “clinic” means any publicly
258 or privately owned facility:
259 (I) That advertises in any medium for any type of pain-
260 management services; or
261 (II) Where in any month a majority of patients are

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262 prescribed opioids, benzodiazepines, barbiturates, or
263 carisoprodol for the treatment of chronic nonmalignant pain.
264 2. Each pain-management clinic must register with the
265 department unless:
266 a. That clinic is licensed as a facility pursuant to
267 chapter 395;
268 b. The majority of the physicians who provide services in
269 the clinic primarily provide surgical services;
270 ~~c. The clinic is owned by a publicly held corporation whose~~
271 ~~shares are traded on a national exchange or on the over-the-~~
272 ~~counter market and whose total assets at the end of the~~
273 ~~corporation's most recent fiscal quarter exceeded $50 million;~~
274 c.~~d.~~ The clinic is affiliated with an accredited medical
275 school at which training is provided for medical students,
276 residents, or fellows;
277 d.~~e.~~ The clinic does not prescribe controlled substances
278 for the treatment of pain;
279 ~~f. The clinic is owned by a corporate entity exempt from~~
280 ~~federal taxation under 26 U.S.C. s. 501(c)(3);~~
281 e.~~g.~~ The clinic is wholly owned and operated by one or more
282 board-eligible or board-certified anesthesiologists,
283 physiatrists, rheumatologists, or neurologists; or
284 f.~~h.~~ The clinic is wholly owned and operated by a physician
285 multispecialty practice where one or more board-eligible or
286 board-certified medical specialists who have also completed
287 fellowships in pain medicine approved by the Accreditation
288 Council for Graduate Medical Education, or who are also board-
289 certified in pain medicine by the American Board of Pain
290 Medicine or a board approved by the American Board of Medical

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291 Specialties, the American Association of Physician Specialists,
292 or the American Osteopathic Association and perform
293 interventional pain procedures of the type routinely billed
294 using surgical codes.
295 (d) The department shall deny registration to any clinic
296 that is not fully owned by a physician licensed under this
297 chapter or chapter 459 or a group of physicians, each of whom is
298 licensed under this chapter or chapter 459; or that is not a
299 health care clinic licensed under part X of chapter 400 which is
300 fully owned by such physician or group of physicians.
301 (5) PREEMPTION.—This chapter preempts to the state all
302 regulation of the licensure, activity, and operation of
303 pharmacies and pharmacists as defined in chapter 465, health
304 care facilities as defined in s. 408.07, and clinics under part
305 X of chapter 400, including registration and licensing for pain-
306 management clinics and practitioners. A local government or
307 political subdivision of the state may not enact or enforce an
308 ordinance that imposes a levy, charge, or fee upon, or that
309 otherwise regulates, pharmacies and pharmacists as defined in
310 chapter 465, health care facilities as defined in s. 408.07, and
311 clinics under part X of chapter 400, including services provided
312 within such facilities, except that this preemption does not
313 prohibit a local government or political subdivision from
314 enacting an ordinance regarding the following:
315 (a) Local business taxes adopted pursuant to chapter 205.
316 (b) Land use development regulations adopted pursuant to
317 chapter 163, which include regulation of any aspect of
318 development, including a subdivision, building construction,
319 sign regulation, and any other regulation concerning the

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320 development of land, landscaping, or tree protection, and which
321 do not include restrictions on pain-management services, health
322 care services, or the prescribing of controlled substances.
323 However, a health care facility or clinic that treats pain or
324 provides pain-management services is a permissible use in a land
325 use or zoning category that permits hospitals, other health care
326 facilities, or clinics as defined in chapter 395, s. 408.907, or
327 under part X of chapter 400.
328 Section 4. Paragraphs (a) and (d) of subsection (1) of
329 section 459.0137, Florida Statutes, are amended, present
330 subsections (5) and (6) of that section are renumbered as
331 subsections (6) and (7), respectively, and a new subsection (5)
332 is added to that section, to read:
333 459.0137 Pain-management clinics.—
334 (1) REGISTRATION.—
335 (a)1. As used in this section, the term:
336 a. “Board eligible” means successful completion of an
337 anesthesia, physical medicine and rehabilitation, rheumatology,
338 or neurology residency program approved by the Accreditation
339 Council for Graduate Medical Education or the American
340 Osteopathic Association for a period of 6 years from successful
341 completion of such residency program.
342 b. “Chronic nonmalignant pain” means pain unrelated to
343 cancer which persists beyond the usual course of disease or the
344 injury that is the cause of the pain or more than 90 days after
345 surgery.
346 c. “Pain-management clinic” or “clinic” means any publicly
347 or privately owned facility:
348 (I) That advertises in any medium for any type of pain-

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349 management services; or
350 (II) Where in any month a majority of patients are
351 prescribed opioids, benzodiazepines, barbiturates, or
352 carisoprodol for the treatment of chronic nonmalignant pain.
353 2. Each pain-management clinic must register with the
354 department unless:
355 a. That clinic is licensed as a facility pursuant to
356 chapter 395;
357 b. The majority of the physicians who provide services in
358 the clinic primarily provide surgical services;
359 ~~c. The clinic is owned by a publicly held corporation whose~~
360 ~~shares are traded on a national exchange or on the over-the-~~
361 ~~counter market and whose total assets at the end of the~~
362 ~~corporation's most recent fiscal quarter exceeded $50 million;~~
363 c.~~d.~~ The clinic is affiliated with an accredited medical
364 school at which training is provided for medical students,
365 residents, or fellows;
366 d.~~e.~~ The clinic does not prescribe controlled substances
367 for the treatment of pain;
368 ~~f. The clinic is owned by a corporate entity exempt from~~
369 ~~federal taxation under 26 U.S.C. s. 501(c)(3);~~
370 e.~~g.~~ The clinic is wholly owned and operated by one or more
371 board-eligible or board-certified anesthesiologists,
372 physiatrists, rheumatologists, or neurologists; or
373 f.~~h.~~ The clinic is wholly owned and operated by a physician
374 multispecialty practice where one or more board-eligible or
375 board-certified medical specialists who have also completed
376 fellowships in pain medicine approved by the Accreditation
377 Council for Graduate Medical Education or the American

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378 Osteopathic Association, or who are also board-certified in pain
379 medicine by the American Board of Pain Medicine or a board
380 approved by the American Board of Medical Specialties, the
381 American Association of Physician Specialists, or the American
382 Osteopathic Association and perform interventional pain
383 procedures of the type routinely billed using surgical codes.
384 (d) The department shall deny registration to any clinic
385 that is not fully owned by a physician licensed under chapter
386 458 or this chapter or a group of physicians, each of whom is
387 licensed under chapter 458 or this chapter; or that is not a
388 health care clinic licensed under part X of chapter 400 which is
389 fully owned by such physician or group of physicians.
390 (5) PREEMPTION.—This chapter preempts to the state all
391 regulation of the licensure, activity, and operation of
392 pharmacies and pharmacists as defined in chapter 465, health
393 care facilities as defined in s. 408.07, and clinics under part
394 X of chapter 400, including registration and licensing for pain-
395 management clinics and practitioners. A local government or
396 political subdivision of the state may not enact or enforce an
397 ordinance that imposes a levy, charge, or fee upon, or that
398 otherwise regulates, pharmacies and pharmacists as defined in
399 chapter 465, health care facilities as defined in s. 408.07, and
400 clinics under part X of chapter 400, including services provided
401 within such facilities, except that this preemption does not
402 prohibit a local government or political subdivision from
403 enacting an ordinance regarding the following:
404 (a) Local business taxes adopted pursuant to chapter 205.
405 (b) Land use development regulations adopted pursuant to
406 chapter 163, which include regulation of any aspect of

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407 development, including a subdivision, building construction,
408 sign regulation, and any other regulation concerning the
409 development of land, landscaping, or tree protection, and which
410 do not include restrictions on pain-management services, health
411 care services, and the prescribing of controlled substances.
412 However, a health care facility or clinic that treats pain or
413 provides pain-management services is a permissible use in a land
414 use or zoning category that permits hospitals, other health care
415 facilities, or clinics as defined in chapter 395, s. 408.907, or
416 under part X of chapter 400.
417 Section 5. Present subsections (1) through (17) of section
418 465.003, Florida Statutes, are renumbered as subsections (2)
419 through (18), respectively, paragraph (a) of present subsection
420 (11) of that section is amended, and a new subsection (1) is
421 added to that section, to read:
422 465.003 Definitions.—As used in this chapter, the term:
423 (1) "Abandoned" means the status of a person who is issued
424 a pharmacy permit but fails to commence pharmacy operations
425 within 180 days after issuance of the pharmacy permit without
426 good cause or fails to follow pharmacy closure requirements as
427 set by the board.
428 (12) ~~(11)~~(a) "Pharmacy" includes a community pharmacy, an
429 institutional pharmacy, a nuclear pharmacy, a special pharmacy,
430 and an Internet pharmacy.
431 1. The term "community pharmacy" includes every location
432 where medicinal drugs are compounded, dispensed, stored, or sold
433 or where prescriptions are filled or dispensed on an outpatient
434 basis.
435 2. The term "institutional pharmacy" includes every

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436 location in a hospital, clinic, nursing home, dispensary,
437 sanitarium, extended care facility, or other facility,
438 hereinafter referred to as “health care institutions,” where
439 medicinal drugs are compounded, dispensed, stored, or sold.
440 3. The term “nuclear pharmacy” includes every location
441 where radioactive drugs and chemicals within the classification
442 of medicinal drugs are compounded, dispensed, stored, or sold.
443 The term “nuclear pharmacy” does not include hospitals licensed
444 under chapter 395 or the nuclear medicine facilities of such
445 hospitals.
446 4. The term “special pharmacy” includes every location
447 where medicinal drugs are compounded, dispensed, stored, or sold
448 if such locations are not otherwise defined in this subsection.
449 5. The term “Internet pharmacy” includes locations not
450 otherwise licensed or issued a permit under this chapter, within
451 or outside this state, which use the Internet to communicate
452 with or obtain information from consumers in this state and use
453 such communication or information to fill or refill
454 prescriptions or to dispense, distribute, or otherwise engage in
455 the practice of pharmacy in this state. Any act described in
456 this definition constitutes the practice of pharmacy as defined
457 in subsection (14) ~~(13)~~.
458 Section 6. Section 465.0065, Florida Statutes, is created
459 to read:
460 465.0065 Notices; form and service.—Each notice served by
461 the department pursuant to this chapter must be in writing and
462 must be delivered personally by an agent of the department or by
463 certified mail to the pharmacy permittee. If the pharmacy
464 permittee refuses to accept service or evades service or if the

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465 agent is otherwise unable to carry out service after due
466 diligence, the department may post the notice in a conspicuous
467 place at the pharmacy.
468 Section 7. Paragraphs (e) and (s) of subsection (1) of
469 section 465.016, Florida Statutes, are amended, and paragraph
470 (u) is added to that subsection to read:
471 465.016 Disciplinary actions.—
472 (1) The following acts constitute grounds for denial of a
473 license or disciplinary action, as specified in s. 456.072(2):
474 (e) Violating chapter 499; 21 U.S.C. ss. 301-392, known as
475 the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et
476 seq., known as the Comprehensive Drug Abuse Prevention and
477 Control Act; or chapter 893 or rules adopted thereunder.
478 (s) Dispensing any medicinal drug based upon a
479 communication that purports to be a prescription as defined by
480 s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows
481 or has reason to believe that the purported prescription is not
482 based upon a valid practitioner-patient relationship.
483 (u) Misappropriating drugs, supplies, or equipment from a
484 pharmacy permittee.
485 Section 8. Paragraph (j) of subsection (5) of section
486 465.022, Florida Statutes, is amended, present subsections (10)
487 through (14) are renumbered as subsections (11) through (15),
488 respectively, present subsection (10) of that section is
489 amended, and a new subsection (10) is added to that section, to
490 read:
491 465.022 Pharmacies; general requirements; fees.—
492 (5) The department or board shall deny an application for a
493 pharmacy permit if the applicant or an affiliated person,

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494 partner, officer, director, or prescription department manager
495 or consultant pharmacist of record of the applicant:
496 (j) Has dispensed any medicinal drug based upon a
497 communication that purports to be a prescription as defined by
498 s. 465.003 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows
499 or has reason to believe that the purported prescription is not
500 based upon a valid practitioner-patient relationship that
501 includes a documented patient evaluation, including history and
502 a physical examination adequate to establish the diagnosis for
503 which any drug is prescribed and any other requirement
504 established by board rule under chapter 458, chapter 459,
505 chapter 461, chapter 463, chapter 464, or chapter 466.
506
507 For felonies in which the defendant entered a plea of guilty or
508 nolo contendere in an agreement with the court to enter a
509 pretrial intervention or drug diversion program, the department
510 shall deny the application if upon final resolution of the case
511 the licensee has failed to successfully complete the program.
512 (10) The permittee shall commence pharmacy operations
513 within 180 days after issuance of the permit, or show good cause
514 to the department why pharmacy operations were not commenced.
515 Commencement of pharmacy operations includes, but is not limited
516 to, acts within the scope of the practice of pharmacy, ordering
517 or receiving drugs, and other similar activities. The board
518 shall establish rules regarding commencement of pharmacy
519 operations.
520 (11) ~~(10)~~ A pharmacy permittee shall be supervised by a
521 prescription department manager or consultant pharmacist of
522 record at all times. A permittee must notify the department, on

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523 a form approved by the board, within 10 days after any change in
524 prescription department manager or consultant pharmacist of
525 record.
526 Section 9. Subsection (1) of section 465.023, Florida
527 Statutes, is amended to read:
528 465.023 Pharmacy permittee; disciplinary action.—
529 (1) The department or the board may revoke or suspend the
530 permit of any pharmacy permittee, and may fine, place on
531 probation, or otherwise discipline any pharmacy permittee if the
532 permittee, or any affiliated person, partner, officer, director,
533 or agent of the permittee, including a person fingerprinted
534 under s. 465.022(3), has:
535 (a) Obtained a permit by misrepresentation or fraud or
536 through an error of the department or the board;
537 (b) Attempted to procure, or has procured, a permit for any
538 other person by making, or causing to be made, any false
539 representation;
540 (c) Violated any of the requirements of this chapter or any
541 of the rules of the Board of Pharmacy; of chapter 499, known as
542 the "Florida Drug and Cosmetic Act"; of 21 U.S.C. ss. 301-392,
543 known as the "Federal Food, Drug, and Cosmetic Act"; of 21
544 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse
545 Prevention and Control Act; or of chapter 893 <u>or rules adopted</u>
546 <u>thereunder</u>;
547 (d) Been convicted or found guilty, regardless of
548 adjudication, of a felony or any other crime involving moral
549 turpitude in any of the courts of this state, of any other
550 state, or of the United States;
551 (e) Been convicted or disciplined by a regulatory agency of

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552 the Federal Government or a regulatory agency of another state
553 for any offense that would constitute a violation of this
554 chapter;
555 (f) Been convicted of, or entered a plea of guilty or nolo
556 contendere to, regardless of adjudication, a crime in any
557 jurisdiction which relates to the practice of, or the ability to
558 practice, the profession of pharmacy;
559 (g) Been convicted of, or entered a plea of guilty or nolo
560 contendere to, regardless of adjudication, a crime in any
561 jurisdiction which relates to health care fraud; or
562 (h) Dispensed any medicinal drug based upon a communication
563 that purports to be a prescription as defined by s. 465.003 ~~s.~~
564 ~~465.003(14)~~ or s. 893.02 when the pharmacist knows or has reason
565 to believe that the purported prescription is not based upon a
566 valid practitioner-patient relationship that includes a
567 documented patient evaluation, including history and a physical
568 examination adequate to establish the diagnosis for which any
569 drug is prescribed and any other requirement established by
570 board rule under chapter 458, chapter 459, chapter 461, chapter
571 463, chapter 464, or chapter 466.
572 Section 10. Paragraph (b) of subsection (2), subsection
573 (10), and paragraph (c) of subsection (11) of section 893.055,
574 Florida Statutes, are amended to read:
575 893.055 Prescription drug monitoring program.—
576 (2)
577 (b) The department~~, when the direct support organization~~
578 ~~receives at least $20,000 in nonstate moneys or the state~~
579 ~~receives at least $20,000 in federal grants for the prescription~~
580 ~~drug monitoring program,~~ shall adopt rules as necessary

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581 concerning the reporting, accessing the database, evaluation,
582 management, development, implementation, operation, security,
583 and storage of information within the system, including rules
584 for when patient advisory reports are provided to pharmacies and
585 prescribers. The patient advisory report shall be provided in
586 accordance with s. 893.13(7)(a)8. The department shall work with
587 the professional health care licensure boards, such as the Board
588 of Medicine, the Board of Osteopathic Medicine, and the Board of
589 Pharmacy; other appropriate organizations, such as the Florida
590 Pharmacy Association, the Florida Medical Association, the
591 Florida Retail Federation, and the Florida Osteopathic Medical
592 Association, including those relating to pain management; and
593 the Attorney General, the Department of Law Enforcement, and the
594 Agency for Health Care Administration to develop rules
595 appropriate for the prescription drug monitoring program.
596 (10) All costs incurred by the department in administering
597 the prescription drug monitoring program shall be funded through
598 state funds, federal grants, or private funding applied for or
599 received by the state. The department may not commit funds for
600 the monitoring program without ensuring funding is available.
601 ~~The prescription drug monitoring program and the implementation~~
602 ~~thereof are contingent upon receipt of the nonstate funding.~~ The
603 department and state government shall cooperate with the direct-
604 support organization established pursuant to subsection (11) in
605 seeking state funds, federal grant funds, other nonstate grant
606 funds, gifts, donations, or other private moneys for the
607 department if ~~so long as~~ the costs of doing so are not
608 considered material. Nonmaterial costs for this purpose include,
609 but are not limited to, the costs of mailing and personnel

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610 assigned to research or apply for a grant. Notwithstanding the
611 exemptions to competitive-solicitation requirements under s.
612 287.057(3)(f), the department shall comply with the competitive-
613 solicitation requirements under s. 287.057 for the procurement
614 of any goods or services required by this section. Funds
615 provided, directly or indirectly, by prescription drug
616 manufacturers may not be used to implement the program.
617 (11) The department may establish a direct-support
618 organization that has a board consisting of at least five
619 members to provide assistance, funding, and promotional support
620 for the activities authorized for the prescription drug
621 monitoring program.
622 (c) The State Surgeon General shall appoint a board of
623 directors for the direct-support organization. Members of the
624 board shall serve at the pleasure of the State Surgeon General.
625 The State Surgeon General shall provide guidance to members of
626 the board to ensure that moneys received by the direct-support
627 organization are not received from inappropriate sources.
628 Inappropriate sources include, but are not limited to, donors,
629 grantors, persons, and ~~or~~ organizations, excluding
630 pharmaceutical companies, that may monetarily or substantively
631 benefit from the purchase of goods or services by the department
632 in furtherance of the prescription drug monitoring program.
633 Section 11. Subsection (1) of section 409.9201, Florida
634 Statutes, is amended to read:
635 409.9201 Medicaid fraud.—
636 (1) As used in this section, the term:
637 (a) “Prescription drug” means any drug, including, but not
638 limited to, finished dosage forms or active ingredients that are

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639 subject to, defined by, or described by s. 503(b) of the Federal
640 Food, Drug, and Cosmetic Act or by s. 465.003 ~~s. 465.003(8)~~, s.
641 499.003(46) or (53) or s. 499.007(13).
642 (b) "Value" means the amount billed to the Medicaid program
643 for the property dispensed or the market value of a legend drug
644 or goods or services at the time and place of the offense. If
645 the market value cannot be determined, the term means the
646 replacement cost of the legend drug or goods or services within
647 a reasonable time after the offense.
648
649 The value of individual items of the legend drugs or goods or
650 services involved in distinct transactions committed during a
651 single scheme or course of conduct, whether involving a single
652 person or several persons, may be aggregated when determining
653 the punishment for the offense.
654 Section 12. Paragraph (pp) of subsection (1) of section
655 458.331, Florida Statutes, is amended to read:
656 458.331 Grounds for disciplinary action; action by the
657 board and department.—
658 (1) The following acts constitute grounds for denial of a
659 license or disciplinary action, as specified in s. 456.072(2):
660 (pp) Applicable to a licensee who serves as the designated
661 physician of a pain-management clinic as defined in s. 458.3265
662 or s. 459.0137:
663 1. Registering a pain-management clinic through
664 misrepresentation or fraud;
665 2. Procuring, or attempting to procure, the registration of
666 a pain-management clinic for any other person by making or
667 causing to be made, any false representation;

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668 3. Failing to comply with any requirement of chapter 499,
669 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the
670 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,
671 the Drug Abuse Prevention and Control Act; or chapter 893, the
672 Florida Comprehensive Drug Abuse Prevention and Control Act;
673 4. Being convicted or found guilty of, regardless of
674 adjudication to, a felony or any other crime involving moral
675 turpitude, fraud, dishonesty, or deceit in any jurisdiction of
676 the courts of this state, of any other state, or of the United
677 States;
678 5. Being convicted of, or disciplined by a regulatory
679 agency of the Federal Government or a regulatory agency of
680 another state for, any offense that would constitute a violation
681 of this chapter;
682 6. Being convicted of, or entering a plea of guilty or nolo
683 contendere to, regardless of adjudication, a crime in any
684 jurisdiction of the courts of this state, of any other state, or
685 of the United States which relates to the practice of, or the
686 ability to practice, a licensed health care profession;
687 7. Being convicted of, or entering a plea of guilty or nolo
688 contendere to, regardless of adjudication, a crime in any
689 jurisdiction of the courts of this state, of any other state, or
690 of the United States which relates to health care fraud;
691 8. Dispensing any medicinal drug based upon a communication
692 that purports to be a prescription as defined in s. 465.003 ~~s.~~
693 ~~465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or
694 has reason to believe that the purported prescription is not
695 based upon a valid practitioner-patient relationship; or
696 9. Failing to timely notify the board of the date of his or

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

697 her termination from a pain-management clinic as required by s.
698 458.3265(2).
699 Section 13. Paragraph (rr) of subsection (1) of section
700 459.015, Florida Statutes, is amended to read:
701 459.015 Grounds for disciplinary action; action by the
702 board and department.—
703 (1) The following acts constitute grounds for denial of a
704 license or disciplinary action, as specified in s. 456.072(2):
705 (rr) Applicable to a licensee who serves as the designated
706 physician of a pain-management clinic as defined in s. 458.3265
707 or s. 459.0137:
708 1. Registering a pain-management clinic through
709 misrepresentation or fraud;
710 2. Procuring, or attempting to procure, the registration of
711 a pain-management clinic for any other person by making or
712 causing to be made, any false representation;
713 3. Failing to comply with any requirement of chapter 499,
714 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the
715 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,
716 the Drug Abuse Prevention and Control Act; or chapter 893, the
717 Florida Comprehensive Drug Abuse Prevention and Control Act;
718 4. Being convicted or found guilty of, regardless of
719 adjudication to, a felony or any other crime involving moral
720 turpitude, fraud, dishonesty, or deceit in any jurisdiction of
721 the courts of this state, of any other state, or of the United
722 States;
723 5. Being convicted of, or disciplined by a regulatory
724 agency of the Federal Government or a regulatory agency of
725 another state for, any offense that would constitute a violation

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726 of this chapter;
727 6. Being convicted of, or entering a plea of guilty or nolo
728 contendere to, regardless of adjudication, a crime in any
729 jurisdiction of the courts of this state, of any other state, or
730 of the United States which relates to the practice of, or the
731 ability to practice, a licensed health care profession;
732 7. Being convicted of, or entering a plea of guilty or nolo
733 contendere to, regardless of adjudication, a crime in any
734 jurisdiction of the courts of this state, of any other state, or
735 of the United States which relates to health care fraud;
736 8. Dispensing any medicinal drug based upon a communication
737 that purports to be a prescription as defined in s. 465.003 ~~s.~~
738 ~~465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or
739 has reason to believe that the purported prescription is not
740 based upon a valid practitioner-patient relationship; or
741 9. Failing to timely notify the board of the date of his or
742 her termination from a pain-management clinic as required by s.
743 459.0137(2).
744 Section 14. Subsection (1) of section 465.014, Florida
745 Statutes, is amended to read:
746 465.014 Pharmacy technician.—
747 (1) A person other than a licensed pharmacist or pharmacy
748 intern may not engage in the practice of the profession of
749 pharmacy, except that a licensed pharmacist may delegate to
750 pharmacy technicians who are registered pursuant to this section
751 those duties, tasks, and functions that do not fall within the
752 purview of s. 465.003 ~~s. 465.003(13)~~. All such delegated acts
753 shall be performed under the direct supervision of a licensed
754 pharmacist who shall be responsible for all such acts performed

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755 by persons under his or her supervision. A pharmacy registered
756 technician, under the supervision of a pharmacist, may initiate
757 or receive communications with a practitioner or his or her
758 agent, on behalf of a patient, regarding refill authorization
759 requests. A licensed pharmacist may not supervise more than one
760 registered pharmacy technician unless otherwise permitted by the
761 guidelines adopted by the board. The board shall establish
762 guidelines to be followed by licensees or permittees in
763 determining the circumstances under which a licensed pharmacist
764 may supervise more than one but not more than three pharmacy
765 technicians.
766 Section 15. Paragraph (c) of subsection (2) of section
767 465.015, Florida Statutes, is amended to read:
768 465.015 Violations and penalties.—
769 (2) It is unlawful for any person:
770 (c) To sell or dispense drugs as defined in s. 465.003 ~~s.~~
771 ~~465.003(8)~~ without first being furnished with a prescription.
772 Section 16. Subsection (8) of section 465.0156, Florida
773 Statutes, is amended to read:
774 465.0156 Registration of nonresident pharmacies.—
775 (8) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes
776 of this section, the registered pharmacy and the pharmacist
777 designated by the registered pharmacy as the prescription
778 department manager or the equivalent must be licensed in the
779 state of location in order to dispense into this state.
780 Section 17. Subsection (4) of section 465.0197, Florida
781 Statutes, is amended to read:
782 465.0197 Internet pharmacy permits.—
783 (4) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes

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784 of this section, the Internet pharmacy and the pharmacist
785 designated by the Internet pharmacy as the prescription
786 department manager or the equivalent must be licensed in the
787 state of location in order to dispense into this state.
788 Section 18. Section 465.1901, Florida Statutes, is amended
789 to read:
790 465.1901 Practice of orthotics and pedorthics.—The
791 provisions of chapter 468 relating to orthotics or pedorthics do
792 not apply to any licensed pharmacist or to any person acting
793 under the supervision of a licensed pharmacist. The practice of
794 orthotics or pedorthics by a pharmacist or any of the
795 pharmacist's employees acting under the supervision of a
796 pharmacist shall be construed to be within the meaning of the
797 term "practice of the profession of pharmacy" as set forth in s.
798 465.003 ~~s. 465.003(13)~~, and shall be subject to regulation in
799 the same manner as any other pharmacy practice. The Board of
800 Pharmacy shall develop rules regarding the practice of orthotics
801 and pedorthics by a pharmacist. Any pharmacist or person under
802 the supervision of a pharmacist engaged in the practice of
803 orthotics or pedorthics is not precluded from continuing that
804 practice pending adoption of these rules.
805 Section 19. Subsection (43) of section 499.003, Florida
806 Statutes, is amended to read:
807 499.003 Definitions of terms used in this part.—As used in
808 this part, the term:
809 (43) "Prescription drug" means a prescription, medicinal,
810 or legend drug, including, but not limited to, finished dosage
811 forms or active pharmaceutical ingredients subject to, defined
812 by, or described by s. 503(b) of the Federal Food, Drug, and

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813 Cosmetic Act or s. 465.003 ~~s. 465.003(8)~~, s. 499.007(13), or
814 subsection (11), subsection (46), or subsection (53), except
815 that an active pharmaceutical ingredient is a prescription drug
816 only if substantially all finished dosage forms in which it may
817 be lawfully dispensed or administered in this state are also
818 prescription drugs.
819 Section 20. Subsection (22) of section 893.02, Florida
820 Statutes, is amended to read:
821 893.02 Definitions.—The following words and phrases as used
822 in this chapter shall have the following meanings, unless the
823 context otherwise requires:
824 (22) "Prescription" means and includes an order for drugs
825 or medicinal supplies written, signed, or transmitted by word of
826 mouth, telephone, telegram, or other means of communication by a
827 duly licensed practitioner licensed by the laws of the state to
828 prescribe such drugs or medicinal supplies, issued in good faith
829 and in the course of professional practice, intended to be
830 filled, compounded, or dispensed by another person licensed by
831 the laws of the state to do so, and meeting the requirements of
832 s. 893.04. The term also includes an order for drugs or
833 medicinal supplies so transmitted or written by a physician,
834 dentist, veterinarian, or other practitioner licensed to
835 practice in a state other than Florida, but only if the
836 pharmacist called upon to fill such an order determines, in the
837 exercise of his or her professional judgment, that the order was
838 issued pursuant to a valid patient-physician relationship, that
839 it is authentic, and that the drugs or medicinal supplies so
840 ordered are considered necessary for the continuation of
841 treatment of a chronic or recurrent illness. However, if the

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842 physician writing the prescription is not known to the
843 pharmacist, the pharmacist shall obtain proof to a reasonable
844 certainty of the validity of said prescription. A prescription
845 order for a controlled substance shall not be issued on the same
846 prescription blank with another prescription order for a
847 controlled substance which is named or described in a different
848 schedule, nor shall any prescription order for a controlled
849 substance be issued on the same prescription blank as a
850 prescription order for a medicinal drug, as defined in s.
851 465.003 ~~s. 465.003(8)~~, which does not fall within the definition
852 of a controlled substance as defined in this act.
853 Section 21. This act shall take effect July 1, 2013.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/13
Meeting Date

Topic: SB 1192 - Pharmacy Controlled Substance

Bill Number: 1192 *(if applicable)*

Name: Nick Matthews

Amendment Barcode: 769960 *(if applicable)*

Job Title: Legislative Coordinator

Address: 115 S. Andrews Ave.
Street

Ft. Lauderdale FL 33301
City *State* *Zip*

Phone:

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: Broward County

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)

3/20/13
Meeting Date

Topic: Pharmacy / Controlled Subs.

Bill Number: 1192

Name: Lisa Hurley

Amendment Barcode: 769960 (if applicable)

Job Title:

Address: 100 S Monroe St.
Street

Tallahassee FL 32301
City State Zip

Phone: 850.922.4300

E-mail: lhurley@flcounties.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: FL Assoc. of Counties

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)

3-20-13
Meeting Date

Topic: Controlled Substance Prescribing

Bill Number: 1192 *(if applicable)*

Name: Rebecca O'Hara

Amendment Barcode: DE 769960 *(if applicable)*

Job Title: VP Govt Affairs

Address: 113 E College Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 339 6211

E-mail: rohara@flmedical.org

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

Representing: Fla Medical Assn

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

Lobbyist registered with Legislature: [X] 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)

3/20/13
Meeting Date

Topic: Pharmacy

Bill Number: 1192 *(if applicable)*

Name: Melissa Joiner

Amendment Barcode: 769960 *(if applicable)*
Strike all

Job Title: Director Gov't Affairs

Address: *Street*

Tallahassee FL
City *State* *Zip*

Phone: 850-570-0269

E-mail: Melissa@frf.org

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

Representing: Florida Retail Federation

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)

3/20/13
Meeting Date

Topic _____

Bill Number 1192 *(if applicable)*

Name Chris Nuland

Amendment Barcode 769960 *(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: [x] For [ ] Against [ ] Information

Representing Florida Chapter, American College of Physicians

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

Lobbyist registered with Legislature: [x] 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)

Meeting Date: _____

Topic: Prescription Drugs

Bill Number: 1192 (if applicable)

Name: BETH LABASKY

Amendment Barcode: _____ (if applicable)

Job Title: Consultant

Address: 13211 Bowey Rd.
Street

Jacksonville FLA 32226
City State Zip

Phone: 850-322-7335

E-mail: bethlabasky@aol.com

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

Representing: Informed Families 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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/2013
Meeting Date

Topic: PRESCRIPTION DRUG - CONTROLED SUBSTANCE

Bill Number: 1192 *(if applicable)*

Name: Sally West

Amendment Barcode: *(if applicable)*

Job Title: MANAGER, STATE GOVM'T RELATIONS

Address: *Street*

City TALLAHASSEE *State* FL *Zip*

Phone:

E-mail: Sally.West@walgreens.com

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

Representing: WALGREENS

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)

3:00
412-K

WAIVE IN SUPPORT

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-20-2013
Meeting Date

Topic: PHARMACY & CONTROLLED SUBSTANCES

Bill Number: SB 1192 (if applicable)

Name: STEPHEN R. WIDOW

Amendment Barcode: (if applicable)

Job Title: EXECUTIVE DIRECTOR

Address: 2007 APALACHEE PARKWAY
Street

TALLAHASSEE FL 32301
City State Zip

Phone: 878-7463

E-mail:

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

Representing: FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

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

Lobbyist registered with Legislature: [X] 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)

3/20/13
Meeting Date

Topic: Pharmacy & Controlled Substances

Bill Number: 1192 (if applicable)

Name: Ron Hartley

Amendment Barcode: (if applicable)

Job Title: Major

Address: 2008 E 8th Avenue
Street

Tampa FL 33605
City State Zip

Phone: 813 363-0375

E-mail: LBowden@HCSO.-
TAMPA FL US

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

Representing: Hillsborough County Sheriff's Office

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

Lobbyist registered with Legislature: [ ] Yes [X] 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)

3/20/13
Meeting Date

Topic: Controlled Substances

Bill Number: SB 1192 (if applicable)

Name: Larry Gonzalez

Amendment Barcode: (if applicable)

Job Title:

Address: 223 S. Gadsden St
Street

Tallahassee FL 32303
City State Zip

Phone: 222-0465

E-mail: lgonz@earthlink.net

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

Representing: Florida Society of Health System Pharmacists

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

Lobbyist registered with Legislature: [x] 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)

3/20
Meeting Date

Topic: Pain Mgmt. Clinics

Bill Number: SB 1192 (if applicable)

Name: Cari Roth

Amendment Barcode: (if applicable)

Job Title:

Address: 101 N. Monroe St Suite 900
Street

Tallahassee Fl 32301
City State Zip

Phone: 850/591-1094

E-mail: croth@bmolaw.com

Speaking: ☐ For ☒ Against ☐ Information Will Waive

Representing: Manatee + Charlotte Counties

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)

3-20-13
Meeting Date

Topic: Preemption of Local Govt of P.I. Mills

Bill Number: 1192 (if applicable)

Name: Scott Dudley

Amendment Barcode: (if applicable)

Job Title: Legislative Director, Florida League of Cities

Address: 301 S Bronough Street
Street

Tallahassee FL 32301
City State Zip

Phone: 222-9684

E-mail: sdudley@flcities.com

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

Representing: Florida League of Cities

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)

3/20/2013
Meeting Date

Topic: Pharmacy & CS

Bill Number: SB1192 (if applicable)

Name: MICHAEL AYOTTE

Amendment Barcode: (if applicable)

Job Title: Sr. Director of Gov. Affairs

Address: 7578 West Broad St.
Street

Richmond VA 23112
City State Zip

Phone: 8043774806

E-mail: MICHAEL.AYOTTE@CVSCAREMARK.COM

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

WAIVE IN SUPPORT

Representing: CVSCAREMARK

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

Lobbyist registered with Legislature: [x] 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)

3-20-13
Meeting Date

Topic: Pain Management Clinics

Bill Number: 1192 *(if applicable)*

Name: Marsha Hosack

Amendment Barcode: *(if applicable)*

Job Title: Intergovernmental Relations Manager

Address: 1660 Ringling Blvd
Street

Sarasota, FL 34236
City *State* *Zip*

Phone: 941 650-6968

E-mail: mhosack@scgov.net

Speaking: ☐ For ☒ Against ☐ Information

Representing: Sarasota County Government

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)

3-20-13
Meeting Date

Topic: PAIN MANAGEMENT

Bill Number: 1192 *(if applicable)*

Name: KEVIN KENNEY

Amendment Barcode: *(if applicable)*

Job Title: MAJOR

Address: 2071 RINGLING BLVD.
Street

SARASOTA, FL 34230
City, State, Zip

Phone: (941) 861-4232

E-mail: KKENNEY@SCGOV.NET

Speaking: ☐ For ☑ Against ☐ Information

Representing: SARASOTA COUNTY SHERIFF'S OFFICE

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

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 Committee on Health Policy

BILL: SB 1264

INTRODUCER: Senator Flores

SUBJECT: Hospital Licensure

DATE: March 15, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Pre-meeting**
2.			CF	
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

SB 1264 allows specialty-licensed children's hospitals that have neonatal intensive care beds to provide obstetrical (OB) services, including labor and delivery care, to up to 10 patients who have documentation by an examining physician that the woman's fetus has at least one characteristic or condition that would characterize the pregnancy or delivery as high risk or that the fetus may require at least one perinatal intervention.

This bill substantially amends section 395.003 of the Florida Statutes.

II. Present Situation:

Presently, s. 395.003, F.S., states that a specialty hospital may not provide any service or regularly serve any population group beyond those that are specified in its license with an exception made for specialty-licensed children's hospitals to allow them to treat certain adult patients with cardiovascular issues that the hospital treated as children. The Agency for Health Care Administration (AHCA) licenses all hospital types in the state of Florida. According to the AHCA, the options for a class II specialty hospital are a women's hospital or a children's hospital. To offer services to women and children, a hospital must be licensed as a class I general acute care hospital. A currently licensed children's hospital wanting to offer services outside of their previously defined patient base would be required to obtain a Certificate of Need to establish a new hospital or apply to change their classification to a class I general acute care hospital. Three hospitals in Florida qualify as specialty-licensed children's hospitals: All

Children's Hospital in Saint Petersburg, Miami Children's Hospital in Miami, and Nemours Children's Hospital in Orlando.[1]

Presently, it is necessary for new-born infants that require emergency procedures performed by specialists at children's hospitals to be transported from their place of birth to the children's hospital for treatment. The number of new-born infants that require emergency transport is relatively small. For example, in Miami-Dade, Broward, and Palm Beach counties, between 2007 and 2012, a total of 1,526 of the neonatal admissions were diagnosed with conditions considered to be high risk before birth. Of these, 1,479 infants were air-lifted from surrounding hospitals to Miami Children's Hospital for emergency procedures.[2]

III. Effect of Proposed Changes:

Section 1 amends s. 395.003, F.S., to allow specialty-licensed children's hospitals that have neonatal intensive care beds to provide obstetrical services, including labor and delivery care, to up to 10 patients who have documentation by an examining physician that their fetus has at least one characteristic or condition that would characterize the pregnancy or delivery as high risk or that their fetus may require at least one perinatal intervention.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1264 will have an indeterminate positive fiscal impact by removing the need to transfer some new-born infants to specialty-licensed children's hospitals.

[1] AHCA bill analysis for SB 1264, dated Mar. 15, 2013, on file with the Senate Health Policy Committee.
[2] Statistics from Miami Children's Hospital on High Risk Deliveries, on file with the Senate Health Policy Committee.

The bill may have a negative fiscal impact on general hospitals offering obstetrics and neonatal intensive care if their specialists stop or reduce their services at the general hospital. General hospitals offering obstetrics without neonatal intensive care may see no change or may strengthen their cooperation with the children's hospital, such as transfer agreements.[3]

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill allows OB for up to 10 patients, but does not specify a time frame. It would be beneficial to specify a time frame (such as "10 patients at the same time," or "10 patients per month") in order to clarify the effect of the bill. Also, the bill specifies that OB services may only be provided to patients whose fetuses display at least one characteristic or condition that would characterize the pregnancy or delivery as high risk, but the bill does not define the term high risk or reference a specified standard for determining what fetal conditions qualify as high risk.

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.

[3]Supra n. 1

131818

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/21/2013	.	
	.	
	.	
	.	

The Committee on Health Policy (Flores) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 28 - 34
4 and insert:
5 (b) A specialty-licensed children's hospital that has
6 licensed neonatal intensive care unit beds may provide
7 obstetrical services, as provided in subsection 59A-3.2085(8),
8 F.A.C., up to 10 beds for labor and delivery care, which
9 services are restricted to the diagnosis, care, and treatment of
10 pregnant women of any age who have documentation by an examining
11 physician which includes information regarding:

489482

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/21/2013	.	
	.	
	.	
	.	

The Committee on Health Policy (Bean) recommended the following:

1 **Senate** ~~Substitute for~~ **Amendment** ~~(131818)~~
2
3 Delete lines 28 - 34
4 and insert:
5 (b) A specialty-licensed children's hospital that has
6 licensed neonatal intensive care unit beds and is located in a
7 county with a population of 1,750,000 or more may provide
8 obstetrical services, in compliance with the agency's rules
9 pertaining to the obstetrical department in a hospital, to up to
10 10 beds for labor and delivery care, which services are
11 restricted to the diagnosis, care, and treatment of pregnant
12 women of any age who have documentation by an examining
13 physician that includes information regarding:

By Senator Flores

37-00545A-13 20131264__

A bill to be entitled

An act relating to hospital licensure; amending s. 395.003, F.S.; authorizing certain specialty-licensed children's hospitals to provide obstetrical services under certain circumstances; providing an effective date.

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

Section 1. Subsection (6) of section 395.003, Florida Statutes, is amended to read:

395.003 Licensure; denial, suspension, and revocation.—

(6) A specialty hospital may not provide any service or regularly serve any population group beyond those services or groups specified in its license.

(a) A specialty-licensed children's hospital that is authorized to provide pediatric cardiac catheterization and pediatric open-heart surgery services may provide cardiovascular service to adults who, as children, were previously served by the hospital for congenital heart disease, or to those patients who are referred for a specialized procedure only for congenital heart disease by an adult hospital, without obtaining additional licensure as a provider of adult cardiovascular services. The agency may request documentation as needed to support patient selection and treatment. This paragraph ~~subsection~~ does not apply to a specialty-licensed children's hospital that is already licensed to provide adult cardiovascular services.

(b) A specialty-licensed children's hospital that has licensed neonatal intensive care unit beds may provide

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 obstetrical services, including labor and delivery care, to up
31 to 10 patients, which services are restricted to the diagnosis,
32 care, and treatment of pregnant women of any age who have
33 documentation by an examining physician which includes
34 information regarding:
35 1. At least one fetal characteristic or condition that
36 would characterize the pregnancy or delivery as high risk; or
37 2. Medical advice or a diagnosis indicating that the fetus
38 may require at least one perinatal intervention.
39 Section 2. This act shall take effect July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: March 7, 2013

I respectfully request that **Senate Bill #1264**, relating to Hospital Licensure, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

FLORIDA SENATE
MAR 07 2013
Health Policy Committee

File signed original with committee office

S-020 (03/2004)

ENTERED

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.20.2013
Meeting Date

Topic: Health Care Licensure

Bill Number: SB 1264 *(if applicable)*

Name: DR. Narendra Kini

Amendment Barcode: _____ *(if applicable)*

Job Title: CEO

Address: 3100 SW 62nd Ave.
Street

Miami, FL 33155-3089
City *State* *Zip*

Phone: 305-662-8303

E-mail: _____

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

Representing: Miami Children's Hospital

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)

3-20-12
Meeting Date

Topic: Children's Hospitals

Bill Number: 1264 (if applicable)

Name: Ron Book

Amendment Barcode: (if applicable)

Job Title:

Address: 104 West Jefferson St.
Street

Tallahassee FL 32301
City, State, Zip

Phone: 850-224-3422

E-mail: ron@rbookpa.com

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

Representing: South Broward Hospital District

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

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 Committee on Health Policy

BILL: CS/SB 1690

INTRODUCER: Health Policy Committee and Senator Bean

SUBJECT: Volunteer Health Services

DATE: March 22, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Fav/CS**
2.			AHS	
3.			AP	
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:

CS/SB 1690:

- Revises contractual requirements for patient referral under the "Access to Health Care Act."
- Eliminates a requirement that a governmental contractor approve all patient care, including follow up or hospital care.
- Requires the Department of Health (DOH) to post specified information online concerning volunteer providers.
- Allows volunteer providers to earn continuing education credits for participating in the program for up to eight credits per licensure period for each provider.

This bill substantially amends s. 766.1115 of the Florida Statutes:

II. Present Situation:

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the Act). The Act was enacted in 1992 to encourage health care providers to provide care to low-income persons.[1] This section extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who provide volunteer, uncompensated health care services to low-income individuals as an agent of the state. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the Act.

Health care providers under the Act include:[2]

- A birth center licensed under chapter 383.
- An ambulatory surgical center licensed under chapter 395.
- A hospital licensed under chapter 395.
- A physician or physician assistant licensed under chapter 458.
- An osteopathic physician or osteopathic physician assistant licensed under chapter 459.
- A chiropractic physician licensed under chapter 460.
- A podiatric physician licensed under chapter 461.
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under chapter 464, part I, or any facility which employs nurses licensed or registered under chapter 464, part I, to supply all or part of the care delivered under this section.
- A dentist or dental hygienist licensed under chapter 466.
- A midwife licensed under chapter 467.
- A health maintenance organization certificated under chapter 641, part I.
- A health care professional association and its employees or a corporate medical group and its employees.
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs 4.-9.
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, which delivers health care services provided by the listed licensed professionals, any

[1] Low-income persons are defined in the Act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department.
[2] s. 766.1115(3)(d), F.S.

federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

A governmental contractor is defined in the Act as the DOH, a county health department, a special taxing district with health care responsibilities, or a hospital owned and operated by a governmental entity.[3]

The definition of contract under the Act provides that the contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or any public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.[4]

The Act further specifies contract requirements. The contract must provide that:

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor must make patient selection and initial referrals.
- The health care provider must accept all referred patients, however the contract may specify limits on the number of patients to be referred and patients may not be transferred to the provider based on a violation of the antidumping provisions of the Omnibus Budget Reconciliation Acts.
- Patient care, including any follow-up or hospital care, is subject to approval by the governmental contractor.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of actions related to medical negligence.

The individual accepting services through this contracted provider must not have medical or dental care coverage for the illness, injury, or condition in which medical or dental care is sought.[5] The services not covered under this program include experimental procedures and clinically unproven procedures. The governmental contractor shall determine whether or not a procedure is covered.

[3] s. 766.1115(3)(c), F.S.
[4] s. 766.1115(3)(a), F.S.
[5] Rule 64I-2.001, F.A.C.

The health care provider may not subcontract for the provision of services under this chapter.[6]

Annually, the DOH reports a summary to the Legislature containing the efficacy of access and treatment outcomes while providing health care for low-income persons. The DOH adopts rules to administer this section. The rules include services to be provided and authorized procedures.

The DOH adopts rules that specify required methods of determination and approval of patient eligibility and referral. This also includes the contractual conditions under which the health care provider may perform the patient eligibility and referral process. These rules include, but are not limited to the following:

- Provider must accept all patients referred by the DOH. The number of patients that must be accepted may be limited in the contract.
- Provider shall comply with departmental rules regarding determination and approval of the patient eligibility and referral.
- Provider shall complete training by the DOH regarding compliance with the approved methods of determination and approval of patient eligibility and referral.
- The DOH shall retain review oversight authority of the patient eligibility and referral determination.[7]

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13, State Constitution, recognizes the concept of sovereign immunity and gives the Legislature the right to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state.

Under this statue, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event or omission of action in the scope of his or her employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. Subsection (5) limits the recovery of any one person to $200,000 for one incidence and limits all recovery related to one incidence to a total of $300,000. The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps but the plaintiff cannot recover the excess damages without action by the Legislature.[8]

[6] Supra, fn 5
[7] Section 766.1115 (10), F.S.
[8] Section 768.28(5), F.S.

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[9] In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

> One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.[10]

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.[11] The court explained:

> Whether the CMS physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. *National Sur. Corp. v. Windham*, 74 So. 2d 549, 550 (Fla. 1954) ("The [principal's] right to control depends upon the terms of the contract of employment…") The CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS[12] Manual and CMS Consultants Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.
>
> Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.[13]

III. Effect of Proposed Changes:

Section 766.1115, F.S., is amended to revise contractual requirements for patient referrals and care under the "Access to Health Care Act." The contract between the governmental contractor and the provider may authorize the provider to determine patient selection and initial referral. Current law authorizes the DOH to specify in rule the contractual conditions under which the provider may perform the patient eligibility and referral process. The bill requires the DOH to

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[9] Stoll v. Noel, 694 So. 2d 701, 703(Fla. 1997)
[10] Stoll v. Noel, 694 So. 2d 701, 703(Fla. 1997) (quoting The Restatement of Agency)
[11] Stoll v. Noel, 694 So. 2d 701, 703(Fla. 1997)
[12] Florida Department of Health and Rehabilitative Services
[13] Stoll v. Noel, 694 So. 2d 701, 703(Fla. 1997)

retain review and oversight authority of this process. The bill eliminates a requirement that a governmental contractor approve all patient care including follow up or hospital care. It requires the DOH to post specified information online concerning volunteer providers' hours and number of patient visits.

This bill also allows volunteer providers to earn continuing education credits for participating in the program for up to eight credits per licensure period for each provider.

The effective date of the bill is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Additional health care providers may be incentivized to volunteer under the Act due to the continuing education credits authorized in the bill.

C. Government Sector Impact:

CS/SB 1690 requires the DOH to post specified information online concerning volunteer providers. This may require additional staffing.

This bill allows each hour of volunteer services to count as a continuing education hour for up to eight hours. To monitor and record each hour will require current continuing education procedures to be updated within the DOH.

There may be additional costs associated with the collecting and online reporting of volunteer provider hours and patient visits that cannot be determined at this time. It is

noted that as of June 30, 2012 there were12,867 licensed volunteer providers in the state.[14]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Whether sovereign immunity is extended to a contracted health care provider depends on the degree of control retained or exercised by the governmental entity. The bill removes the specific requirement that patient care is subject to approval by the governmental contractor. Although the DOH retains responsibility to adopt rules to administer the Act, the extent to which oversight and control of the provider is diminished, if any, might affect a court's determination of whether sovereign immunity applies.

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 Policy on March 20, 2013:
The CS reinstates and adds language concerning DOH rulemaking related to methods for determination and approval of patient eligibility and referral by governmental contractors and providers. The DOH will review and oversee authority of the patient eligibility and referral determination. The CS also reinstates language pertaining to antidumping prohibitions.

B. Amendments:

None.

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

[14] DOH Bill Analysis for SB 1690 dated March 6, 2013, on file with the Senate Health Policy Committee

767584

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2013	.	
	.	
	.	
	.	

The Committee on Health Policy (Bean) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 41 - 44
4 and insert:
5
6 ~~contract, and~~. Patients may not be transferred to the provider
7 based on a violation of the antidumping provisions of the
8 Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget
9 Reconciliation Act of 1990, or chapter 395.

745766

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2013	.	
	.	
	.	
	.	

The Committee on Health Policy (Bean) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 73 - 78
4 and insert:
5
6 ~~authorized procedures.~~ Notwithstanding the requirements of
7 paragraph (4)(d), the department shall adopt rules that specify
8 required methods for determination and approval of patient
9 eligibility and referral by government contractors and
10 providers. The rules adopted by the department pursuant to this
11 subsection shall give providers the greatest flexibility
12 possible in order to serve eligible patients. The department
13 shall retain review and oversight authority of the patient

745766

14 eligibility and referral determination. ~~and the contractual~~
15 ~~conditions under which a health care provider may perform the~~
16 ~~patient eligibility and referral process on behalf of the~~
17 ~~department. These rules~~
18
19 ========== T I T L E A M E N D M E N T ==========
20 And the title is amended as follows:
21 Delete lines 11 - 14
22 and insert:
23
24 to a specified amount; providing that any rule adopted
25 by the department give providers the greatest
26 flexibility possible in order to serve eligible
27 patients; providing an effective date.

By Senator Bean

4-01079-13 20131690__

A bill to be entitled

An act relating to volunteer health services; amending s. 766.1115, F.S.; revising requirements for patient referral under the "Access to Health Care Act"; eliminating a requirement that the governmental contractor approve all followup or hospital care; requiring the Department of Health to post specified information online concerning volunteer providers; permitting volunteer providers to earn continuing education credit for participation in the program up to a specified amount; deleting provisions requiring the department to make specified rules concerning methods for determination and approval of patient eligibility and referral; providing an effective date.

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

Section 1. Subsections (10) and (11) of section 766.1115, Florida Statutes, are renumbered as sections (11) and (12), respectively, a new subsection (10) is added to that section, and paragraphs (d), (f), and (g) of subsection (4) and present subsections (8) and (10) of that section are amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of the governmental contractor is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 contract, if the contract complies with the requirements of this
31 section and regardless of whether the individual treated is
32 later found to be ineligible. A health care provider under
33 contract with the state may not be named as a defendant in any
34 action arising out of medical care or treatment provided on or
35 after April 17, 1992, under contracts entered into under this
36 section. The contract must provide that:
37 (d) Patient selection and initial referral may ~~must~~ be made
38 ~~solely~~ by the governmental contractor or the provider~~, and the~~
39 ~~provider must accept all referred patients. However, the number~~
40 ~~of patients that must be accepted may be limited by the~~
41 ~~contract, and patients may not be transferred to the provider~~
42 ~~based on a violation of the antidumping provisions of the~~
43 ~~Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget~~
44 ~~Reconciliation Act of 1990, or chapter 395~~.
45 ~~(f) Patient care, including any followup or hospital care,~~
46 ~~is subject to approval by the governmental contractor.~~
47 (f) ~~(g)~~ The provider is subject to supervision and regular
48 inspection by the governmental contractor.
49
50 A governmental contractor that is also a health care provider is
51 not required to enter into a contract under this section with
52 respect to the health care services delivered by its employees.
53 (8) REPORTING ~~REPORT TO THE LEGISLATURE~~.~~—~~
54 (a) Annually, the department shall report to the President
55 of the Senate, the Speaker of the House of Representatives, and
56 the minority leaders and relevant substantive committee
57 chairpersons of both houses, summarizing the efficacy of access
58 and treatment outcomes with respect to providing health care

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

59 services for low-income persons pursuant to this section.
60 (b) The department shall provide an online listing of all
61 providers volunteering under this program with their hours and
62 the number of patient visits each provided.
63 (10) CONTINUING EDUCATION CREDIT.—A provider may fulfill 1
64 hour of continuing education credit by performing 1 hour of
65 volunteer services to the indigent as provided in this section,
66 up to a maximum of eight credits per licensure period for that
67 provider.
68 (11) ~~(10)~~ RULES.—The department shall adopt rules to
69 administer this section in a manner consistent with its purpose
70 to provide and facilitate access to appropriate, safe, and cost-
71 effective health care services and to maintain health care
72 quality. ~~The rules may include services to be provided and~~
73 ~~authorized procedures. Notwithstanding the requirements of~~
74 ~~paragraph (4)(d), the department shall adopt rules that specify~~
75 ~~required methods for determination and approval of patient~~
76 ~~eligibility and referral and the contractual conditions under~~
77 ~~which a health care provider may perform the patient eligibility~~
78 ~~and referral process on behalf of the department. These rules~~
79 ~~shall include, but not be limited to, the following~~
80 ~~requirements:~~
81 ~~(a) The provider must accept all patients referred by the~~
82 ~~department. However, the number of patients that must be~~
83 ~~accepted may be limited by the contract.~~
84 ~~(b) The provider shall comply with departmental rules~~
85 ~~regarding the determination and approval of patient eligibility~~
86 ~~and referral.~~
87 ~~(c) The provider shall complete training conducted by the~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

88 ~~department regarding compliance with the approved methods for~~
89 ~~determination and approval of patient eligibility and referral.~~
90 ~~(d) The department shall retain review and oversight~~
91 ~~authority of the patient eligibility and referral determination.~~
92 Section 2. This act shall take effect July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/13
Meeting Date

Topic _____

Bill Number 1690 *(if applicable)*

Name Chris Nland

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 1000 Riverside Ave #115
Street

Jacksonville, Fl 32204
City *State* *Zip*

Phone 904-355-1555

E-mail nlandlaw@aol.com

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

Representing Florida Public Health Association

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)

3/20/13
Meeting Date

Topic

Bill Number 1690 (if applicable)

Name Daniel J. Guerra, MD

Amendment Barcode (if applicable)

Job Title

Address 1650 Galiano St Apt 311
Street

Coral Gables FL 33134
City State Zip

Phone (305) 528-6818

E-mail dguerra@med.miami.edu

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

Representing Florida Chapter, American College of Physicians

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

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 Committee on Health Policy

BILL: CS/CS/SB 748

INTRODUCER: Health Policy Committee; Children, Families, and Elder Affairs Committee; and Senator Bean and others

SUBJECT: Program of All-inclusive Care for the Elderly

DATE: March 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	**Fav/CS**
2.	Peterson	Stovall	HP	**Fav/CS**
3.			AP	
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:

CS/CS/SB 748 authorizes three additional Program of All-inclusive Care for the Elderly (PACE) sites, subject to an appropriation. One site is authorized to serve Duval, St. Johns, Baker, and Nassau Counties with 300 slots. The second is authorized to serve Alachua and Clay Counties also with 300 slots. The third site is authorized to serve Pasco and Hernando Counties with 150 slots.

This bill will have a significant fiscal impact on the state, if an appropriation is made, and provides an effective date of July 1, 2013.

This bill creates three undesignated sections of the Florida Statutes.

II. Present Situation:

Program of All-Inclusive Care for the Elderly (PACE)

The PACE is a capitated benefit model authorized by the federal Balanced Budget Act of 1997 (BBA) that features a comprehensive service delivery system and integrated federal Medicare and state Medicaid financing. The model, which was tested through Centers for Medicaid and Medicare (CMS) demonstration projects beginning in the mid-1980s,[1] was developed to address the needs of long-term care clients, providers, and payers.

A PACE organization is a not-for-profit, private or public entity that is primarily engaged in providing PACE services and must:

- Have a governing board that includes community representation;
- Be able to provide the complete service package regardless of frequency or duration of services;
- Have a physical site to provide adult day services;
- Have a defined service area;
- Have safeguards against conflicts of interest;
- Have a demonstrated fiscal soundness; and
- Have a formal participant bill of rights.

The PACE participants must be at least 55 years of age, live in the PACE service area, and be certified eligible for nursing home care, but able to live safely in the community. The PACE program becomes the sole source of services for these Medicare and Medicaid eligible enrollees.

Under the PACE program, an interdisciplinary team consisting of professional and paraprofessional staff assesses participants' needs, develops care plans, and delivers all services, including acute care and nursing facility services when necessary, which are integrated to provide a seamless delivery model. A PACE program provides social and medical services primarily in an adult day health center, which are supplemented by in-home and referral services as necessary. The PACE service package must include all Medicare and Medicaid covered services, and other services determined necessary by the multidisciplinary team for the care of the PACE participant.

The BBA established the PACE model of care as a permanent entity within the Medicare program and enabled states to provide the PACE services to Medicaid beneficiaries as an optional state plan service without a Medicaid waiver. The state plan must include PACE as an optional Medicaid benefit before the state and the Secretary of the Department of Health and Human Services can enter into program agreements with PACE providers.

The PACE project is a unique federal/state partnership. The federal government establishes the PACE organization requirements and application process. The state Medicaid agency or other state agency is responsible for oversight of the entire application process, which includes reviewing the initial application and providing an on-site readiness review before a PACE

[1]CMS Manual *available at* http://www.cms.gov/Medicare/Health-Plans/pace/downloads/r1so.pdf (last visited Feb. 7, 2013)

organization can be authorized to serve patients. An approved PACE organization must sign a contract with CMS and the state Medicaid agency. Rates for PACE providers are developed based on a county level actuarial analysis of the costs associated with the service population.

Florida PACE Project

The Florida PACE project was initially authorized in ch. 98-327, Laws of Florida and is codified in s. 430.707(2), F.S., under the administration of the Department of Elder Affairs (DOEA), operating in consultation with the Agency for Health Care Administration (AHCA).[2] The initial program was located in Miami-Dade County and began serving enrollees in February 2003 with a total of 150 slots. Since then, the Legislature has approved additional slots either as part of the General Appropriations Act (GAA) or general law.

The 2006 GAA contained proviso language authorizing an additional 150 slots in the Miami-Dade County program and 200 slots each at new programs in Martin/St. Lucie Counties, and Lee County.[3] In 2008, the Legislature reallocated equally 150 unused PACE slots to Miami-Dade, Lee, and Pinellas Counties.[4] In 2009, the Legislature authorized 100 slots for a program in Hillsborough County.[5] The 2010 GAA funded an additional 100 slots in Pinellas County and authorized and funded a new program with 100 slots in Hillsborough County.[6] That same year, the Legislature, by general law, authorized an additional 50 slots in Miami-Dade and 150 slots for a program serving Polk, Hardee, Highlands, and Hillsborough Counties.[7] In 2011, the Legislature authorized a program with 150 slots in Palm Beach County,[8] and funded, through the GAA, 50 additional slots in Lee County and 150 slots for a program serving Polk, Hardee, and Highlands Counties.[9] In 2012, the Legislature authorized two new programs of up to 150 slots each for a program in Broward County and a program serving Manatee, Sarasota, and DeSoto Counties.[10] The 2012 – 2013 GAA funded 100 additional slots in Miami-Dade and 150 additional slots in Lee County.[11]

Not all authorized PACE slots are currently in operation, and not all slots that have been authorized are currently funded. According to the DOEA, of the approximately 2,325 slots the Legislature has authorized since 2003, 1,075 are funded and operational; 250 are funded and will be operational in 2012, and 450 are not funded or operational.[12] The Legislature appropriated $26,578,951 for PACE in the 2012 GAA.[13]

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[2] Chapter 2011-135, s. 24, L.O.F, repeals s. 430.707, F.S., effective Oct 1, 2013, as part of the expansion of Medicaid managed care.
[3] Chapter 2006-25, L.O.F.
[4] Chapter 2008-152, L.O.F.
[5] Chapter 2009-55, s. 20, L.O.F.
[6] Chapter 2010-152, L.O.F.
[7] Chapter 2010-156, ss. 14, 15, L.O.F.
[8] Chapter 2011-61, s. 17, L.O.F.
[9] Chapter 2011-69, L.O.F.
[10] Chapter 2012-33, ss.18, 19, L.O.F.
[11] Ch. 2012-118, L.O.F.
[12] E-mail from Marcy R. Hajdukiewicz, Division Director, Statewide Community Based Services, Florida Department of Elder Affairs, (Feb. 28,2013) (on file with the Senate Children, Families, and Elder Affairs Committee).
[13] Chapter 2012-118, L.O.F..

An entity that seeks to become a PACE provider must submit a comprehensive PACE application to the AHCA, which sets forth details about the adult day health care center, staffing, provider network, financial solvency and pro forma financial projections, and policies and procedures, among other elements. The application is similar in detail level to the provider applications submitted by managed care plans seeking to provide medical care to Medicaid recipients. Providers operating in the same geographic region must establish that there is adequate demand for services that each provider will be viable. The application requires that documentation be submitted demonstrating that neither provider is competing for the same potential enrollees.

The AHCA and the DOEA review the application and, when the entity has satisfied all requirements, conduct an on-site survey of the entity's readiness to serve PACE enrollees. Once all requirements are met, including full licensure of the center, staffing for key positions, and signed provider network contracts, the AHCA certifies to CMS that the PACE site is ready. At that time, CMS reviews the application and readiness certification and, if all requirements are satisfied, executes a three-way agreement with the PACE provider and the AHCA. The PACE provider may then begin enrolling members, subject to an appropriation to fund the slots. In total, the process to become a PACE provider and begin serving enrollees typically takes at least one year.[14]

In 2011, the Legislature moved administrative responsibility for the PACE program from DOEA to AHCA as part of the expansion of Medicaid managed care.[15] Participation by PACE is not subject to the procurement requirements or regional plan number limits applicable to the statewide Medicaid Managed Care program. Instead, PACE plans may continue to provide services to individuals at such levels and enrollment caps as authorized by the GAA.[16]

Medicaid

Medicaid is the health care safety net for low-income Floridians. Medicaid serves approximately 3.3 million people in Florida, with over half of those being children and adolescents 20 years of age or younger. Medicaid is a partnership between the federal and state governments where the federal government establishes the structure for the program and pays a share of the cost. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare and Medicaid Services or CMS. The plan outlines current Medicaid eligibility standards, policies and reimbursement methodologies.

In Florida, the program is administered by the AHCA. The AHCA delegates certain functions to other state agencies, including the Department of Children and Families (DCF), the Agency for Persons with Disabilities (APD), and the DOEA. The AHCA has overall responsibility for the program and qualifies providers, set payment levels, and pays for services. The DCF is responsible for determining financial eligibility for Medicaid recipients. The APD operates one of the larger waiver programs under Medicaid, the Home and Community Based Waiver program serving individuals with disabilities. The DOEA assesses Medicaid recipients to

[14] Agency for Health Care Administration, *Senate Bill 748 Bill Analysis & Economic Impact Statement* (Received Mar. 9, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[15] Chapter 2011-135, s. 24, Laws of Fla, repeals Section 430.707, F.S., effective Oct. 1, 2013.
[16] Section 409.981(4), F.S.

determine if they require nursing home care. Specifically, the DOEA determines whether an individual:

- Requires nursing home placement as evidenced by the need for medical observation throughout a 24-hour period and requires care to be performed on a daily basis under the direct supervision of a health professional of medically complex services because of mental or physical incapacitation; or
- Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and requires care to be performed on a daily basis under the supervision of a health professional because of mental or physical incapacitation; or
- Requires or is at imminent risk of nursing home placement as evidenced by the need for observation throughout a 24-hour period and requires limited care to be performed on a daily basis under the supervision of a health professional because of mild mental or physical incapacitation.

The February 25, 2013 Social Services Estimating Conference estimated that expenditures for Medicaid for fiscal year 2012-2013 would be $20.77 billion. One of the most important and expensive components of Medicaid is long-term care. The conference estimated that $4.75 billion will be spent on long-term care under Medicaid in fiscal year 2012-2013.

Floridians who need nursing home care, but do not qualify for Medicaid, must pay from their own funds or through insurance. According to the 2011 MetLife Market Survey of Nursing Home, Assisted Living, Adult Day Services, and Home Care Costs, the national average cost of a nursing home was $78,110 per year for a semi-private room in 2011. Persons needing nursing home care are determined to be eligible for Medicaid based on financial assets and monthly income.

Long-Term Managed Care

In 2011, the Legislature passed and the Governor signed into law HB 7107[17] to increase the use of managed care in Medicaid. The law requires both long-term care services and Medicaid medical assistance to be provided through managed care plans. The Long-term Care Managed Care component of the law will be implemented first. Implementation of the program began July 1, 2012, with full implementation by October 1, 2013.

The AHCA has chosen the plans that may participate in the program through a competitive bid process. The AHCA considered many factors when choosing plans. The AHCA chose a certain number of long-term care managed care plans for each region to ensure that recipients have a choice between plans. After the AHCA has chosen the plans that may participate in the Florida Long-Term Care Managed Care Program, the AHCA will begin to notify and transition eligible Medicaid recipients into the program. It is anticipated that the Florida Long-Term Care Managed Program will be available in certain areas of the State beginning the first quarter of 2013 and will be in all areas by October 1, 2013.

[17] Chapter 2011-134, L.O.F.

Participating managed care plans are required to provide minimum benefits that include nursing home as well as home and community based services. Plans will be free to customize and offer additional serves. The minimum benefits include:

- Nursing home
- Services provided in assisted living facilities
- Hospice
- Adult day care
- Medical equipment and supplies, including incontinence supplies
- Personal care
- Home accessibility adaptation
- Behavior management
- Home delivered meals
- Case management
- Therapies: physical, respiratory, speech, and occupational
- Intermittent and skilled nursing
- Medication administration
- Medication management
- Nutritional assessment and risk reduction
- Caregiver training
- Respite care
- Transportation
- Personal emergency response system

On February 1, 2013, the Federal Centers for Medicare and Medicaid Services, approved AHCA's request for a Home and Community Based Care Services waiver for individuals 65 and older and individuals with physical disabilities ages 18 through 64 years of age. This approval will allow Florida to implement managed care for long-term care services under Medicaid.

III. Effect of Proposed Changes:

Section 1 directs the AHCA to contract with a not-for-profit organization that has been jointly formed by a lead agency that is licensed as a nursing home diversion program provider and by a not-for-profit hospice that has been licensed for more than 30 years to serve residents in Duval, St. Johns, Baker, and Nassau Counties to provide PACE services to frail elders in those counties. The organization is directed to utilize existing community-based care providers and healthcare organizations in the delivery of services. The bill exempts the organization from ch. 641, F.S., relating to health maintenance organizations. The bill authorizes 300 slots, subject to an appropriation.

Section 2 directs the AHCA to contract with a not-for-profit hospice with 30 years' experience that currently serves residents in Clay, Alachua, Bradford, and Putnam Counties to provide PACE services to frail elders in Alachua and Clay Counties. The bill exempts the organization from ch. 641, F.S., relating to health maintenance organizations. The bill authorizes 300 slots, subject to an appropriation.

Section 3 directs the AHCA to contract with a not-for-profit hospice with 30 years' experience that currently serves residents in Pasco and Hernando Counties to provide services to frail elders who reside in those counties. The bill exempts the organization from ch. 641, F.S., relating to health maintenance organizations. The bill authorizes 150 slots, subject to an appropriation

Section 4 provides an effective date of July 1, 2013.

Other Potential Implications:

The bill expands an existing carve out of long term care services from the Medicaid managed care program. Statewide long term managed care is estimated to serve 85,000 residents who are 18 years of age or older; whereas, the combined PACE enrollees is under 2,000 and limited to eligible residents who are 55 years of age and older. This bill would be inconsistent with one of the purposes of expanding Medicaid managed care – to standardize the delivery of Medicaid services by eliminating the waivers and carve outs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill may violate Art. III, s. 10, State Constitution, relating to special laws. The Constitution states: "No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law" Publication is not required if the law becomes effective only after referendum approval.
Section 11.02, F.S., requires that notice of the intent to pass special or local legislation be published in a newspaper as defined in ch 50 in each affected county: The bill was filed as a general bill without prior publication. It proposes to create an exception to general law authorizing two providers to operate PACE programs in specified counties.

In general, a special law relates to or operates on persons or things, or on classified persons or things when classification is not permissible or is illegal. A local law relates to or operates only on one part of the state when there is no valid basis to distinguish that location from others, or within classified territory when the classification is illegal. A general law operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state, or uniformly within permissible classification by

population of counties or otherwise. *State ex rel. Landis v. Harris,* 120 Fla. 555, 163 So. 237, 240 (Fla. 1934) (citations omitted). A statute may be a general law even if it was enacted for the benefit of a single business entity or a single geographic area, provided the classification regulated by the statute remains open. *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d 879, 882 (Fla 1983).

A Supreme Court decision is instructive in considering the potential constitutional violation of the bill. In *St. Vincent's Medical Center, Inc. v. Memorial Healthcare Group, Inc*,[18] the Court was asked to review a statute creating a specific exemption from the requirement to obtain a Certificate of Need to establish an open heart surgery program in a new hospital. The exemption applied only if the new hospital was being established "in the location of an existing hospital with an adult open-heart surgery program, the existing hospital and the existing adult open-heart surgery program are being relocated to a replacement hospital, and the replacement hospital will utilize a closed-staff model."[19] The law was enacted during the 2003 Session and by its terms was repealed January 1, 2008. At the time of the law's enactment, two hospitals met the criteria of having both an open-heart surgery program and closed medical staff, but only one hospital was actively seeking to establish a new hospital with an open-heart surgery program.

The statute was challenged on the grounds that it was a special law enacted in violation of the notice requirements of the Constitution.[20] The trial court heard testimony on whether the law could apply to another hospital, specifically, whether a hospital could convert to a closed medical staff in time to take advantage of the law. The trial court concluded that only the one already identified hospital could utilize the statute saying:

> The Exemption Provision is nothing more than a description of the situation involving St. Vincent's and St. Luke's. The Court concludes that the constitutional requirements governing special laws cannot be avoided by merely utilizing generic language in a complicated classification scheme that is intended to address a special circumstance.[21]

On appeal, the First District Court held that the trial court correctly applied the law when it concluded there was no "reasonable possibility" that the exemption could apply to another party before the exemption expired.[22] The Supreme Court affirmed, relying on the rule set forth in *Florida Department of Business Regulation v. Gulfstream Park Racing Ass'n,*[23] holding that "whether a law has general application turns on whether its application to others is reasonable or practical, not theoretical or speculative."[24]

The bill creates exemptions from general law that apply to providers in three separate geographic areas of the state. In one case, the provider is a not-for-profit formed between

[18] *St. Vincent's Medical Center, Inc. v. Memorial Healthcare Group, Inc*, 967 So.2d 794 (Fla. 2007),
[19] *Id*,. at 796.
[20] *Id*,. at 797.
[21] I*d*., at 798 *(*quoting the trial court order*).*
[22] *Id* (citing *St. Vincent's Medical Center, Inc. v. memorial Healthcare Group, Inc.,* 928 So.2d. *4*30, 435 (Fla. 1st DCA 2006).
[23] *Florida Department of Business Regulation v. Gulfstream Park Racing Ass,* 967 So.2d 802 (Fla. 2007)
[24] *St. Vincent's* 967 So.2d at 801.

a lead agency designated pursuant to s. 430.205, F.S., and licensed as a nursing home diversion program provider, and a hospice licensed for 30 years to provide service in Duval, St. Johns, Baker, and Nassau Counties. The second is a not-for-profit hospice provider with 30 years' experience and currently licensed to serve Clay, Alachua, Bradford, and Putnam Counties. The third is a not-for-profit hospice provider with more than 30 years' experience that is licensed to serve Hernando and Pasco Counties. Currently, there are two not-for-profit hospice providers licensed to serve Duval, St. Johns, Baker, and Nassau Counties; only one of those has been licensed in those counties for 30 years. Only one hospice provider is licensed currently in Clay, Alachua, Bradford, and Putnam Counties and only one hospice provider is licensed currently in Pasco and Hernando Counties. Thus, on its face, the bill authorizes contracts directed at the only three providers in the state who currently meet its terms, and for programs that will operate in only specified counties. It is possible – whether or not "a reasonable possibility" – that other hospice providers could eventually qualify under the terms of the bill. It is not presently possible, however, for a new provider to qualify as a licensed nursing home diversion program provider because the Legislature has sunset that program as part of the transition to statewide Medicaid managed care.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Frail elders in need of comprehensive home and community-based long-term care services in Alachua, Baker, Clay, Duval, Hernando, Nassau, Pasco, and St. Johns Counties will have additional choices of programs to serve their needs.

The new PACE providers would compete with other providers of long-term care services in those counties who have participated in the competitive procurement process required by statewide Medicaid managed care (SMMC). Because it takes up to two years for the typical PACE provider to be certified and begin operations, the AHCA will have fully implemented SMMC by that time and all individuals eligible for long term care will be enrolled in SMMC.

C. Government Sector Impact:

The AHCA reviews all new and expansion PACE applications, handles communication with CMS, and participates in all monitoring activities, including all federal and state on-site reviews. The AHCA is also responsible for providing technical assistance, as needed. In order to implement the bill, the AHCA would need one FTE for fiscal year 2013-2014.

The DOEA provides oversight of established PACE sites. The fiscal impact to DOEA would come in fiscal year 2014-2015 as it takes at least a year for the application approval and the readiness certification.

CS/CS/SB 748 conditions the new PACE sites contingent upon an appropriation by the Legislature. Typically, PACE slots cost approximately $25,000 per member per year. Thus, the estimated cost of the 750 new PACE program slots authorized in the bill would be $18.75 million, if an appropriation to cover those expenditures is provided. The PACE slots are intended as an alternative to nursing home care, however, which is separately funded in the budget. If the funding for nursing home services were to be reduced as a result of the addition of the new PACE slots, then the actual fiscal impact to the state could be less.

Fiscal Impact	**Fiscal Year 2013-14**		**Fiscal Year 2014-2015**
AHCA	**FTE**	**Total**	**Total**
Application process	1	$71,128	
Operation of 750 slots			$18.75 million
Total	1	$71,128	$18.75 million

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/CS by Health Policy on March 20, 2013:
The bill was amended to add a third program with 150 slots that is authorized to serve Hernando and Pasco Counties, and to reduce the authorized service area of the second program to Alachua and Clay Counties, only (removing Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union Counties.)

CS by Children, Families, and Elder Affairs on March 12, 2013:
The bill was amended to add a second PACE program with up to 300 slots that is authorized to serve Alachua, Bradford, Clay, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union Counties.

B. Amendments:

None.

524380

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/21/2013	.	
	.	
	.	
	.	

The Committee on Health Policy (Bean) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete line 50
4 and insert:
5
6 one not-for-profit corporation with more than 30 years'
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 9 - 21
11 and insert:
12
13 authorizing, subject to appropriation, enrollment

524380

14 slots for the program in such counties; requiring the
15 Agency for Health Care Administration to contract with
16 a certain organization to provide services under the
17 federal Program of All-inclusive Care for the Elderly
18 in Alachua, Bradford, Clay, Columbia, Dixie,
19 Gilchrist, Hamilton, Lafayette, Levy, Putnam,
20 Suwannee, and Union counties; providing an exemption
21 from ch. 641, Florida Statutes, for the organization;
22 authorizing, subject to appropriation, enrollment
23 slots for the program in such

497726

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
	.	
	.	
	.	

The Committee on Health Policy (Bean) recommended the following:

Senate Substitute for Amendment (524380) (with title amendment)

Delete lines 50 - 56
and insert:

one not-for-profit corporation with more than 30 years experience as a licensed hospice provider and currently licensed as a hospice provider to serve individuals and families in Clay, Alachua, Bradford, and Putnam counties. This not-for-profit corporation shall provide PACE services to frail elders who reside in Alachua and Clay counties.

497726

14 ========== T I T L E A M E N D M E N T ==========
15 And the title is amended as follows:
16 Delete lines 9 - 21
17 and insert:
18
19 authorizing, subject to appropriation, enrollment
20 slots for the program in such counties; requiring the
21 Agency for Health Care Administration to contract with
22 a certain not-for-profit corporation to provide
23 services under the federal Program of All-inclusive
24 Care for the Elderly in Alachua and Clay counties;
25 providing an exemption from ch. 641, Florida Statutes,
26 for the corporation; authorizing, subject to
27 appropriation, enrollment slots for the program in
28 such

350792

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
	.	
	.	
	.	

The Committee on Health Policy (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 64 and 65
insert:

Section 3. Notwithstanding s. 430.707, Florida Statutes, and subject to federal approval of the application to be a site for the Program of All-inclusive Care for the Elderly (PACE), the Agency for Health Care Administration shall contract with one not-for-profit organization that has more than 30 years' experience as a licensed hospice and is currently a licensed hospice serving individuals and families in Hernando and Pasco Counties. This not-for-profit organization shall provide PACE services to frail elders who reside in Hernando and Pasco

350792

14 Counties. The organization shall be exempt from the requirements
15 of chapter 641, Florida Statutes. The agency, in consultation
16 with the Department of Elderly Affairs and subject to an
17 appropriation, shall approve up to 150 initial enrollees in the
18 Program of All-inclusive Care for the Elderly established by
19 this organization to serve frail elders who reside in Hernando
20 and Pasco Counties.
21
22 ========== T I T L E A M E N D M E N T ==========
23 And the title is amended as follows:
24 Delete line 22
25 and insert:
26 counties; authorizing the Agency for Health Care
27 Administration to contract with certain organizations
28 to provide services under the federal Program of All-
29 inclusive Care for the Elderly in Hernando and Pasco
30 Counties; providing an exemption from ch. 641, F.S.,
31 for the organizations; authorizing, subject to
32 appropriation, enrollment slots for the program in
33 such counties; providing an effective date.

By the Committee on Children, Families, and Elder Affairs; and Senators Bean and Gibson

586-02281-13 2013748c1

A bill to be entitled

An act relating to the Program of All-inclusive Care for the Elderly; requiring the Agency for Health Care Administration to contract with a certain organization to provide services under the federal Program of All-inclusive Care for the Elderly in Duval, St. Johns, Baker, and Nassau Counties; providing an exemption from ch. 641, Florida Statutes, for the organization; requiring the organization, subject to an appropriation, to enroll a specified number of persons to participate in the program in the named counties; requiring the Agency for Health Care Administration to contract with a certain organization to provide services under the federal Program of All-inclusive Care for the Elderly in Alachua, Bradford, Clay, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union counties; providing an exemption from ch. 641, Florida Statutes, for the organization; requiring the organization, subject to an appropriation, to enroll a specified number of persons to participate in the program in the named counties; providing an effective date.

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

Section 1. Notwithstanding s. 430.707, Florida Statutes, and subject to federal approval of the application to be a site for the Program of All-inclusive Care for the Elderly (PACE) program, the Agency for Health Care Administration shall

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 contract with a not-for-profit organization that has been
31 jointly formed by a lead agency that has been designated
32 pursuant to s. 430.205, Florida Statutes, and that is licensed
33 as a nursing home diversion program provider, and by a not-for-
34 profit hospice provider that has been licensed for more than 30
35 years to serve individuals and families in Duval, St. Johns,
36 Baker, and Nassau Counties. The not-for-profit organization
37 shall leverage existing community-based care providers and
38 healthcare organizations to provide PACE services to frail
39 elders who reside in Duval, St. Johns, Baker, and Nassau
40 Counties. The organization is exempt from the requirements of
41 chapter 641, Florida Statutes. The agency, in consultation with
42 the Department of Elderly Affairs, and subject to an
43 appropriation, shall approve up to 300 initial enrollees in the
44 PACE established by this organization to serve frail elders who
45 reside in Duval, St. Johns, Baker, and Nassau Counties.
46 Section 2. Notwithstanding s. 430.707, Florida Statutes,
47 and subject to federal approval of the application to be a site
48 for the Program of All-inclusive Care for the Elderly (PACE),
49 the Agency for Health Care Administration shall contract with
50 one private health care organization with more than 30 years'
51 experience as a licensed hospice provider and currently licensed
52 as a hospice provider to serve individuals and families in Clay,
53 Alachua, Bradford and Putnam Counties. This not-for-profit
54 organization shall provide PACE services to frail elders who
55 reside in Alachua, Bradford, Clay, Columbia, Dixie, Gilchrist,
56 Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union counties.
57 The organization shall be exempt from the requirements of
58 Chapter 641, Florida Statutes. The agency in consultation with

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

59 the Department of Elderly Affairs and subject to an
60 appropriation, shall approve up to 300 initial enrollees in the
61 Program of All-inclusive Care for the Elderly established by
62 this organization to serve frail elders who reside in Alachua,
63 Bradford, Clay, Columbia, Dixie, Gilchrist, Hamilton, Lafayette,
64 Levy, Putnam, Suwannee, and Union counties.
65 Section 3. This act shall take effect July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/13
Meeting Date

Topic: Program of ALL-Inclusive Care for the Elderly

Bill Number: SB 748 (if applicable)

Name: Susan Ponder-Stansel

Amendment Barcode: (if applicable)

Job Title: President & CEO

Address: 4266 Sunbeam Rd
Street

Jacksonville FL 32217
City State Zip

Phone: 904-610-1466

E-mail: sstansel@communityhospice.com

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

Representing: Community Hospice

Appearing at request of Chair: [ ] Yes [X] 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)

3/20/13
Meeting Date

Topic: PACE-Program of ALL-inclusive Care for the Elderly

Bill Number: SB 748 (if applicable)

Name: Robert S. Beck

Amendment Barcode: (if applicable)

Job Title: Partner, Adams St. Advocates

Address: 205 S. Adams St
Street

Tallahassee FL 32301
City State Zip

Phone: 850 766 1410

E-mail: Robert@AdamsstAdvocates.com

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

Representing: Aging TRUE, Community Care for the Elderly Lead Agency

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

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 Committee on Health Policy

BILL: SB 594

INTRODUCER: Senator Bean

SUBJECT: Nursing Homes and Related Health Care Facilities

DATE: March 15, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Favorable**
2.			BI	
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 594 exempts certain clinics, rehabilitation agencies, and public health agencies that provide out-patient physical therapy or speech pathology services and that are certified under 42 C.F.R. part 485, subpart H, from the requirement to obtain a license as a clinic under part X of ch. 400, F.S., in order to receive reimbursement under the Florida Motor Vehicle No-fault Law.

This bill substantially amends section 400.9905 of the Florida Statutes.

II. Present Situation:

Currently, clinics in the State of Florida must be licensed by the Agency for Health Care Administration (AHCA).[1] However, there are many exclusions from the definition of "clinic" and from the requirement to obtain a license from the AHCA.[2] Health care entities that are certified under 42 C.F.R. 485, subpart H, to provide physical therapy or speech pathology services along with entities that own,[3] are owned by,[4] or are under common ownership with,[5] directly or indirectly, such health care entities, are included under these exceptions. Providers certified under 42 C.F.R. 485, subpart H include:

[1] s. 400.991, F.S.
[2] s. 400.9905(4)(a)-(n), F.S.
[3] s. 400.9905(4)(b), F.S.
[4] s. 400.9905(4)(c), F.S.
[5] s. 400.9905(4)(d), F.S.

- **Clinics** where the medical services are furnished by a group of three or more physicians practicing medicine together and a physician is present during all hours of operation of the clinic to furnish medical services, as distinguished from purely administrative services;[6]
- **Rehabilitation agencies** that provide an integrated interdisciplinary rehabilitation program designed to upgrade the physical functioning of handicapped disabled individuals by bringing specialized rehabilitation staff together to perform as a team and provide at least physical therapy or speech-language pathology services;[7] and
- **Public health agencies** established by a state or local government, the primary function of which is to maintain the health of the population served by performing environmental health services, preventive medical services, and in certain cases, therapeutic services.[8]

However, in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law health care entities excluded from the definition of a clinic under s. 400.9905, F.S., still must obtain a license as a clinic unless they are listed by s. 627.736(5)(h), F.S.[9]

Florida Motor Vehicle No-Fault Law

Under the state's no-fault law,[10] owners or registrants of motor vehicles are required to purchase $10,000 of personal injury protection (PIP) insurance and $5,000 in death benefits which compensates persons injured in accidents regardless of fault. [11] Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.[12] This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.[13] In contrast, under a tort liability system, the negligent party is responsible for damages caused and an accident victim can sue the at-fault driver to recover economic and non-economic damages.

Florida drivers are required to purchase both PIP and property damage liability (PD) insurance.[14] PIP coverage provides reimbursement for 80 percent of reasonable medical expenses if the individual receives initial services and care within 14 days after the motor vehicle accident in the manner prescribed,[15,16,17] 60 percent of loss of income,[18] and all expenses reasonably incurred in

[6] 42 C.F.R. 485.703
[7] Id.
[8] Id.
[9] *Exempted entities include*: an entity wholly owned by a physician licensed under ch. 458 or ch. 459, or by the physician and the spouse, parent, child, or sibling of the physician; an entity wholly owned by a dentist licensed under ch. 466, or by the dentist and the spouse, parent, child, or sibling of the dentist; an entity wholly owned by a chiropractic physician licensed under ch. 460, or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician; a hospital or ambulatory surgical center licensed under ch. 395; an entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under ch. 395; and an entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.
[10] Sections 627.730-627.7405, F.S.
[11] Section 627.736(1), F.S.
[12] See s. 627.731, F.S.
[13] Section 627.737, F.S.
[14] See sections 324.022, F.S. and 627.733, F.S.
[15] This benefit is limited to minimum of $10,000 for emergency medical conditions (s. 627.736(1), F.S.) and $2,500 for non-emergency medical conditions (s. 627.736(1)(a)4., F.S.).
[16] Section 627.736(1)(a), F.S.

obtaining from others ordinary and necessary services which the insured would have performed,[19] for bodily injury sustained in a motor vehicle accident, without regard to fault. The PD coverage must provide a $10,000 minimum benefit. A $5,000 death benefit is also provided.[20]

Motor Vehicle Insurance Fraud in Florida

Between years 2007 and 2012, Florida experienced an increase in motor vehicle related insurance fraud. The number of staged motor vehicle accidents received by the Division of Insurance Fraud (division)[21] nearly doubled from 776 in fiscal year 2008-2009[22] to 1,416 in fiscal year 2010-2011.[23] The division also reported sizeable increases in the overall number of PIP fraud referrals, which have increased from 9,916 during fiscal year 2007-2008 to 13,452 in fiscal year 2010-2011.[24]

Motor vehicle insurance fraud has been a long-standing problem in Florida. In November 2005, the Senate Banking and Insurance Committee issued a report entitled Florida's Motor Vehicle No-Fault Law, which was a comprehensive review of Florida's No-Fault system. The report noted that fraud was at an "all-time" high at the time, noting that there were 3,942 PIP fraud referrals received by the division during the three fiscal years beginning in 2002 and ending in 2005. That amount was easily exceeded by the over 5,500 PIP fraud referrals received by the division during fiscal year 2009-2010. Given this fact, the following description from the 2005 report is an accurate description of the situation in 2011-2012 regarding motor vehicle insurance fraud:

> Florida's no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes, manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering…

Fraudulent claims are a major cost-driver and result in higher motor vehicle insurance premium costs for Florida policyholders.

---

[17] See sub-subparagraphs 1-5 of s. 627.736(1)(a), F.S. for the specifics on how care may be obtained.
[18] Section 627.736(1)(b), F.S.
[19] Id.
[20] Section 627.736(1)(c), F.S.
[21] The Division of Insurance Fraud is the law enforcement arm of the Department of Financial Services.
[22] Florida Department of Financial Services Division of Insurance Fraud Statistical Report: Fiscal year 2008-2009.
[23] Florida Department of Financial Services Division of Insurance Fraud Annual Report: Fiscal year 2010-2011, pg. 30, found at: http://www.myfloridacfo.com/fraud/annual%20report/2010-2011_DIF_AnnualReport.pdf, last visited on Mar. 19, 2013.
[24] See the Office of the Insurance Consumer Advocate, *Report on Florida Motor Vehicle No-fault Insurance*, found at; http://www.myfloridacfo.com/ica/docs/PIP%20Working%20Group%20Report%2012.14.2011.pdf, last visited on Mar. 18, 2013.

Legislative Response

Responding to widespread PIP related insurance fraud and the rising cost of automobile insurance, the Insurance Consumer Advocate formed the PIP Working Group in July of 2011, to assist in developing a policy paper that broadly reviewed and outlined the challenges regarding the rising fraud and abuse associated with Florida's No-Fault system.[25] The working group was comprised of various stakeholders who provided data, commentary and policy direction. In December 2011, the working group released a report which concluded that absent much needed changes to Florida's No-Fault system, Florida consumers will be left with fewer choices, higher rates or, they will choose to go uninsured.[26] In response to these issues and the working group's report, the 2012 Legislature passed CS/CS/HB 199 (CS/CS/SB 1860 by Senator Negron), which was signed into law on April 24, 2012.[27] The bill significantly changed to Florida's PIP insurance laws relating to:

- PIP medical benefits;
- PIP death benefits;
- The PIP medical fee schedule;
- Mandatory rate filings and data call;
- Attorney fees;
- Investigation and payment of claims; and,
- Prevention of PIP-related insurance fraud.[28]

One element of the bill required that, in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, health care entities excluded from the definition of a clinic under s. 400.9905, F.S., still must obtain a license as a clinic unless they are listed by s. 627.736(5)(h), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 400.9905, F.S., to exempt clinics, rehabilitation agencies, and public health agencies that provide out-patient physical therapy or speech pathology services and that are certified under 42 C.F.R. part 485, subpart H, from the requirement to obtain a license as a clinic under part X of ch. 400, F.S., in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law[29] if they are certified before June 30, 2014 or if they are owned by an entity which owns other clinics certified before June 30, 2014.

Section 2 creates an effective date of July 1, 2013.

[25] Supra, n. 21, p. 1
[26] Supra, n. 21, p. 42
[27] 2012-197, L.O.F.
[28] For a full summary of the changes made by CS/CS/HB 119, please see the Banking and Insurance Committee's bill summary, found at: http://www.flsenate.gov/Committees/billsummaries/2012/html/215, last visited on Mar. 18, 2012
[29] ss. 627.730-627.7405, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 594 could have a positive fiscal impact on health care entities, which will be newly eligible to receive reimbursement under the Florida Motor Vehicle No-Fault Law without obtaining a license from the AHCA.

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.)

None.

B. Amendments:

None.

By Senator Bean

4-00277A-13 2013594__

A bill to be entitled

An act relating to nursing homes and related health care facilities; amending s. 400.9905, F.S.; clarifying provisions to exempt certain clinics that receive reimbursement under the Florida Motor Vehicle No-Fault Law from licensure requirements in this state if they hold specific federal certification; extending the exemption to clinics that are owned by certain entities; providing an effective date.

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

Section 1. Subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4) "Clinic" means an entity in which ~~where~~ health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

(a) Entities licensed or registered by the state under chapter 395; entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 C.F.R. part 405, subpart U; providers certified under 42 C.F.R.
31 part 485, subpart B or subpart H; or any entity that provides
32 neonatal or pediatric hospital-based health care services or
33 other health care services by licensed practitioners solely
34 within a hospital licensed under chapter 395.
35 (b) Entities that own, directly or indirectly, entities
36 licensed or registered by the state pursuant to chapter 395;
37 entities that own, directly or indirectly, entities licensed or
38 registered by the state and providing only health care services
39 within the scope of services authorized pursuant to their
40 respective licenses under ss. 383.30-383.335, chapter 390,
41 chapter 394, chapter 397, this chapter except part X, chapter
42 429, chapter 463, chapter 465, chapter 466, chapter 478, part I
43 of chapter 483, chapter 484, or chapter 651; end-stage renal
44 disease providers authorized under 42 C.F.R. part 405, subpart
45 U; providers certified under 42 C.F.R. part 485, subpart B or
46 subpart H; or any entity that provides neonatal or pediatric
47 hospital-based health care services by licensed practitioners
48 solely within a hospital licensed under chapter 395.
49 (c) Entities that are owned, directly or indirectly, by an
50 entity licensed or registered by the state pursuant to chapter
51 395; entities that are owned, directly or indirectly, by an
52 entity licensed or registered by the state and providing only
53 health care services within the scope of services authorized
54 pursuant to their respective licenses under ss. 383.30-383.335,
55 chapter 390, chapter 394, chapter 397, this chapter except part
56 X, chapter 429, chapter 463, chapter 465, chapter 466, chapter
57 478, part I of chapter 483, chapter 484, or chapter 651; end-
58 stage renal disease providers authorized under 42 C.F.R. part

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59 405, subpart U; providers certified under 42 C.F.R. part 485,
60 subpart B or subpart H; or any entity that provides neonatal or
61 pediatric hospital-based health care services by licensed
62 practitioners solely within a hospital under chapter 395.
63 (d) Entities that are under common ownership, directly or
64 indirectly, with an entity licensed or registered by the state
65 pursuant to chapter 395; entities that are under common
66 ownership, directly or indirectly, with an entity licensed or
67 registered by the state and providing only health care services
68 within the scope of services authorized pursuant to their
69 respective licenses under ss. 383.30-383.335, chapter 390,
70 chapter 394, chapter 397, this chapter except part X, chapter
71 429, chapter 463, chapter 465, chapter 466, chapter 478, part I
72 of chapter 483, chapter 484, or chapter 651; end-stage renal
73 disease providers authorized under 42 C.F.R. part 405, subpart
74 U; providers certified under 42 C.F.R. part 485, subpart B or
75 subpart H; or any entity that provides neonatal or pediatric
76 hospital-based health care services by licensed practitioners
77 solely within a hospital licensed under chapter 395.
78 (e) An entity that is exempt from federal taxation under 26
79 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan
80 under 26 U.S.C. s. 409 that has a board of trustees at least
81 two-thirds of which are Florida-licensed health care
82 practitioners and provides only physical therapy services under
83 physician orders, any community college or university clinic,
84 and any entity owned or operated by the federal or state
85 government, including agencies, subdivisions, or municipalities
86 thereof.
87 (f) A sole proprietorship, group practice, partnership, or

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88 corporation that provides health care services by physicians
89 covered by s. 627.419, that is directly supervised by one or
90 more of such physicians, and that is wholly owned by one or more
91 of those physicians or by a physician and the spouse, parent,
92 child, or sibling of that physician.
93 (g) A sole proprietorship, group practice, partnership, or
94 corporation that provides health care services by licensed
95 health care practitioners under chapter 457, chapter 458,
96 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
97 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,
98 chapter 490, chapter 491, or part I, part III, part X, part
99 XIII, or part XIV of chapter 468, or s. 464.012, and that is
100 wholly owned by one or more licensed health care practitioners,
101 or the licensed health care practitioners set forth in this
102 paragraph and the spouse, parent, child, or sibling of a
103 licensed health care practitioner if one of the owners who is a
104 licensed health care practitioner is supervising the business
105 activities and is legally responsible for the entity’s
106 compliance with all federal and state laws. However, a health
107 care practitioner may not supervise services beyond the scope of
108 the practitioner’s license, except that, for the purposes of
109 this part, a clinic owned by a licensee in s. 456.053(3)(b)
110 which provides only services authorized pursuant to s.
111 456.053(3)(b) may be supervised by a licensee specified in s.
112 456.053(3)(b).
113 (h) Clinical facilities affiliated with an accredited
114 medical school at which training is provided for medical
115 students, residents, or fellows.
116 (i) Entities that provide only oncology or radiation

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117 therapy services by physicians licensed under chapter 458 or
118 chapter 459 or entities that provide oncology or radiation
119 therapy services by physicians licensed under chapter 458 or
120 chapter 459 which are owned by a corporation whose shares are
121 publicly traded on a recognized stock exchange.
122 (j) Clinical facilities affiliated with a college of
123 chiropractic accredited by the Council on Chiropractic Education
124 at which training is provided for chiropractic students.
125 (k) Entities that provide licensed practitioners to staff
126 emergency departments or to deliver anesthesia services in
127 facilities licensed under chapter 395 and that derive at least
128 90 percent of their gross annual revenues from the provision of
129 such services. Entities claiming an exemption from licensure
130 under this paragraph must provide documentation demonstrating
131 compliance.
132 (l) Orthotic or prosthetic clinical facilities that are a
133 publicly traded corporation or that are wholly owned, directly
134 or indirectly, by a publicly traded corporation. As used in this
135 paragraph, a publicly traded corporation is a corporation that
136 issues securities traded on an exchange registered with the
137 United States Securities and Exchange Commission as a national
138 securities exchange.
139 (m) Entities that are owned by a corporation that has $250
140 million or more in total annual sales of health care services
141 provided by licensed health care practitioners where one or more
142 of the owners is a health care practitioner who is licensed in
143 this state and who is responsible for supervising the business
144 activities of the entity and is legally responsible for the
145 entity’s compliance with state law for purposes of this part.

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146 (n) Entities that employ 50 or more licensed health care
147 practitioners licensed under chapter 458 or chapter 459 where
148 the billing for medical services is under a single tax
149 identification number. The application for exemption under this
150 subsection shall contain information that includes: the name,
151 residence, and business address and phone number of the entity
152 that owns the practice; a complete list of the names and contact
153 information of all the officers and directors of the
154 corporation; the name, residence address, business address, and
155 medical license number of each licensed Florida health care
156 practitioner employed by the entity; the corporate tax
157 identification number of the entity seeking an exemption; a
158 listing of health care services to be provided by the entity at
159 the health care clinics owned or operated by the entity and a
160 certified statement prepared by an independent certified public
161 accountant which states that the entity and the health care
162 clinics owned or operated by the entity have not received
163 payment for health care services under personal injury
164 protection insurance coverage for the preceding year. If the
165 agency determines that an entity which is exempt under this
166 subsection has received payments for medical services under
167 personal injury protection insurance coverage, the agency may
168 deny or revoke the exemption from licensure under this
169 subsection.
170
171 Notwithstanding this subsection, an entity shall be deemed a
172 clinic and must be licensed under this part in order to receive
173 reimbursement under the Florida Motor Vehicle No-Fault Law, ss.
174 627.730-627.7405, unless exempted under s. 627.736(5)(h) <u>or</u>

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175 under this subsection as a provider certified under 42 C.F.R.
176 part 485, subpart H, before June 30, 2014. However, if a single
177 legal entity owns clinics certified under 42 C.F.R. part 485,
178 subpart H, which are exempted under this provision, the
179 exemption extends after June 30, 2014, to other clinics
180 certified under 42 C.F.R. part 485, subpart H, which are owned
181 by that entity.
182 Section 2. This act shall take effect July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/13
Meeting Date

Topic: Nursing Home + Related Health Care Facilities

Bill Number: 594 *(if applicable)*

Name: Brad C. Roush

Amendment Barcode: *(if applicable)*

Job Title: Executive Vice President and General Counsel

Address: CORA Health Services, Inc.
Street 1110 Shawnee Road

City Lima, *State* OH *Zip* 45805

Phone: 419.221.6712

E-mail: broush@corahealth.com

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

Representing: CORA Health Services, Inc.

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 Committee on Health Policy

BILL: CS/SB 1420

INTRODUCER: Health Policy Committee and Senator Sobel

SUBJECT: Mental Health Treatment

DATE: March 20, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HP	**Fav/CS**
2.			CJ	
3.			AP	
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:

CS/SB 1420 allows a client who has been recently transferred to a civil or forensic facility operated in conjunction with the Department of Children and Families (DCF) to be involuntarily continued on psychotherapeutic medications if he or she has been deemed to lack informed decision-making capacity regarding treatment, the admitting physician judges that abrupt cessation could jeopardize the health or safety of the client, and the facility administrator petitions the court for authorization. The bill requires the court to hold a competency hearing within 30 days of receiving notification that any facility client adjudicated mentally incompetent or not guilty by reason of insanity no longer meets the criteria for continued commitment.

The bill provides for the dismissal of charges against any defendant adjudicated mentally incompetent if he or she remains incompetent three (rather than five) years after the initial competency decision was made, unless the court believes that he or she will become competent in the future. If the defendant was committed in relation to an allegation of certain specified crimes, the period before charge dismissal remains five years.

The bill also provides additional details for how incompetency is determined in juvenile delinquency cases. It provides a definition for when a child is considered competent and

specifies certain components which must be included in a competency evaluation report. Concerning competency evaluations related to mental retardation or autism, the bill requires the evaluator to provide a clinical opinion as to whether the child is competent to proceed with delinquency hearings.

The bill provides an effective date of July 1, 2013.

This bill amends sections 916.107, 916.13, 916.145, 916.15, and 985.19 of the Florida Statutes.

II. Present Situation:

The Due Process Clause of the 14th Amendment prohibits the states from trying and convicting defendants who are incompetent to stand trial.[1] The states must have procedures in place that adequately protect the defendant's right to a fair trial, which includes his or her participation in all material stages of the process.[2] Specifically, defendants (and juveniles charged with having committed felony-level delinquent acts) must be able to appreciate the range and nature of the charges and penalties that may be imposed, and must be able to understand the adversarial nature of the legal process and disclose to counsel facts pertinent to the proceedings at issue. Defendants also must manifest appropriate courtroom behavior and be able to testify relevantly.[3]

If a defendant is suspected of being incompetent, the court or counsel for the defendant or the state may file a motion for examination to have the defendant's cognitive state assessed. If the motion is well-founded the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing. If the defendant is found to be competent, the criminal proceeding resumes. If, however, the defendant is found to be incompetent to proceed, competency must be restored before the criminal proceeding may resume.[4]

Restoration of Competency

Competency restoration is designed to help defendants meaningfully participate in their own defense. The DCF has oversight of felony defendants who are found incompetent to proceed due to mental illness, while the Agency for Persons with Disabilities (APD) is charged with oversight of felony defendants who are incompetent to proceed due to developmental disabilities.[5] The DCF is directed by statute to provide competency training for juveniles who have been found incompetent to proceed to trial as a result of mental illness, mental retardation or autism.[6]

If the court determines that the defendant is a danger to himself or others, it may involuntarily commit the defendant to a secure forensic facility.[7] Defendants may be placed on conditional

[1] See *Pate v. Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); *Bishop v. U.S.*, 350 U.S.961, 76 S.Ct. 440, 100 L.Ed. 835 (1956); *Jones v. State*, 740 So.2d 520 (Fla. 1999).
[2] *Id.* See also Rule 3.210(a)(1), Fla.R.Crim.P., Rule 8.095(d)(1), Fla.R.Juv.P.
[3] *Id.* See also s. 916.12, 916.3012, and 985.19, F.S.
[4] Rule 3.210(b), 3.211, 3.212, Fla.R.Crim.P.; Rule 8.095(a)(1)-(6), Fla.R.Juv.P.
[5] Ch. 916, F.S.
[6] s. 985.19(4), F.S.
[7] s. 916.13, F.S.

release to receive competency restoration training in the community if the court finds they do not pose a risk to public safety.[8]

Once a defendant is determined to have regained his or her competence to proceed, the court is notified and a hearing is set for the judge to determine the defendant's competency.[9] If the court finds the defendant to be competent, the criminal proceeding resumes. If, however, the court finds the defendant incompetent to proceed, the defendant is returned to a forensic facility or community restoration on conditional release until competency is restored.[10]

Competency restoration training and mental health services are provided in four state forensic facilities, that have a total of 1,108 beds (two facilities are state-operated and two are operated under contract with a private provider).[11] The DCF served 2,531 adults who were committed for competency restoration services during fiscal year 2011-2012.[12] The DCF reports that 405 juveniles received competency training during fiscal year 2011-2012.[13]

Qualifications of Competency Experts

Section 916.115 (1)(a), F.S., provides that experts appointed by the court to conduct competency evaluations shall, to the extent possible, have completed forensic evaluator training approved by the DCF and each shall be a psychiatrist, licensed psychologist, or physician. The DCF is required by s. 916.115 (1)(b), F.S., to maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts. However, current law does not require attendance at a department-authorized training or training renewal.

In the juvenile system, the court appoints mental health experts to conduct competency evaluations although there does not appear to be a specific requirement in the juvenile competency statute that the expert be a psychiatrist, licensed psychologist, or physician as is the case in the adult system.[14] As in the adult system, the DCF provides the court a list of experts who have completed a department-approved training program but there is no statute that requires any attendance or on-going forensic training for the purpose of competency evaluation and reporting.[15] The APD conducts the evaluations and makes the reports to the court regarding juveniles who meet the definition of "retardation" or "autism."[16] Although there is a requirement in s. 916.301(2)(b)1., F.S., that the expert appointed to examine adult defendants be a psychologist, the juvenile statute does not make such a specification.

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[8] s. 916.17, F.S.
[9] Rule 3.212, Fla.R.Crim.P.
[10] *Id*.
[11] DCF Analysis of SB 1420 dated March 7, 2013. On file with Health Policy Committee staff.
[12] *Id*.
[13] *Id*.
[14] s. 985.19(1)(b), F.S.
[15] s. 985.19(1)(d), F.S.
[16] s. 985.19(1)(e), F.S.

Hearing to Determine Restoration of Competency or Need for Continued Commitment

When the court adjudicates a defendant incompetent to proceed and the defendant is committed to the DCF to be restored to competency, or if the defendant has been found not guilty by reason of insanity and committed to the DCF, the defendant is returned to court periodically for a review and report on his or her condition.[17] Generally, a review is conducted:

- No later than six months after the date of admission;
- At the end of any extended period of commitment;
- At any time upon the facility administrator's communication to the court that the defendant no longer meets commitment criteria; or
- Upon counsel's Motion for Review having been granted.

Rules of Criminal and Juvenile Procedure require that a hearing be held within 30 days of the court's receiving the administrator's pre-hearing report.[18] There is no corresponding statutory time constraint on the court conducting a hearing.

The court also retains jurisdiction for purposes of dismissing charges if a defendant has not become competent within five years.[19]

Psychotropic Medication

Forensic clients of the DCF, which includes defendants who have been committed to the DCF for competency restoration or because they have been found not guilty by reason of insanity, must be treated with dignity and respect. The DCF; however, is responsible for providing treatment deemed necessary to fulfill its obligation under the statutes governing competency restoration and mental illness.

Forensic clients are, therefore, asked to give express and informed consent for treatment.[20] When treatment is refused, it may nonetheless be provided in an emergency situation for periods of up to 48 hours (excluding weekends and holidays, subject to review in 48-hour increments by a physician until a court rules) unless or until the DCF obtains a court order authorizing continued treatment.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 916.107, F.S., concerning administration of psychotherapeutic medications to forensic clients. If a client has been receiving psychotherapeutic medications in jail at the time of transfer to the forensic or civil facility and lacks informed decision-making capacity with respect to mental health treatment, the admitting physician at the facility may order continued administration of these medications if he or she judges that abrupt cessation could jeopardize the

[17] ss. 916.13(2), 916.15(3) and 916.302(2)(a), F.S. See also s. 985.19(4)(e), (5) and (6), F.S., related to the court's jurisdiction and reporting requirements in juvenile cases.
[18] Rules 3.212 and 3.218, Fla.R.Crim.P.; Rule 8.095(a)(5), Fla.R.Juv.P. See also Rule 8.095(e), Fla.R.Juv.P.
[19] s. 916.145, 916.303, F.S. Regarding dismissal of charges of juvenile delinquency, see s. 985.19(5)(c), F.S.
[20] s. 916.107(3), F.S.
[21] *Id.*

health or safety of the client during the period before acquisition of a court order for medication administration. To continue the psychotherapeutic medication, the facility administrator or his or her designee must petition the committing court or the local circuit court for an authorization order. This petition must be made within five business days after admission of the client. The jail physician must also a current therapeutic medication order for the client at the admitting physician's request or at the time of transfer to the facility.

The bill also makes some technical changes to s. 916.107(3)(a), F.S.

Section 2 amends s. 916.13, F.S., to require the court to hold a competency hearing within 30 days after receiving notification that any facility client adjudicated mentally incompetent no longer meets the criteria for continued commitment. The bill also makes some technical changes.

Section 3 amends s. 916.145, F.S., to state that charges against any defendant adjudicated mentally incompetent will be dismissed if he or she remains incompetent three (rather than five) years after the initial competency decision was made, unless the court believes that he or she will become competent in the future. If the defendant was committed in relation to an allegation of certain crimes, the period before charge dismissal is five years. Such crimes include arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.

Section 4 amends s. 916.15, F.S., to require the court to hold a competency hearing within 30 days after receiving notification that any facility client adjudicated not guilty by reason of insanity no longer meets the criteria for continued commitment.

Section 5 amends s. 985.19, F.S., to change references to the Department of Children and Family Services to the Department of Children and Families. The bill also provides additional details for how incompetency is determined in juvenile delinquency cases. A child is considered competent to proceed if he or she has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and has a rational and factual understanding of the proceedings.[22]

A child's competency evaluation report must specifically state the basis for the determination of his or her mental condition and must also include written findings that:

- Identify the specific matters referred for evaluation;
- Identify the sources of information used by the expert;
- Describe the procedures, techniques, and diagnostic tests used in the examination to determine the basis of the child's mental condition;
- Assess the child's capacity to:
  - Appreciate the charges or allegations against him or her;

[22] This definition is very similar to how competency and incompetency are described in s. 916.12(1), F.S., governing adults.

- Appreciate the range and nature of possible penalties that may be imposed in proceedings against him or her, if applicable;
- Understand the adversarial nature of the legal process;
- Disclose to counsel facts pertinent to the proceedings at issue;
- Display appropriate courtroom behavior; and
- Testify relevantly.

The evaluation report must also a summary of findings which presents the factual basis for the expert's clinical findings and opinions of the child's mental condition; this factual basis must be supported by the diagnostic criteria found in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association. The summary of findings must include:

- The day, month, year, and length of time of the face-to-face diagnostic clinical interview to determine the child's mental condition;
- A statement that identifies the DSM clinical name and associated diagnostic code for the specific mental disorder that forms the basis of the child's incompetency;
- A statement of how the child would benefit from competency restoration services in the community or in a secure residential treatment facility;
- An assessment of the probable duration of the treatment to restore competence and the probability that the child will attain competence to proceed in the foreseeable future; and
- A description of recommended treatment or education appropriate for the mental disorder.

If the evaluator finds the child to be incompetent to proceed to trial, he or she must report on the mental disorder that forms the basis of the incompetency.

The bill also changes the term "incompetency evaluations" to "competency evaluations" in this section.

Concerning competency evaluations related to mental retardation or autism, the bill requires the evaluator to provide a clinical opinion as to whether the child is competent to proceed with delinquency hearings.

Section 6 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The 30-day court hearing time restrictions for certain competency and commitment hearings may be viewed as a Separation of Powers issue. It could be argued to be a procedural matter that falls within the power of the court, rather than a substantive matter of the law, a legislative matter. The issue may not arise, however, as the statutory change set forth in the bill mirrors the current court rules.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Adults and children with mental illness will be evaluated and treated differently in the justice system. Some adults with mental illness may be released from facilities earlier.

C. Government Sector Impact:

The DCF reports no fiscal impact.[23]

VI. Technical Deficiencies:

The bill is entitled "an act relating to mental health treatment." However, the bill relates to both evaluation and treatment of mental health patients within the justice system. This may represent a single-subject violation.

The bill's title also fails to mention that evaluations of children with mental retardation or autism must include a clinical opinion of competency.

In line 191, "the" could be changed to "each" since at least two experts are required to perform competency assessments on each child.

VII. Related Issues:

Lines 52-70 of the bill, which amend s. 916.107, F.S., refer frequently to administration of psychotherapeutic medications to facility clients. However, ch. 916, F.S., provides no definition for "psychotherapeutic medications." This chapter does, however, provide a detailed definition for "psychotropic medications" in s. 916.12(5), F.S. Perhaps "psychotherapeutic medications" could be changed to "psychotropic medications" in the bill to create greater congruency with existing statute.

[23] DCF Analysis of SB 1420 dated March 7, 2013. On file with Health Policy Committee staff.

Lines 54-56 state that a client who has been receiving psychotherapeutic medications in jail and "lack the capacity to make an informed decision regarding mental health treatment at the time of admission" may continue to receive psychotherapeutic medications upon court order. However, there is no provision in the bill as to who determines that the client lacks decision-making capacity or how this determination is made.

Lines 60-61 could be clarified by providing a timeframe for pursuing court orders for continued medication and limits on the amount of time a medication may be continued while awaiting the order. Similar constraints are provided for in emergency situation under s. 916.107(3)(a)1., F.S.

It is unclear what the "specific matters referred for evaluation" are in line 215.

Furthermore, the bill requires an evaluator's clinical findings and opinions to be supported by the diagnostic criteria in the DSM in lines 233-235. The DSM contains diagnostic criteria for hundreds of mental disorders; it is unclear as to what "the diagnostic criteria" in line 233 refers to.

Lines 251-252 require each evaluation report to contain a description of recommended treatment or education appropriate for the mental disorder. Perhaps the words "the mental disorder" could be replaced with "mental disorders of the child" to prevent a person from being viewed only as his or her diagnosis and to acknowledge the fact that each child may have more than one psychological or psychiatric diagnosis.

The term "mental disorder" is found nowhere in ch. 985, F.S., but is found frequently in lines 208-255, which amend a section of this chapter. Perhaps this term could be changed to "mental condition" or "psychological or psychiatric disorder" to provide congruity with terms in existing statute.

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 Policy on March 20, 2013:
The CS specifies the crimes for which the period before charge dismissal for a defendant adjudicated mentally incompetent is five years.

B. Amendments:

None.

217934

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2
3 Delete lines 134 - 147
4 and insert:
5 (Substantial rewording of section. See s. 916.145, F.S., for
6 present text.)
7 916.145 Dismissal of charges.—
8 (1) The charges against any defendant adjudicated
9 incompetent to proceed due to mental illness shall be dismissed
10 without prejudice to the state if the defendant remains
11 incompetent to proceed:
12 (a) 3 years after such determination; or

217934

13 (b) 5 years after such determination if the charge related
14 to commitment is:
15 1. Arson;
16 2. Sexual Battery;
17 3. Robbery;
18 4. Kidnapping;
19 5. Aggravated child abuse;
20 6. Aggravated abuse of an elderly person or disabled adult;
21 7. Aggravated assault with a deadly weapon;
22 8. Murder;
23 9. Manslaughter;
24 10. Aggravated manslaughter of an elderly person or
25 disabled adult;
26 11. Aggravated manslaughter of a child;
27 12. Unlawful throwing, placing or discharging of a
28 destructive device or bomb;
29 13. Armed burglary;
30 14. Aggravated battery; or
31 15. Aggravated stalking.
32
33 Unless the court, in an order, specifies reasons for
34 believing that the defendant will become competent to proceed,
35 and specifies a reasonable time within which the defendant is
36 expected to become competent.
37 (2) Nothing in this section of law shall be construed to
38 prohibit the state from refiling dismissed charges, should the
39 defendant be declared to be competent to proceed in the future.
40

By Senator Sobel

33-00539B-13 20131420__

A bill to be entitled

An act relating to mental health treatment; amending s. 916.107, F.S.; authorizing forensic and civil facilities to order the continuation of psychotherapeutics for individuals receiving such medications in the jail before admission; amending s. 916.13, F.S.; providing timeframes within which competency hearings must be held; amending s. 916.145, F.S.; revising the time for dismissal of certain charges for defendants that remain incompetent to proceed to trial; amending s. 916.15, F.S.; providing a timeframe within which commitment hearings must be held; amending s. 985.19, F.S.; standardizing the protocols, procedures, diagnostic criteria, and information and findings that must be included in an expert's competency evaluation report; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A forensic client shall be asked to give express and informed written consent for treatment. If a client refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team for the appropriate care of the client, such treatment may be provided under the following

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30 circumstances:
31 1. In an emergency situation in which there is immediate
32 danger to the safety of the client or others, such treatment may
33 be provided upon the written order of a physician for a period
34 not to exceed 48 hours, excluding weekends and legal holidays.
35 If, after the 48-hour period, the client has not given express
36 and informed consent to the treatment initially refused, the
37 administrator or designee of the civil or forensic facility
38 shall, within 48 hours, excluding weekends and legal holidays,
39 petition the committing court or the circuit court serving the
40 county in which the facility is located, at the option of the
41 facility administrator or designee, for an order authorizing the
42 continued treatment of the client. In the interim, the need for
43 treatment shall be reviewed every 48 hours and may be continued
44 without the consent of the client upon the continued written
45 order of a physician who has determined that the emergency
46 situation continues to present a danger to the safety of the
47 client or others.
48 2. In a situation other than an emergency situation, the
49 administrator or designee of the facility shall petition the
50 court for an order authorizing necessary and essential treatment
51 for the client.
52 a. If the client has been receiving psychotherapeutic
53 medications at the jail at the time of transfer to the forensic
54 or civil facility and lacks the capacity to make an informed
55 decision regarding mental health treatment at the time of
56 admission, the admitting physician may order continued
57 administration of psychotherapeutic medications if, in the
58 clinical judgment of the physician, abrupt cessation of

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59 psychotherapeutic medications could pose a risk to the health or
60 safety of the client during the time a court order to medicate
61 is pursued. The administrator or designee of the civil or
62 forensic facility shall, within 5 days after admission,
63 excluding weekends and legal holidays, petition the committing
64 court or the circuit court serving the county in which the
65 facility is located, at the option of the facility administrator
66 or designee, for an order authorizing the continued treatment of
67 a client. The jail physician shall provide a current
68 psychotherapeutic medication order at the time of transfer to
69 the forensic or civil facility or upon request of the admitting
70 physician after the client is evaluated.
71 b. The court order shall allow such treatment for up to ~~a~~
72 ~~period not to exceed~~ 90 days after ~~following~~ the date of the
73 entry of the order. Unless the court is notified in writing that
74 the client has provided express and informed consent in writing
75 or that the client has been discharged by the committing court,
76 the administrator or designee shall, before ~~prior to~~ the
77 expiration of the initial 90-day order, petition the court for
78 an order authorizing the continuation of treatment for another
79 90 days ~~90-day period~~. This procedure shall be repeated until
80 the client provides consent or is discharged by the committing
81 court.
82 3. At the hearing on the issue of whether the court should
83 enter an order authorizing treatment for which a client was
84 unable to or refused to give express and informed consent, the
85 court shall determine by clear and convincing evidence that the
86 client has mental illness, retardation, or autism, that the
87 treatment not consented to is essential to the care of the

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88 client, and that the treatment not consented to is not
89 experimental and does not present an unreasonable risk of
90 serious, hazardous, or irreversible side effects. In arriving at
91 the substitute judgment decision, the court must consider at
92 least the following factors:
93 a. The client’s expressed preference regarding treatment;
94 b. The probability of adverse side effects;
95 c. The prognosis without treatment; and
96 d. The prognosis with treatment.
97
98 The hearing shall be as convenient to the client as may be
99 consistent with orderly procedure and shall be conducted in
100 physical settings not likely to be injurious to the client’s
101 condition. The court may appoint a general or special magistrate
102 to preside at the hearing. The client or the client’s guardian,
103 and the representative, shall be provided with a copy of the
104 petition and the date, time, and location of the hearing. The
105 client has the right to have an attorney represent him or her at
106 the hearing, and, if the client is indigent, the court shall
107 appoint the office of the public defender to represent the
108 client at the hearing. The client may testify or not, as he or
109 she chooses, and has the right to cross-examine witnesses and
110 may present his or her own witnesses.
111 Section 2. Subsection (2) of section 916.13, Florida
112 Statutes, is amended to read:
113 916.13 Involuntary commitment of defendant adjudicated
114 incompetent.—
115 (2) A defendant who has been charged with a felony and who
116 has been adjudicated incompetent to proceed due to mental

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117 illness, and who meets the criteria for involuntary commitment
118 ~~to the department~~ under ~~the provisions of~~ this chapter, may be
119 committed to the department, and the department shall retain and
120 treat the defendant.
121 (a) Within ~~No later than~~ 6 months after the date of
122 admission and at the end of any period of extended commitment,
123 or at any time the administrator or designee has ~~shall have~~
124 determined that the defendant has regained competency to proceed
125 or no longer meets the criteria for continued commitment, the
126 administrator or designee shall file a report with the court
127 pursuant to the applicable Florida Rules of Criminal Procedure.
128 (b) A competency hearing must be held within 30 days after
129 the court receives notification that the defendant is competent
130 to proceed or no longer meets the criteria for continued
131 commitment.
132 Section 3. Section 916.145, Florida Statutes, is amended to
133 read:
134 916.145 Dismissal of charges.—The charges against any
135 defendant adjudicated incompetent to proceed due to the
136 defendant's mental illness shall be dismissed without prejudice
137 to the state if the defendant remains incompetent to proceed 3 ~~5~~
138 years after such determination or 5 years after such
139 determination if a charge related to commitment includes an
140 allegation of a violent crime against a person, unless the court
141 in its order specifies its reasons for believing that the
142 defendant will become competent to proceed within the
143 foreseeable future and specifies the time within which the
144 defendant is expected to become competent to proceed. The
145 charges against the defendant are dismissed without prejudice to

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146 the state to refile the charges should the defendant be declared
147 competent to proceed in the future.
148 Section 4. Subsection (5) is added to section 916.15,
149 Florida Statutes, to read:
150 916.15 Involuntary commitment of defendant adjudicated not
151 guilty by reason of insanity.—
152 (5) The commitment hearing must be held within 30 days
153 after the court receives notification that the defendant no
154 longer meets the criteria for continued commitment.
155 Section 5. Subsection (1) of section 985.19, Florida
156 Statutes, is amended to read:
157 985.19 Incompetency in juvenile delinquency cases.—
158 (1) If, at any time prior to or during a delinquency case,
159 the court has reason to believe that the child named in the
160 petition may be incompetent to proceed with the hearing, the
161 court on its own motion may, or on the motion of the child's
162 attorney or state attorney must, stay all proceedings and order
163 an evaluation of the child's mental condition.
164 (a) Any motion questioning the child's competency to
165 proceed must be served upon the child's attorney, the state
166 attorney, the attorneys representing the Department of Juvenile
167 Justice, and the attorneys representing the Department of
168 Children and Families ~~Family Services~~. Thereafter, any motion,
169 notice of hearing, order, or other legal pleading relating to
170 the child's competency to proceed with the hearing must be
171 served upon the child's attorney, the state attorney, the
172 attorneys representing the Department of Juvenile Justice, and
173 the attorneys representing the Department of Children and
174 Families ~~Family Services~~.

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175 (b) All determinations of competency must ~~shall~~ be made at
176 a hearing, with findings of fact based on an evaluation of the
177 child's mental condition made by at least ~~not less than~~ two but
178 not ~~nor~~ more than three experts appointed by the court. ~~The~~
179 ~~basis for the determination of incompetency must be specifically~~
180 ~~stated in the evaluation. In addition, a recommendation as to~~
181 ~~whether residential or nonresidential treatment or training is~~
182 ~~required must be included in the evaluation.~~ Experts appointed
183 by the court to determine the mental condition of a child shall
184 be allowed reasonable fees for services rendered. State
185 employees may be paid expenses pursuant to s. 112.061. The fees
186 shall be taxed as costs in the case.
187 (c) A child is competent to proceed if the child has
188 sufficient present ability to consult with counsel with a
189 reasonable degree of rational understanding and the child has a
190 rational and factual understanding of the present proceedings.
191 The expert's competency evaluation report must specifically
192 state the basis for the determination of the child's mental
193 condition and must include written findings that:
194 1. Identify the specific matters referred for evaluation.
195 2. Identify the sources of information used by the expert.
196 3. Describe the procedures, techniques, and diagnostic
197 tests used in the examination to determine the basis of the
198 child's mental condition.
199 4. Address the child's capacity to:
200 a. Appreciate the charges or allegations against the child.
201 b. Appreciate the range and nature of possible penalties
202 that may be imposed in the proceedings against the child, if
203 applicable.

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204 c. Understand the adversarial nature of the legal process.
205 d. Disclose to counsel facts pertinent to the proceedings
206 at issue.
207 e. Display appropriate courtroom behavior.
208 f. Testify relevantly.
209 5. Present the factual basis for the expert's clinical
210 findings and opinions of the child's mental condition. The
211 expert's factual basis of his or her clinical findings and
212 opinions must be supported by the diagnostic criteria found in
213 the most recent edition of the Diagnostic and Statistical Manual
214 of Mental Disorders (DSM) published by the American Psychiatric
215 Association and must be presented in a separate section of the
216 report entitled "summary of findings." This section must
217 include:
218 a. The day, month, year, and length of time of the face-to-
219 face diagnostic clinical interview to determine the child's
220 mental condition.
221 b. A statement that identifies the DSM clinical name and
222 associated diagnostic code for the specific mental disorder that
223 forms the basis of the child's incompetency.
224 c. A statement of how the child would benefit from
225 competency restoration services in the community or in a secure
226 residential treatment facility.
227 d. An assessment of the probable duration of the treatment
228 to restore competence and the probability that the child will
229 attain competence to proceed in the foreseeable future.
230 e. A description of recommended treatment or education
231 appropriate for the mental disorder.
232 6. If the evaluator determines the child to be incompetent

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233 to proceed to trial, the evaluator must report on the mental
234 disorder that forms the basis of the incompetency.
235 (d) ~~(c)~~ All court orders determining incompetency must
236 include specific written findings by the court as to the nature
237 of the incompetency and whether the child requires secure or
238 nonsecure treatment or training environment ~~environments~~.
239 (e) ~~(d)~~ For competency ~~incompetency~~ evaluations related to
240 mental illness, the Department of Children and Families ~~Family~~
241 ~~Services~~ shall maintain and annually provide the courts with a
242 list of available mental health professionals who have completed
243 a training program approved by the Department of Children and
244 Families ~~Family Services~~ to perform the evaluations.
245 (f) ~~(e)~~ For competency ~~incompetency~~ evaluations related to
246 mental retardation or autism, the court shall order the Agency
247 for Persons with Disabilities to examine the child to determine
248 if the child meets the definition of "retardation" or "autism"
249 in s. 393.063 and, provide a clinical opinion as to ~~if so~~,
250 whether the child is competent to proceed with delinquency
251 proceedings.
252 ~~(f) A child is competent to proceed if the child has~~
253 ~~sufficient present ability to consult with counsel with a~~
254 ~~reasonable degree of rational understanding and the child has a~~
255 ~~rational and factual understanding of the present proceedings.~~
256 ~~The report must address the child's capacity to:~~
257 ~~1. Appreciate the charges or allegations against the child.~~
258 ~~2. Appreciate the range and nature of possible penalties~~
259 ~~that may be imposed in the proceedings against the child, if~~
260 ~~applicable.~~
261 ~~3. Understand the adversarial nature of the legal process.~~

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262 ~~4. Disclose to counsel facts pertinent to the proceedings~~
263 ~~at issue.~~
264 ~~5. Display appropriate courtroom behavior.~~
265 ~~6. Testify relevantly.~~
266 (g) Immediately upon the filing of the court order finding
267 a child incompetent to proceed, the clerk of the court shall
268 notify the Department of Children and Families ~~Family Services~~
269 and the Agency for Persons with Disabilities and fax or hand
270 deliver to the department and to the agency a referral packet
271 that includes, at a minimum, the court order, the charging
272 documents, the petition, and the court-appointed evaluator's
273 reports.
274 (h) After placement of the child in the appropriate
275 setting, the Department of Children and Families ~~Family Services~~
276 in consultation with the Agency for Persons with Disabilities,
277 as appropriate, must, within 30 days after placement of the
278 child, prepare and submit to the court a treatment or training
279 plan for the child's restoration of competency. A copy of the
280 plan must be served upon the child's attorney, the state
281 attorney, and the attorneys representing the Department of
282 Juvenile Justice.
283 Section 6. This act shall take effect July 1, 2013.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ELEANOR SOBEL
33rd District

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Ethics and Elections, *Vice Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Regulated Industries
Rules

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act, *Vice Chair*

March 11, 2013

Senator Aaron Bean, Chair
Committee on Health Policy
530 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Bean:

I respectfully request that SB 1420, relating to mental health treatment, be placed on the next committee agenda.

SB 1420 authorizes forensic and civil facilities to order the continuation of psychotherapeutics for individuals receiving such medications in the jail before admission.

Thank you for your time and consideration.

With Best Regards,

Eleanor Sobel
State Senator
District 33

REPLY TO:
❒ The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
❒ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/13
Meeting Date

Topic: forensic mental health

Bill Number: 1420 *(if applicable)*

Name: Dan Hendrickson

Amendment Barcode: *(if applicable)*

Job Title: Asst Public Defender, 2d Circuit

Address: 301 S Monroe St
Street

Tallahassee — *City*
Fl — *State*
32301 — *Zip*

Phone: 850 606-1037

E-mail: dan.hendrickson@flpd2.com

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

Representing: Fl Public Defender Assn

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)

3/20/2013
Meeting Date

Topic _____

Bill Number 1420 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

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

Representing JUSTICE-2-JESUS

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 Committee on Health Policy

BILL: SB 360

INTRODUCER: Senator Garcia

SUBJECT: Surgical Assistants and Surgical Technologists

DATE: March 18, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HP	**Pre-meeting**
2.			BI	
3.			AHP	
4.			AP	
5.				
6.				

I. Summary:

SB 360 creates an undesignated section of law to prohibit health care facilities from employing or contracting with surgical technologists or surgical first assistants unless they meet certain educational and certification requirements, with certain exceptions. The Agency for Health Care Administration (AHCA) is required to adopt rules to administer this section.

The bill amends s. 627.419, F.S., of the Florida Insurance Code to add surgical assistants certified by certain national organizations to the list of practitioners who can be reimbursed by a health insurance policy, health care services plan, or other contract for their surgical first assisting services under certain conditions, unless the assistant is paid by the hospital.

The bill creates one undesignated section of law and amends s. 627.419, 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, 2012-13 Edition: Surgical Technologists*, available at: http://www.bls.gov/oco/ocos106.htm (last visited on March 18, 2013).

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.

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[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 March 18, 2013).
[3] AST, *About Us*, available at : http://www.ast.org/aboutus/about_ast.aspx (last visited on Mar. 18, 2013).
[4] *Supra* fn. 2.

- Transfer the patient to the operating table.
- Assess the patient's comfort and safety and provide verbal and tactile reassurance.
- Assist anesthesia personnel.
- 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.[5] Professional certification is available through the AST as a Certified Surgical Technologist (CST).[6] 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).[7] The CST certification is valid for four years; to renew, an individual must either retake and pass the

[5] *Supra* fn. 1.
[6] *Id.*
[7] NBSTSA, *CST Examinations*, available at: http://nbstsa.org/examinations-cst.html (last visited on March 18, 2013).

NBSTSA examination required for initial certification or complete 60 hours of continuing education. A renewal fee is also required.[8]

National certification may also be obtained from the National Center for Competency Testing (NCCT),[9] which awards the "Tech in Surgery-Certified (NCCT)" designation. Applicants must 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.[10] The NCCT certification must be renewed annually by completing 14 hours of continuing education and paying a recertification fee.[11]

Currently, there are approximately 4,800 surgical technologists employed in Florida. Of these, more than 3,400 are CSTs, and a few dozen hold the Tech in Surgery-Certified (NCCT) designation.[12]

Role of Surgical First Assistants

Surgical assistants provide aid in exposure, hemostasis, closure, and other intraoperative technical functions under the direct supervision of surgeons to help carry out safe operations with optimal results for patients. In addition to intraoperative duties, surgical assistants also perform preoperative and postoperative duties to better facilitate proper patient care.[13] Surgical first assistants provide primary assistance to the primary surgeon, must be listed on the operative record as first assistants, and cannot be involved in any other role during the procedure.[14]

The primary professional organizations for surgical assistants are the Association of Surgical Technology (AST) and the National Surgical Assistant Association (NSAA). 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.[15] The NSAA was formed by surgical assistants in 1983 and was the nation's

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[8] NBSTSA, *Renewal Options*, available at: http://nbstsa.org/renewal/index.html (last visited on March 18, 2013).
[9] 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 medical office assistants. It is not a professional organization. (Source: NCCT, *National Center for Competency Testing (NCCT)*, http://www.ncctinc.com/General/, last visited on March 18, 2013).
[10] NCCT, *Certification Information*, available at: http://www.ncctinc.com/Certifications/ (last visited on March 18, 2013).
[11] NCCT, *Recertification/CE*, available at http://www.ncctinc.com/CE/ (last visited on March 18, 2013).
[12] 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 Policy Committee.
[13] Association of Surgical Technologists, *Job Description: Surgical Assistant*, available at: http://www.ast.org/professionals/documents/2011_%20Surgical%20Assistant_Job_Description_4.5.pdf (last visited on March 18, 2013).
[14] American Board of Surgical Assistants, *Definitions*, available at: http://www.absa.net/definitions.php (last visited on March 18, 2013).
[15] AST, *About Us*, available at : http://www.ast.org/aboutus/about_ast.aspx (last visited on March 18, 2013).

first organization to provide standards for competency, professionalism, and scope of practice in the field.[16]

Duties within the scope of practice of a surgical assistant include positioning the patient; providing visualization of the operative site, including appropriate placement of retractors, suctioning and sponging, and manipulation of suture materials; assisting with hemostasis; participating in volume replacement or autotransfusion techniques, as appropriate; assisting with wound closure, including administration of sutures and subcutaneous injection of local anesthetics; selecting and applying wound dressings; and providing assistance in securing drainage systems to tissue.[17] Surgical assistants must be familiar with operating room procedures and able to anticipate the needs of the surgeon.[18]

Surgical First Assistants in Statute

Registered nurses licensed under ch. 464, F.S., may serve as surgical first assistants if they are certified in perioperative nursing through a year-long training program fulfilling certain conditions. Such nurses may be reimbursed by insurance companies for their first assistant services at a rate not less than 80 percent of what a physician would be paid for the same services.[19]

Physician assistants may also be reimbursed by insurance companies for surgical first assistant services if they act as substitutes for physicians who would have performed the same services.[20]

National Certification of Surgical First Assistants

AST: Certified Surgical First Assistant

An applicant for the Certified Surgical First Assistant (CSFA) designation must fulfill one of the following:

- Be a graduate of a surgical assistant program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP);
- Hold current certification as a Certified Surgical Technologist from the AST, have participated in at least 350 cases within the last four years, and have completed at least two full years of surgical first assistant experience; or
- Hold current surgical assistant certification from the NSAA or the American Board of Surgical Assistants (ABSA), have completed 50 hours of AST-approved continuing education within the last two years, show proof of operative case experience, and have at least an associate's degree.

Eligible applicants may register to take the CSFA exam offered by the National Board of Surgical Technology and Surgical Assisting (NBSTSA).[21] The NBSTSA was previously known

[16] NSAA, *Welcome*, available at: http://www.nsaa.net/index.php (last visited on March 18, 2013).
[17] *Supra* fn. 12.
[18] NSAA, *Scope of Practice*, available at: http://www.nsaa.net/scope_of_practice.php (last visited on March 18, 2013).
[19] Sections 464.027 and 409.906(21), F.S.
[20] Section 627.419(6), F.S.
[21] Edu-Search, *Surgical Technology Certification*, available at: http://www.surgicaltechnologists.net/education/certification (last visited on March 18, 2013).

as the Liaison Council on Certification for the Surgical Technologist (LCCST). After passage of the exam and payment of $290 in fees, an applicant may be certified.[22]

The CSFA certification must be renewed every four years either by retaking and passing the initial certification examination or completing 75 hours of continuing education approved by the AST. Recertification by examination costs $499.[23] Recertification by continuing education costs $6 per credit hour for AST members and $400 for non-members.[24]

More than 2,100 people currently hold CSFA certification.[25]

NSAA: Certified Surgical Assistant

Applicants for the Certified Surgical Assistant (CSA) designation must be graduates of approved surgical assistant training programs (there is one in Florida) or provide documentation of 2,250 hours of assisting experience along with several letters of reference from supervising surgeons. Applicants must also pass a multiple-choice examination offered by the NSAA which covers subjects such as anatomy, medical terminology, technical surgical skills, sterile technique, and anesthesia, and pay $400 in fees. Discounts apply for recent graduates and military personnel, and certification by endorsement is available to nurses, physician assistants, and other practitioners under certain conditions.

CSAs must be recertified every two years by completing 50 hours of approved continuing education or retaking and passing the initial certification exam. Recertification fees for NSAA non-members are $700 if via continuing education and $900 if via reexamination. Fees for NSAA members are $100 if via continuing education or reexamination.[26,27]

More than 1,300 people currently hold CSA certification nationally.[28]

ABSA: Surgical Assistant-Certified

To be eligible to for ABSA certification, an applicant must hold at least an associate's degree with a "C" grade or higher in specified college-level courses, have completed an ABSA- or CAAHEP-approved surgical assistant training program, and have passed the ABSA Surgical Assistant-Certified (SA-C) examination. The examination consists of both multiple-choice and practical components and is offered four times per year in Miami, Chicago, New Jersey, and Houston. Payment of a $710 fee is also required.

SA-C certification must be renewed biennially by retaking and passing the initial certification exam or by completing certain professional development activities. Such activities include reading professional journals, presenting at a hospital seminar, publishing clinical research, and attending medical conferences. Each person must also document participation as a surgical first assistant in either 400 surgical cases or 1,500 procedure hours and hold current certification in

[22] NBSTSA, *CSFA Examination*, available at: http://nbstsa.org/examinations-csfa.html (last visited on March 18, 2013).
[23] NBSTSA, *Renewal Options*, available at: http://nbstsa.org/renewal/index.html (last visited on March 18, 2013).
[24] AST, *Certification*, available at: http://www.ast.org/membership/certification.aspx (last visited on March 18, 2013).
[25] Telephone conversation with NBSTSA staff.
[26] NSAA, *FAQs*, available at: http://nsaa.net/faq.php (last visited on March 18, 2013).
[27] NSAA, *Certification*, available at: http://www.nsaa.net/requirements.php (last visited on March 18, 2013).
[28] Telephone conversation with NSAA staff.

cardiopulmonary resuscitation (CPR), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS). Recertification via examination costs $180, while recertification via professional development costs $100.[29]

More than 1,400 people currently hold active SA-C certification.[30]

III. Effect of Proposed Changes:

Section 1 creates an undesignated section of law and provides definitions for various terms. The bill also prohibits health care facilities from employing or contracting with:

- A surgical assistant who does not hold a current and valid certification as a surgical assistant which is issued by ABSA, NBSTSA, or NSAA; or
- A surgical technologist who has not successfully completed a nationally and programmatically accredited surgical technology program and does not have the credential of certified surgical technologist which is issued by a nationally accredited credentialing body.

The bill also provides exemptions from these requirements for certain groups:

- Any person who practices as a surgical assistant or surgical technologist on or at any time during the six months before January 1, 2013;
- Any person who successfully completes training as a surgical assistant or surgical technologist in the uniformed services;
- Any student who performs, within the scope of his or her training, the functions of a surgical technologist or surgical assistant under the direct supervision of a person licensed under ch. 458, 459, or 461, F.S.[31] Students working as surgical assistants can also be supervised by nurses licensed under part I of ch. 464, F.S.;
- Anyone licensed under ch. 458, 459, or 461, F.S., and who engages in the full scope of practice for which he or she is licensed;
- Any person who performs surgical procedures in an office-based setting; and
- Any person who completes a training program to become a surgical technologist or surgical first assistant before July 1, 2014. Such a person may continue to practice in his or her specialty for one year after completion of the training program.

The bill also restates language found in ch. 395.0161(2), F.S., which states that AHCA may accept the inspection of an accrediting organization in lieu of its own inspection of a health care facility, as long as the accreditation of the facility is not provisional, the facility authorizes release of the accrediting organization's inspection report, and AHCA receives this report.

The bill also allows the AHCA to adopt any rules necessary to administer this section.

Section 2 amends s. 627.419, F.S., of the Florida Insurance Code to add surgical assistants certified by ABSA, NBSTSA, or NSAA to the list of practitioners who can be reimbursed by a health insurance policy, health care services plan, or other contract for their surgical first

[29] ABSA, *Candidate Information Booklet and Certification Examination Review Guide 2011-2012*, available at: http://www.absa.net/pdf/ABSA_Guide_2011-2012.pdf (last visited on March 18, 2013).
[30] ABSA, *History and Statistics*, available at: http://www.absa.net/statistics.php (last visited on March 18, 2013).
[31] Allopathic physicians, osteopathic physicians, and podiatrists, respectively.

assisting services. The bill also adds the employer of a surgical assistant or a *registered* nurse first assistant to the list of entities who may be so reimbursed and states that the reimbursement may only occur if the services performed by the surgical assistant fall within the scope of his or her certification.

Reimbursement for the services of surgical assistants is only permitted if reimbursement would be covered for an assisting physician licensed under ch. 458 or 459, F.S., and the surgical assistant is used as a substitute. This section does not require reimbursement to a surgical assistant if the assistant is paid, or will be paid, by the health care facility for the surgical services performed.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

People wishing to practice as surgical technologists or surgical first assistants in Florida would be required to pay several hundred dollars in fees required to maintain national certification.

B. Private Sector Impact:

Surgical technologists and surgical first assistants who do not meet any of the eligibility requirements in this bill will be unable to practice these occupations at Florida health care facilities. Businesses which offer continuing education courses and examination preparatory courses to surgical technologists and surgical first assistants are likely to receive more business as a result of this bill.

C. Government Sector Impact:

The Office of Insurance Regulation and the Department of Health report no fiscal impact.[32,33]

[32] Office of Insurance Regulation, *2013 Bill Analysis for SB 360*. A copy is on file with the Senate Health Policy Committee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Since much of Section 1 of this bill involves regulating the employment practices of hospitals, perhaps this section could be added as an amendment to s. 395.0191, F.S., which governs the staff membership and clinical privileges of hospitals.

"Direct supervision" (line 46) and "supervision" (line 53) have various definitions in statute. It might be appropriate to specify a uniform definition for purposes of this bill. It may also be helpful to determine where the liability lies in a supervisory relationship.

The bill's definition of "health care facility" in lines 42-44 includes and provides cross-references to two of the three facilities mentioned in the definition of "health care facility" in ch. 395, F.S., the part of Florida law which licenses health care facilities.[34] It is unclear why the bill chose to define "health care facility" using only a part of the ch. 395, F.S., definition when the bill's provisions appear apropos to all facilities licensed under that chapter.

The definitions of "surgical first assistant" and "surgical technologist" in lines 45-62 do not seem congruent with the duties and scope of practice of these workers as established by their national organizations (see the "Role of Surgical Technologists" and "Role of Surgical First Assistants" sections in the Present Situation section of this analysis). It may be prudent to reconstruct the bill's definitions to ally more closely with the definitions advocated by the national bodies representing these entities.

Lines 63-64 and 70-72 state that a health care facility may not contract with or employ people who do not fulfill certain specifications relating to surgical technology or surgical first assisting. Under the bill's language as written, all health care facilities are prohibited from hiring workers as diverse as medical billers, custodial staff, unit secretaries, and nurses because they will not fulfill the requirements listed in lines 63-77 or fit the exemptions listed in lines 78-107. To allow health care facilities to hire employees in a wide range of specialties, it may be useful to limit the scope of this bill by stating, "A health care facility may not employ or contract with any person to work *as a surgical technologist or as a surgical first assistant* without completing these requirements . . ."

Lines 63-69 require that licensed certified surgical first assistants hold and maintain certification from one of three recognized certifying agencies. However, some of these agencies offer a variety of certifications, and it might be helpful to designate exactly which certifications are required for licensure in Florida.

Lines 70-77 outline requirements that surgical technologists must fulfill before they are eligible to be hired by a health care facility. However, it is unclear as to what entity must accredit the

[33] Department of Health, *2013 Bill Analysis for SB 360*. A copy is on file with the Senate Health Policy Committee.
[34] The bill's definition omits "mobile surgical facilities."

surgical technology program mentioned in lines 70-71 and as to what the term "programmatically accredited" refers.

The NBSTSA is the only nationally-accredited credentialing body which issues the credential of Certified Surgical Technologist. The bill specifically mentioned this body in the language concerning surgical first assistants in lines 63-69; it is unclear why it is not also specifically mentioned in lines 75-77 concerning surgical technologists.

Furthermore, the language concerning employment credentials for surgical first assistants does not specify that the first assistant must have graduated from certain training programs, although language concerning surgical technologists does. Surgical first assistants have more sophisticated job duties than surgical technologists, and it is unclear why their educational requirements are not delineated. The national credentialing bodies for both surgical technologists and surgical first assistants have specific educational requirements for certification, but all bodies listed in the bill provide an option for applicants to make up for a lower level of education with years of clinical experience. To keep educational requirements consistent with national certification requirements, perhaps lines 73-74 of the bill could be deleted. The Florida requirements for certification as a surgical technologist will then be identical to the national requirements to become a CST.

It is unclear if lines 80-82 are intended to except current practitioners of surgical technology or surgical first assisting from new certification requirements for practice in health care facilities. If this is the intention of these lines, perhaps this language could be clarified. If not, surgical employees who have been practicing for decades may be forced to retake certification examinations, re-enroll in training programs, pay hundreds of dollars in fees, and fulfill other requirements necessary for national certification.

Lines 83-84 allow any person who completes training as a surgical first assistant or surgical technologist in the uniformed services to be exempt from the certification requirements of the bill. It is unclear if this language exempts such practitioners who are currently practicing in the uniformed services, or if only those who were *trained* in surgical technology or surgical first assisting by the uniformed services are eligible for the exemption.

"Uniformed services" in lines 84-85 has variable meaning throughout statute. It may be useful to define the term as used in this section for clarity. For example, the federal definition of "uniformed services" is found in 10 U.S.C. s. 101(a)(5). A definition of the term in state law can be found in s. 97.021(39), F.S.

Lines 86-97 exempt certain students practicing surgical technology or surgical first assisting under licensed physicians or podiatrists from the certification requirements of the bill. However, other practitioners, such as dentists, also perform surgery, and it is unclear why they are not allowed to supervise students.

Currently, a wide variety of practitioners, both licensed and unlicensed, may function as surgical technologists and surgical first assistants. These practitioners include podiatrist assistants, dental hygienists, physician assistants, and nurses. Requiring all practitioners to be certified as surgical first assistants or surgical technologists before letting them participate in surgery would be

redundant as training programs for such practitioners already incorporate appropriate surgery skills, and surgical-related tasks are already in the scope of practice for the licensees.

Florida statutes and rules already contain many regulations concerning office-based surgeries.[35] To increase congruency, it may be better for the definition of "office-based setting" in the bill to conform with similar definitions in existing law and rules. In fact, lines 98-102 are unnecessary as the bill states that the certification of surgical technologists and surgical first assistants is only required for working in health care facilities, and the bill's definition of "health care facility" does not include office-based settings.

Line 103 exempts people currently in training programs for surgical technologists or surgical first assistants are exempted from the certification requirements of the bill. However, these lines make no mention of whether the training program must be accredited, certified, or approved by some national or state body.

In addition, some surgical technologist or surgical assistant training programs can take up to two years to complete. Students currently enrolled in such programs may not be able to graduate in time to be eligible for the July 1, 2014 exemption.

Lines 108-117 are unnecessary as s. 395.0161(2), F.S., already provides for AHCA to accept results of inspections of health care facilities from other accrediting bodies.

In line 129, "is certified by" should be changed to "maintains current and valid certification which is issued by…" to maintain congruency with the language used in 63-69 of the bill which describes credentialing requirements for surgical first assistants.

Lines 128-132 specify that surgical first assistants must be certified by certain national organizations before their services may be reimbursed by insurance companies. Lines 133-138, however, make no specifications as to any credentials surgical assistants must have for their employers to be reimbursed for such services.

In line 147, "surgical services" should be changed to "surgical assisting services," since surgical first assistants do not directly perform surgery.

The bill makes no reference to what penalties apply to surgical technologists and surgical first assistants who practice in Florida despite not meeting the eligibility requirements or to the health care facilities which employ them.

As presently drafted, the bill's amendments to insurance reimbursement regulations only applies to policies governed by ch. 627, F.S. of the Insurance Code. If there are instances where provider reimbursement for surgical assistants has been of concern under the terms of a health maintenance organization (HMO) provider contract, similar language may be appropriate for amendment into Part III of ch. 641, F.S., which governs provider services under the terms of an HMO contract.

[35] Sections 458.309 and 459.005, F.S., as well as Rules 64B8-9.009 and 64B15-14.007, F.A.C.

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.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Health Policy (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 (11) is added to section 395.0191,
6 Florida Statutes, to read:
7 (11) Surgical assistants and surgical technologists.—
8 (a) DEFINITIONS.—As used in this subsection, the term:
9 1. "Certified surgical assistant" means a surgical
10 assistant who maintains valid and active one of the following
11 certifications:
12 a. Certified Surgical First Assistant from the National

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13 Board of Surgical Technology and Surgical Assisting.
14 b. Certified Surgical Assistant from the National Surgical
15 Assistant Association.
16 c. Surgical Assistant-Certified from the American Board of
17 Surgical Assistants.
18 2. "Certified surgical technologist" means a surgical
19 technologist who maintains valid and active certification as a
20 Certified Surgical Technologist from the National Board of
21 Surgical Technology and Surgical Assisting.
22 3. "Surgeon" means any health care practitioner as defined
23 in chapter 456 whose scope of practice includes performing
24 surgery and who is listed as the primary surgeon in the
25 operative record.
26 4. "Surgical assistant" means a person providing aid under
27 the supervision of a surgeon in exposure, hemostasis, closures,
28 and other intra-operative technical functions that assist the
29 surgeon in performing a safe operation with optimal results for
30 the patient.
31 5. "Surgical technologist" means a person who assists and
32 practices under the supervision of a surgeon to ensure that the
33 operating room environment is safe, that proper equipment is
34 available, and that the operative procedure is conducted
35 efficiently. Surgical technologist duties include, but are not
36 limited to, maintaining sterility during a surgical procedure,
37 handling and ensuring the availability of necessary equipment
38 and supplies, and maintaining visibility of the operative site.
39 (b) EMPLOYMENT LIMITATIONS.—
40 1. A facility may not employ or contract with any person to
41 perform the duties of a surgical assistant unless the person is

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42 a certified surgical assistant.
43 2. A facility may not employ or contract with any person to
44 perform the duties of a surgical technologist unless the person
45 is a certified surgical technologist.
46 3. Subparagraphs 1. and 2. do not apply to:
47 a. A person who was employed or contracted to perform the
48 duties of a surgical technologist or a surgical assistant at any
49 time between January 1, 2013, and July 1, 2013.
50 b. Any health care practitioner as defined in chapter 456
51 or any student, if the duties he or she performs fall within the
52 scope of the practitioner's or the student's training and
53 practice.
54 c. Any person enrolled in a surgical technology or surgical
55 assisting training program accredited by the Commission on
56 Accreditation of Allied Health Education Programs, the
57 Accrediting Bureau of Health Education Schools, or another
58 accrediting body recognized by the United States Department of
59 Education, on July 1, 2013. A person may practice as a surgical
60 technologist or a surgical assistant for one year after
61 completion of such a training program before he or she is
62 required to meet the criteria in subparagraphs 1. or 2.
63 Section 2. Subsection (6) of section 627.419, Florida
64 Statutes, is amended to read:
65 627.419 Construction of policies.—
66 (6) Notwithstanding any other provision of law, if a ~~when~~
67 ~~any~~ health insurance policy, health care services plan, or other
68 contract provides for payment for surgical first assisting
69 benefits or services, the policy, plan, or contract shall ~~is to~~
70 be construed as providing for payment to:

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71 (a) A registered nurse first assistant or a certified
72 surgical assistant as defined in s. 395.0191(11)(a); or
73 (b) An employer ~~employers~~ of a physician assistant,
74 certified surgical assistant, or registered nurse first
75 assistant who performs such services that are within the scope
76 of the ~~a~~ physician assistant's or the ~~a~~ registered nurse first
77 assistant's professional license or the certification of the
78 surgical assistant.
79
80 ~~The provisions of~~ This subsection applies ~~apply~~ only if
81 reimbursement for an assisting physician, licensed under chapter
82 458 or chapter 459, would be covered and a physician assistant,
83 a certified surgical assistant, or a registered nurse first
84 assistant who performs such services is used as a substitute.
85 This subsection does not require reimbursement to a surgical
86 assistant if the assistant is employed by and is paid, or will
87 be paid, by the health care facility for the services performed.
88 Section 3. This act shall take effect July 1, 2013.
89
90 ========== T I T L E A M E N D M E N T ==========
91 And the title is amended as follows:
92 Delete everything before the enacting clause
93 and insert:
94 A bill to be entitled
95 An act relating to surgical assistants and surgical
96 technologists; amending s. 395.0191, F.S.; providing
97 definitions; providing requirements for health care
98 facilities employing or contracting with surgical
99 first assistants and surgical technologists; providing

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100 exceptions to these requirements; amending s. 627.419,
101 F.S.; allowing for payment of surgical assistant
102 services under certain conditions; providing an
103 effective date.

By Senator Garcia

38-00138A-13 2013360__

1 A bill to be entitled
2 An act relating to surgical assistants and surgical
3 technologists; providing definitions; prohibiting a
4 health care facility from employing, contracting with,
5 or granting surgical privileges to a person who does
6 not hold a current and valid certification as a
7 surgical assistant; prohibiting a health care facility
8 from employing or contracting with a person who has
9 not completed a nationally and programmatically
10 accredited surgical technology program and who does
11 not have the credential of certified surgical
12 technologist; providing that certain persons are
13 exempt from having a certification as a surgical
14 assistant or surgical technologist; providing a
15 definition; authorizing a person who completes a
16 training program to become a surgical assistant or a
17 surgical technologist before a specified date to
18 continue to practice as a surgical assistant or
19 surgical technologist for 1 year after completing such
20 program; requiring the Agency for Health Care
21 Administration to accept, in lieu of its own periodic
22 inspections for licensure, the survey or inspection of
23 an accrediting organization under certain
24 circumstances; requiring the agency to adopt rules;
25 amending s. 627.419, F.S.; requiring a health
26 insurance policy, health care services plan, or other
27 contract to provide for payment to a certified
28 surgical assistant or to an employer of a certified
29 surgical assistant if the policy, plan, or contract

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

30 provides for payment for surgical first assisting
31 benefits or services and reimbursement for a physician
32 assistant is covered; providing that reimbursement to
33 a certified surgical assistant is not required under
34 certain circumstances; providing an effective date.
35
36 Be It Enacted by the Legislature of the State of Florida:
37
38 Section 1. Surgical assistants and surgical technologists.—
39 (1) DEFINITIONS.—As used in this section, the term:
40 (a) "Agency" means the Agency for Health Care
41 Administration.
42 (b) "Health care facility" means a hospital as defined in
43 s. 395.002, Florida Statutes, or an ambulatory surgical center
44 as defined in s. 395.002, Florida Statutes.
45 (c) "Surgical assistant" means a person who, under the
46 direct supervision of a person who is licensed under chapter
47 458, chapter 459, or chapter 461, Florida Statutes, performs
48 significant surgical tasks, including manipulating tissues or
49 organs, manipulating or inserting sutures, placing hemostatic
50 agents, injecting local anesthesia, harvesting veins, or
51 implanting devices.
52 (d) "Surgical technologist" means a person who, under the
53 supervision of a person who is licensed under chapter 458,
54 chapter 459, chapter 461, or part I of chapter 464, Florida
55 Statutes:
56 1. Maintains the integrity of surgical instruments within
57 the surgical field during surgical procedures;
58 2. Performs surgical support tasks, including the transfers

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59 and counts of instruments and equipment and the management of
60 fluids, specimens, and supplies;
61 3. Identifies and corrects sepsis; and
62 4. Performs other surgical tasks as directed.
63 (2) EMPLOYMENT LIMITATIONS; SURGICAL ASSISTANTS.—A health
64 care facility may not employ, contract with, or grant surgical
65 privileges to a person who does not hold a current and valid
66 certification as a surgical assistant which is issued by the
67 American Board of Surgical Assistants, the National Board of
68 Surgical Technology and Surgical Assisting, or the National
69 Surgical Assistant Association.
70 (3) EMPLOYMENT LIMITATIONS; SURGICAL TECHNOLOGISTS.—A
71 health care facility may not employ or contract with a person
72 who:
73 (a) Has not successfully completed a nationally and
74 programmatically accredited surgical technology program; and
75 (b) Does not have the credential of certified surgical
76 technologist which is issued by a nationally accredited
77 credentialing body.
78 (4) EXEMPTIONS.—Subsections (2) and (3) do not apply to the
79 following persons:
80 (a) A person who practices as a surgical assistant or
81 surgical technologist on or at any time during the 6 months
82 before January 1, 2013.
83 (b) A person who successfully completes training as a
84 surgical assistant or surgical technologist in the uniformed
85 services.
86 (c) A student who performs, within the scope of the
87 student's training, the functions of a surgical assistant under

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88 the direct supervision of a person who is licensed under chapter
89 458, chapter 459, or chapter 461, Florida Statutes.
90 (d) A student who performs, within the scope of the
91 student's training, the functions of a surgical technologist
92 under the direct supervision of a person who is licensed under
93 chapter 458, chapter 459, chapter 461, or part I of chapter 464,
94 Florida Statutes.
95 (e) A person who is licensed under chapter 458, chapter
96 459, or chapter 461, Florida Statutes, and who engages in the
97 full scope of practice for which he or she is licensed.
98 (f) A person who performs surgical procedures in an office-
99 based setting. As used in this paragraph, the term "office-based
100 setting" means any setting other than a health care facility or
101 a facility directly maintained and operated by the Federal
102 Government.
103 (g) A person who completes a training program to become a
104 surgical assistant or surgical technologist before July 1, 2014.
105 This person may continue to practice as a surgical assistant or
106 surgical technologist for 1 year after completing such program
107 notwithstanding any other provision of this section.
108 (5) INSPECTIONS.—To ensure compliance with this section,
109 the agency shall accept, in lieu of its own periodic inspections
110 for licensure, the survey or inspection of an accrediting
111 organization if:
112 (a) The accreditation of the licensed health care facility
113 is not provisional;
114 (b) The licensed health care facility authorizes release of
115 the accrediting organization's survey or inspection; and
116 (c) The agency receives the accrediting organization's

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117 survey or inspection.
118 (6) RULES.—The agency shall adopt rules to administer this
119 section.
120 Section 2. Subsection (6) of section 627.419, Florida
121 Statutes, is amended to read:
122 627.419 Construction of policies.—
123 (6) Notwithstanding any other provision of law, if a ~~when~~
124 ~~any~~ health insurance policy, health care services plan, or other
125 contract provides for payment for surgical first assisting
126 benefits or services, the policy, plan, or contract shall ~~is to~~
127 be construed as providing for payment to:
128 (a) A registered nurse first assistant or a surgical
129 assistant who is certified by the American Board of Surgical
130 Assistants, the National Board of Surgical Technology and
131 Surgical Assisting, or the National Surgical Assistant
132 Association; or
133 (b) An employer ~~employers~~ of a physician assistant,
134 surgical assistant, or registered nurse first assistant who
135 performs such services that are within the scope of the ~~a~~
136 physician assistant's or the ~~a~~ registered nurse first
137 assistant's professional license or the surgical assistant's
138 certification as a surgical assistant.
139
140 ~~The provisions of~~ This subsection applies ~~apply~~ only if
141 reimbursement for an assisting physician, licensed under chapter
142 458 or chapter 459, would be covered and a physician assistant,
143 a surgical assistant, or a registered nurse first assistant who
144 performs such services is used as a substitute. This subsection
145 does not require reimbursement to a surgical assistant if the

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146 assistant is employed by and is paid, or will be paid, by the
147 health care facility for the surgical services performed.
148 Section 3. This act shall take effect July 1, 2013.

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CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Health Policy Committee **Judge:**

Started: 3/20/2013 3:03:00 PM
Ends: 3/20/2013 5:31:46 PM Length: 02:28:47

3:03:00 PM	
3:03:02 PM	Meeting called to order
3:03:43 PM	Opening remarks by Chairman Bean
3:04:45 PM	Roll call
3:05:16 PM	SB 1448 by Sen. Smith
3:06:07 PM	AM 520342
3:06:22 PM	Kenneth Woliner, M.D., Boca Raton
3:07:07 PM	Stacy Lieberman, M.D., Miami, Florida Chapter, American College of Physicians
3:07:19 PM	Cody Schwartz, Tallahassee, Florida Police Chiefs
3:07:39 PM	Rep. Berman w remarks, co-sponsor in House
3:08:23 PM	Roll call on CS/SB 1448
3:09:12 PM	Chairman Bean
3:09:14 PM	SB 876 by Sen. Stargel
3:09:34 PM	AM 714942
3:09:56 PM	Sen. Joyner w questions
3:11:21 PM	Sen. Stargel to answer
3:11:35 PM	Sen. Joyner w follow-up
3:12:00 PM	Sen. Stargel
3:12:25 PM	Sen. Joyner
3:13:58 PM	Sen. Stargel
3:14:40 PM	Sen. Joyner
3:15:07 PM	Sen. Stargel
3:16:23 PM	Sen. Sobel w question
3:16:40 PM	Sen. Stargel
3:16:53 PM	Sen. Sobel w question
3:17:20 PM	Sen. Stargel
3:18:07 PM	Sen. Sobel w follow-up
3:18:57 PM	Sen. Stargel
3:19:05 PM	Sen. Sobel
3:19:18 PM	Sen. Stargel
3:19:43 PM	Sen. Sobel
3:19:56 PM	Sen. Stargel
3:20:32 PM	Chair Bean
3:20:35 PM	Public Testimony
3:20:59 PM	Joan Hendrix, Crawfordville
3:23:59 PM	Diane Wilson, Co-Director, UniteWomen.ORG FL, Panacea
3:26:03 PM	Chair Bean
3:26:09 PM	Marilynn Wills, League of Women Voters of Florida
3:26:29 PM	Jeff Borg, ACLU of Florida
3:26:31 PM	Brian Pitts - Justice 2 Jesus
3:29:37 PM	Bill Bunkley, Tampa, The Florida Ethics and Religious Liberty Commission, Inc.
3:29:43 PM	Chair Bean
3:30:17 PM	
3:30:26 PM	Barbara Zdravecky, Pres/CEO FAPPA
3:33:28 PM	Chair Bean
3:33:46 PM	Sen. Flores moves to TP SB 876
3:34:15 PM	SB 726 by Sen. Simmons
3:34:35 PM	AM 454396
3:34:55 PM	Chair Bean
3:35:26 PM	Sen. Sobel w questions
3:36:04 PM	Sen. Simmons to answer
3:36:33 PM	Chair Bean

3:36:51 PM	Sen. Braynon w question
3:37:20 PM	Sen. Simmons to answer
3:37:53 PM	Sen. Joyner w questions
3:38:45 PM	Sen. Simmons to answer
3:39:43 PM	Sen. Joyner w follow-up
3:40:48 PM	Sen. Simmons
3:44:34 PM	Sen. Sobel w questions
3:44:55 PM	Sen. Simmons to answer
3:45:16 PM	Sen. Sobel
3:45:22 PM	Sen. Simmons
3:45:56 PM	Sen. Sobel
3:46:03 PM	Sen. Simmons
3:47:40 PM	Sen. Sobel
3:47:51 PM	Sen. Simmons
3:49:04 PM	Sen. Joyner
3:49:56 PM	Sen. Simmons
3:52:06 PM	Chair Bean
3:52:25 PM	Melissa Joiner, Director Governmental Affairs, Florida Retail Federation
3:52:36 PM	Carol Dover, President/CEO, Florida Restaurant and Lodging Association
3:52:46 PM	Pablo Diaz, Legislative Director, National Federation of Independent Businesses
3:52:54 PM	David Christian, VP-Governmental Affairs, Florida Chamber
3:53:02 PM	Brian Pitts, Justice-2-Jesus
3:55:20 PM	Frank Mayernick, AIF
3:55:33 PM	Richard Watson, Legislative Counsel, Associated Builders and Contractors of Florida
3:55:46 PM	Stephanie Kunkel, Organize NOW
3:57:55 PM	Sen. Braynon w question
3:58:17 PM	Stephanie Kunkel to answer
3:58:33 PM	Senator Braynon w follow-up
3:58:46 PM	Maria McClusky, Orlando
4:00:21 PM	Chair Bean
4:00:43 PM	Sen. Braynon w comments
4:01:04 PM	Sen. Joyner w comments
4:03:03 PM	Sen. Sobel w comments
4:04:10 PM	Sen. Simmons closes on his bill
4:07:01 PM	Chair Bean
4:07:03 PM	Roll call on SB 726
4:07:31 PM	Chair Bean
4:07:37 PM	SB 876 by Sen. Stargel is resumed
4:08:24 PM	Sen. Sobel in debate
4:10:53 PM	Sen. Joyner in debate
4:13:39 PM	Sen. Garcia in debate
4:14:37 PM	Sen. Flores in debate
4:15:19 PM	Sen. Stargel closes on her bill
4:16:07 PM	Roll call on SB 876
4:16:42 PM	SB 1240 by Sen. Richter
4:18:00 PM	Sen. Richter presents his bill
4:18:20 PM	AM 914852
4:19:00 PM	Sen. Joyner
4:20:17 PM	Chair Bean
4:21:12 PM	Public Testimony
4:21:14 PM	Cal Davis, Jacksonville
4:21:31 PM	Chair Bean
4:22:38 PM	Sen. Richter
4:23:43 PM	Joanna McLaughlin, Lake City
4:24:52 PM	Donna Drake - Florida Association of the Deaf
4:28:22 PM	Chair Bean
4:28:29 PM	
4:28:47 PM	Christopher Wagner, President/Board Chair, National Association of the Deaf
4:31:33 PM	Chair Bean
4:31:39 PM	Gary Lieffers, President, Florida Association of the Deaf
4:33:20 PM	Chair Bean
4:33:30 PM	Nancy Osborn, North Florida Regional Representative/Florida Registry of Interpreters

4:33:47 PM	Patricia Wilmore, Flagler College Adjunct Instructor
4:33:55 PM	Patsy Eccles, Legislative Director, Florida School for Deaf and Blind
4:35:07 PM	Sen. Joyner w question
4:36:30 PM	Patsy Eccles to answer
4:36:55 PM	Sen. Joyner w follow-up
4:37:11 PM	Patsy Eccles to answer
4:37:25 PM	Josephine Sondossi, Tallahassee
4:38:29 PM	Mary-Lynn Cullen, Legislative Liaison, Advocacy Institute for Children
4:39:17 PM	Dorothy Nolen, Lighthouse Pt
4:39:30 PM	Cathie Desjean, Lighthouse Pt
4:39:31 PM	Amy Datz
4:39:52 PM	Arzra McNeal
4:40:13 PM	Terri Fisk, St. Johns
4:40:15 PM	Azaryah Lanier, Jacksonville
4:40:23 PM	Knox Fisk, St. Johns
4:40:42 PM	Teresa Bulger, Tallahassee
4:40:48 PM	Alexandra McGowan, Middleburg
4:41:02 PM	Owen McLaughlin, Lake City
4:41:11 PM	Cynthia Robinson, Jacksonville
4:41:29 PM	Carter Fisk, St. John's
4:41:37 PM	Ryan Fisk
4:41:46 PM	Ashley McGowan, Middleburg
4:41:51 PM	Anna McGowan
4:41:59 PM	l isa Demico, Jacksonville
4:42:15 PM	Christine Halvorsen
4:42:36 PM	Leah Cook, Tallahassee
4:42:40 PM	Jordan Leavitt, Jacksonville
4:42:40 PM	Debra Leavitt, Jacksonville
4:42:56 PM	Cheryl Montero, Ponte Vedra
4:43:22 PM	Janet LaMoureux, Lakeland
4:43:32 PM	Pierce Montero, Ponte Vedra
4:43:39 PM	Sen. Joyner w questions
4:45:39 PM	Chair Bean
4:45:48 PM	Sen. Richter closes on his bill
4:47:43 PM	Roll call on SB 1240
4:48:29 PM	Chair Bean
4:48:37 PM	SB 924 by Sen. Latvala
4:48:45 PM	Sen. Latvala explains his bill
4:49:13 PM	Chairman Bean
4:49:20 PM	Chris Hansen, Florida Society of Oral Maxillofacia
4:49:28 PM	Michael Gardner, Pres/CEO, Florida Association of Health Plans
4:51:03 PM	Joy Ryan, AHIP, MetLife & Delta Dentex
4:52:19 PM	Ron Watson, Florida Dental Association
4:52:39 PM	Toni Large, Florida Association of Orthodontists
4:52:39 PM	Brian Pitts
4:52:42 PM	Chair Bean w question
4:53:16 PM	Sen Latvala to answer
4:53:48 PM	Roll call on SB 924
4:54:05 PM	Chair Bean
4:54:07 PM	SB 1160 by Sen. Bullard (Tyrell Hall to present bill)
4:54:19 PM	AM 609720
4:55:38 PM	Sen. Brandes w question
4:55:51 PM	Tyrell Hall - Sen. Bullard's aide
4:56:09 PM	Chair Bean
4:56:16 PM	Tyrell Hall closes on SB 1160
4:56:44 PM	Chair Bean
4:56:48 PM	Roll call on SB 1160
4:57:14 PM	Roll Call on bill
4:57:18 PM	Chair Bean
4:57:22 PM	SB 1192 by Sen. Grimsley
4:57:54 PM	Chair Bean
4:57:58 PM	Sen. Sobel w question

4:58:34 PM	Sen. Grimsley to answer
4:59:02 PM	Sen. Joyner w question
4:59:10 PM	Chair Bean
4:59:14 PM	Public Testimony on the amendment
4:59:16 PM	Senator Grimsley to answer
4:59:22 PM	Nick Matthews, Legislative Coordinator, Broward County
5:00:15 PM	Lisa Hurley - Florida Association of Counties
5:01:04 PM	Chris Nuland, Florida Chapter, American College of Physicians
5:02:46 PM	Chair Bean
5:02:59 PM	AM 769960
5:03:24 PM	Chair Bean
5:04:02 PM	Sen. Grimsley
5:04:21 PM	Public Testimony on the bill
5:04:24 PM	Beth Labasky, Informed Families of Florida
5:04:30 PM	Sally West, Manager, State Governmental Relations, Walgreens
5:04:37 PM	Stephen Winn, Florida Osteopathic Medical Association
5:04:41 PM	Major Ron Hartley, Hillsborough County Sheriff's Office
5:04:59 PM	Larry Gonzalez, Florida Society of Health System Pharmacists
5:05:07 PM	Cari Roth, Manatee and Charlotte Counties
5:05:18 PM	Scott Dudley, Legislative Director, Florida League of Cities
5:05:29 PM	Michael Ayotte, Sr. Director of Governmental Affairs, CVS Caremark
5:06:03 PM	Marsha Hosack, Intergovernmental Relations Manager, Sarasota County
5:06:26 PM	Major Kevin Kenney, Sarasota County Sheriff
5:07:18 PM	Chair Bean
5:07:37 PM	Sen. Joyner in debate
5:07:57 PM	Sen. Galvano
5:08:25 PM	Sen. Grimsley closes on her bill
5:08:38 PM	Roll call on SB 1192
5:08:58 PM	Chair Bean
5:09:03 PM	SB 1420 by Sen. Sobel
5:09:12 PM	Sen. Sobel presents her bill
5:09:38 PM	AM 217934
5:10:18 PM	Public Testimony
5:10:27 PM	Dan Hendrickson, Assistant Public Defender, 2nd Circuit, Fl Public Defender Assoc.
5:10:37 PM	Brian Pitts
5:10:53 PM	Roll call on SB 1420
5:11:29 PM	Chair Bean passes the chair to Sen. Sobel
5:11:42 PM	SB 1690 by Sen. Bean
5:12:15 PM	Sen. Joyner w questions
5:12:59 PM	Sen. Bean to answer
5:13:37 PM	AM 767584 by Sen. Bean
5:13:56 PM	AM adopted
5:14:00 PM	AM 745766 by Sen. Bean
5:14:26 PM	AM adopted
5:14:29 PM	Daniel J. Guerra, M.D., Florida Chapter, American College of Physicians
5:14:40 PM	Chris Nuland, Florida Public Health Association
5:14:46 PM	Chair Sobel
5:14:56 PM	Roll call on SB 1690
5:15:29 PM	SB 748 by Sen. Bean
5:15:37 PM	Sen. Bean presents his bill
5:15:53 PM	Susan Ponder-Stansel, Community Hospice
5:16:08 PM	Robert S. Beck, Aging True, Community Care for the Elderly
5:16:50 PM	Chair Sobel
5:16:59 PM	Sen. Joyner w question
5:17:35 PM	Chair Sobel
5:18:10 PM	Sen. Joyner
5:18:15 PM	Sen. Bean
5:19:15 PM	
5:19:21 PM	Senator Sobel
5:19:55 PM	Roll call on SB 748
5:20:21 PM	SB 594 by Sen. Bean
5:20:37 PM	Sen. Bean explains his bill

5:21:31 PM	Brad C. Roush, Executive Vice President and General Counsel, CORA Health Services, Inc.
5:21:56 PM	Roll call on SB 594
5:22:13 PM	Chair Sobel passes the chair to Sen. Bean
5:22:30 PM	Chair Bean
5:26:15 PM	SB 1264 by Sen. Flores
5:26:23 PM	Sen. Flores presents her bill
5:26:56 PM	Chair Bean
5:26:59 PM	Sen. Flores
5:27:58 PM	Chair Bean
5:28:07 PM	Sen. Joyner w question
5:28:31 PM	AM 489482
5:28:54 PM	Chair Bean
5:29:22 PM	Sen. Sobel
5:29:36 PM	Sen. Flores
5:30:38 PM	Sen. Sobel w questions
5:30:46 PM	Chair Bean
5:31:00 PM	Ron Book, South Broward Hospital District
5:31:06 PM	Narendra Kini, M.D., Miami Children's Hospital
5:31:10 PM	SB 1264 is TPed
5:31:36 PM	Meeting adjourned