The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Bean, Chair
Senator Sobel, Vice Chair

MEETING DATE: Tuesday, April 2, 2013
TIME: 12:30 —3:30 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 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 HP 04/02/2013 Fav/CS CF AHS AP	Fav/CS Yeas 7 Nays 2
2	**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 HP 04/02/2013 Fav/CS RI AHS AP	Fav/CS Yeas 6 Nays 3
3	**SB 818** Garcia (Compare CS/H 671)	Pharmacy Technicians; Increasing the number of pharmacy technicians which a licensed pharmacist may supervise, etc. HP 04/02/2013 Not Considered RI RC	Not Considered
4	**SB 1482** Hays (Compare CS/H 1159)	Skilled Nursing Facilities; Providing an exemption from certificate-of-need requirements for the construction of specified licensed skilled nursing facilities, etc. HP 04/02/2013 Fav/CS AHS AP RC	Fav/CS Yeas 6 Nays 3

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**CS/SB 468** Banking and Insurance / Hukill (Identical CS/CS/H 335, Compare S 1770)	Property and Casualty Insurance Rates and Forms; Exempting medical malpractice insurance that covers certain providers and practitioners from specified rate filing requirements; revising provisions relating to notification of rate changes to codify the amendments made to s. 627.062(3)(d)3., F.S., by s. 1, ch. 2011-160, Laws of Florida, in lieu of the amendments made by s. 12, ch. 2011-39, Laws of Florida, and making editorial changes; providing for an informational filing of certain forms that are exempt from the Office of Insurance Regulation's approval process, etc. BI 03/20/2013 Fav/CS HP 04/02/2013 Fav/CS JU	Fav/CS Yeas 6 Nays 2
6	Presentation on Florida Health Choices by Rose Naff		Presented
7	Consideration of proposed committee bill:		
	SPB 7144	Health Choice Plus Program; Authorizing the Florida Health Choices, Inc., to accept funds from various sources to deposit into health benefits accounts, subsidize the costs of coverage, and administer and support the program; requiring the corporation to manage the health benefits accounts and provide the marketplace of options that an enrollee in the program may use; specifying healthy living performance goals; providing for payment for achieving health living performance goals, etc.	Submitted as Committee Bill Yeas 6 Nays 3
8	**SB 898** Joyner (Identical H 499)	Health Care Coverage; Requiring health insurers, corporations, and health maintenance organizations issuing certain health policies to provide coverage for telemedicine services; prohibiting the exclusion of telemedicine cost coverage solely because the services were not provided face to face; prohibiting the imposition of certain dollar and durational coverage limitations or copayments, coinsurance, or deductibles on telemedicine services unless imposed equally on all terms and services; providing coverage under the state plan or a waiver for health home services provided to eligible individuals with chronic conditions, etc. HP 04/02/2013 Fav/1 Amendment BI AHS AP	Fav/1 Amendment (159956) Yeas 8 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**SB 1094** Flores (Identical H 4031)	Home Health Agencies; Deleting requirements for the quarterly reporting by a home health agency of certain data submitted to the Agency for Health Care Administration, etc. HP 04/02/2013 Fav/CS GO	Fav/CS Yeas 9 Nays 0
10	**SB 1368** Ring (Similar CS/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 HP 04/02/2013 Not Considered CJ CF AP	Not Considered
11	**SB 360** Garcia (Compare CS/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 HP 04/02/2013 Fav/CS BI AHS AP	Fav/CS Yeas 8 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**SB 1358** Flores (Similar H 791)	Audits of Pharmacy Records; Revising requirements for the audit of Medicaid-related pharmacy records; requiring that audits of third-party payor and third-party administrator records of pharmacy permittees be conducted in specified manners; prohibiting certain accounting practices used for calculating the recoupment of claims; providing procedures for review and appeal of third-party payor and third-party administrator audits, etc. HP 04/02/2013 Not Considered AHS AP	Not Considered

Other Related Meeting Documents

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 1264

INTRODUCER: Health Policy Committee and Senator Flores

SUBJECT: Hospital Licensure

DATE: April 2, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.			CF	
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/SB 1264 allows certain 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] Only Miami Children's Hospital is located in a county with a population of 1,750,000 or more.[2,3]

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.[4]

The AHCA regulates hospitals and AHCA Rule 59A-3.2085(8), F.A.C., specifically regulates OB departments within hospitals. The rule requires that if a hospital provides OB services, they must include labor, delivery, and nursery facilities and be formally organized and operated to provide complete and effective care for each patient. Also, except for in hospitals with 75 beds or less. The OB services must be separated from other patient care rooms and have a separate nursing staff. The rules also include provisions for admitting clean gynecological and surgical patients and for ensuring that infants are identified at birth.

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 and are located in a county with a population of at least 1,750,000 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. The bill further requires that the OB services must be provided in compliance with the AHCA's rules pertaining to the OB department in a hospital.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[1] AHCA bill analysis for SB 1264, dated Mar. 15, 2013, on file with the Senate Health Policy Committee.
[2] US Census Bureau, 2012 Population Estimates, found at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2012_PEPANNRES&prodType=table, last visited on April 3, 2013.
[3] Nemours Children's Hospital is located in Orange County which had a population of 1,202,234 in 2012, and All Children's Hospital is located in Pinellas County which had a population of 921,319 in 2012. Id.
[4] Statistics from Miami Children's Hospital on High Risk Deliveries, on file with the Senate Health Policy Committee.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill may be challenged on constitutional grounds as a special law passed as a general law. A general law operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state, or uniformly within permissible classifications by population of counties or otherwise, or is a law relating to a state function or instrumentality.[5] Conversely, special and local laws operate within a very narrow classification of persons or on a limited geographic region of the state. The Florida Supreme Court defines special and local laws as:

> [A law] relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the state, or one that purports to operate within classified territory when classification is not permissible or the classification adopted is illegal.[6]

While general laws are enacted through the ordinary legislative process, a special law or local law must be noticed according to s. 11.02, F.S., as required by Art. III, s. 10 of the State Constitution.

The legal test to determine if a law is a special law or a general law is a reasonableness test. A general law may, when first enacted, only apply to one locality or one party and still be constitutional if the law can be reasonably expected to apply to other locations or parties in the future.[7]

This bill presently only affects Miami Children's Hospital. It is possible for this bill to affect other children's hospitals if the populations of Orange (Nemours Children's Hospital) or Pinellas (All Children's Hospital) Counties grow to 1,750,000 or if a specialty licensed children's hospital is built in a county with a population of 1,750,000 or more. Currently only Dade and Broward Counties have populations of 1,750,000 or more.[8]

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[5] *St. Vincent's Medical Center, Inc. v. Memorial HealthCare Group, Inc*., 967 So.2d 794*(Fla. 2007).*
[6] Id. Additionally, Art. X, s. 10 of the State Constitution, defines "special law" as "a special or local law."
[7] Id.
[8] Supra, n. 2.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/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.

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.[9]

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.)

CS by Health Policy on April 2, 2013:
The CS substantially amends SB 1264 to restrict which specialty licensed children's hospitals are allowed to provide OB services to those that are located in counties with a population of 1,750,000 or more and clarify that OB services provided by such hospitals must be in compliance with AHCA rules.

[9] Supra n. 1

B. Amendments:

None.

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

131818

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/02/2013	.	
	.	
	.	
	.	

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	.	
04/02/2013	.	
	.	
	.	
	.	

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

2:36

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2
Meeting Date

Topic: SB 1264 (Hosp Licensure)

Bill Number: SB-1264 (if applicable)

Name: PAUL GLUCK MD

Amendment Barcode: (if applicable)

Job Title: SENIOR MEDICAL CONSULTANT

Address: 10165 SW 84 CT.
Street

MIAMI FL 33156
City State Zip

Phone: 305-546-2340

E-mail: PAGLUCK@ALUM.MIT.EDU

Speaking: ☐ For ☒ Against ☐ Information

Representing: PATIENT SAFETY / BAPTIST HEALTH SOUTH 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)

12:39

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2
Meeting Date

Topic: Hospital Licensure

Bill Number: SB 1264 (if applicable)

Name: Reverend Robert Jakoby

Amendment Barcode: — (if applicable)

Job Title: Asst. V.P. & Chaplain Director of Bapt. Health So. FL

Address: 7900 N. Kendall Dr.
Street

Miami, FL 33176
City State Zip

Phone: 786-596-6577 (office)

E-mail: robertj@baptisthealth.net

Speaking: ☐ For ☒ Against ☐ Information

Representing: Baptist Health South Florida

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)

4/2
Meeting Date

Topic: Hospital Licensure

Bill Number: SB1264 *(if applicable)*

Name: William Duquette

Amendment Barcode: — *(if applicable)*

Job Title: CEO Homestead Hospital

Address: 975 Baptist Way
Street

Homestead, FL 33033
City, State, Zip

Phone: 786-243-8693

E-mail: billd@baptisthealth.net

Speaking: ☐ For ☒ Against ☐ Information

Representing: Baptist Health South Florida / Homestead Hospital

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)

4/2/13
Meeting Date

Topic: Hospital Licensure

Bill Number: 1264 *(if applicable)*

Name: Jefry Biehler MD

Amendment Barcode: _____ *(if applicable)*

Job Title: Chair of Pediatrics Miami Children's Hospital

Address: 3100 SW 62 AVE
Street

Miami, FL 33155
City, State, Zip

Phone: (305) 299-3835

E-mail: jefry.biehler@mch.com

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

Representing: Miami Children's Hospital

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)

4/2/13
Meeting Date

Topic: Hospital Licensure

Bill Number: 1264 *(if applicable)*

Name: April Andrews-Singh

Amendment Barcode: *(if applicable)*

Job Title: General Counsel & SVP of Legal Affairs

Address: 3100 SW 62 Avenue
Street

Miami, FL 33155
City, State, Zip

Phone:

E-mail: april.andrews@mch.com

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

Representing: Miami Children's Hospital

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)

4/2
Meeting Date

Topic: Hospital Licensure

Bill Number: SB 1264 *(if applicable)*

Name: Phillis Oeters

Amendment Barcode: *(if applicable)*

Job Title: V.P. Community + Govt Relations

Address: 6855 Red Road
Street

Coral Gables, Fl 33143
City *State* *Zip*

Phone: 786-662-7557

E-mail: phillis o@baptisthealth.net

Speaking: ☐ For ☒ Against ☐ Information

Representing: Baptist Health South 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

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 732

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Pharmacy

DATE: April 2, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HP	**Fav/CS**
2.			RI	
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/SB 732 requires a Class II institutional pharmacy to add biological products, biosimilars, and biosimilar interchangeable to its institutional formulary system.

Pharmacists may provide biosimilar products to patients in place of biologics if:

- The Federal Food and Drug Administration (FDA) has determined that the substitute biological product is biosimilar to and interchangeable for the prescribed biological product;
- 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 five business days after dispensing the prescription; and
- The pharmacist and the prescriber retain record of the substitution for at least two years.

A pharmacist who practices in a Class II or modified Class II institutional pharmacy must comply with the reporting provisions by entering the substitution into the institution's medical

record system. The bill also requires the Board of Pharmacy to maintain on its public website a list of biological products that the FDA has determined to be biosimilar and interchangeable.

The bill amends s. 465.019, F.S., and creates s. 465.0252, F.S.

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

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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.

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]

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]

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[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).
[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)).

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 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.

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[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).
[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).

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]

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

[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).
[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.

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;
- 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.

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[36] Id.
[37] Id.
[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.

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]

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] The 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

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[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).
[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.

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]

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 amends s. 465.019, F.S., to authorize a Class II institutional pharmacy to add biological products, biosimilars, and biosimilar interchangeables to its institutional formulary system.

Section 2 creates s. 465.0252, F.S., relating to substitution of biosimilar products. The bill provides definitions for "biological product," "biosimilar, and "interchangeable" consistent with how these terms are defined in the federal Public Health Service Act.[65] The bill offers guidelines for when pharmacists may substitute a biosimilar product for a prescribed biologic. This substitution may occur if:

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[56] Id.
[57] Id.
[58] S. 465.025(3)(a), F.S.; *see also* Rule 64B-16-27.530, F.A.C.
[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.
[65] 42 U.S.C. s. 262. In this section, "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, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition of human beings. "Biosimilar" means that the biological product is highly similar to the reference product notwithstanding minor differences in chemically inactive components and there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product. "Interchangeable" means that the biological product may be substituted for the reference product without the intervention of the health care provider who prescribed the reference product.

- The FDA has determined that the substitute biological product is biosimilar to and interchangeable for the prescribed biological product;
- The prescriber does not express any preference against such a substitution;
- The pharmacist notifies the person presenting the prescription 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 five business days after dispensing the prescription; and
- The pharmacist and the prescriber retain a written or electronic record of the substitution for at least two years.

A pharmacist who practices in a Class II or modified Class II institutional pharmacy must comply with the notification provisions by entering the substitution into the institution's medical record system. The bill also requires the Board of Pharmacy to maintain on its public website a list of biological products that the FDA has determined to be biosimilar and interchangeable.

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:

None.

B. Private Sector Impact:

CS/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.)

CS by Health Policy on April 2, 2013:
The CS authorizes a Class II institutional pharmacy to add biological products, biosimilars, and biosimilar interchangeables to its institutional formulary system. It provides definitions for "biological product," "biosimilar," and "interchangeable" consistent with how these terms are defined in the federal Public Health Service Act and deletes the requirement that pharmacists verify that a substituted biological product is biosimilar with the prescribed product *for the specified, indicated use*. The bill reduces the time a pharmacist has to notify a prescribing practitioner of a substitution and the time a pharmacist and a practitioner must retain a record of such substitution to five days and two years, respectively.

The bill permits pharmacists at Class II or modified Class II pharmacies to fulfill reporting requirements by entering the substitution into the institution's medical record system. The bill also requires the Board of Pharmacy to maintain on its public website a list of biological products that the FDA has determined to be biosimilar and interchangeable.

B. Amendments:

None.

178606

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
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The Committee on Health Policy (Galvano) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsection (6) of section 465.019, Florida
6 Statutes, is amended to read:
7 465.019 Institutional pharmacies; permits.—
8 (6) In a Class II institutional pharmacy, an institutional
9 formulary system may be adopted with approval of the medical
10 staff for the purpose of identifying those medicinal drugs, ~~and~~
11 proprietary preparations, biological products, biosimilars, and
12 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
Comm: WD	.	
04/02/2013	.	
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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
Comm: WD	.	
04/01/2013	.	
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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
Comm: WD	.	
04/02/2013	.	
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The Committee on Health Policy (Sobel) recommended the following:

1 **Senate Amendment to Amendment (178606) (with title**
2 **amendment)**
3
4 Delete line 57
5 and insert:
6 Section 3. This act shall take effect July 1, 2013, and
7 expire June 30, 2018.
8
9 ========== T I T L E A M E N D M E N T ==========
10 And the title is amended as follows:
11 Delete line 76
12 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

APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic: BIOSIMILARS

Bill Number: SB732 *(if applicable)*

Name: CARLOS SATTLER

Amendment Barcode: *(if applicable)*

Job Title: HEAD, US CLINICAL DEVELOPMENT + MEDICAL AFFAIRS, SANDOZ

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Speaking: ☐ For ☑ Against ☐ Information

Representing: NOVARTIS / SANDOZ

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)

4/2/13
Meeting Date

Topic: Prescription Drugs

Bill Number: SB 732 (if applicable)

Name: Melissa Joiner

Amendment Barcode: (if applicable)

Job Title: Director of Gov't Affairs

Address: Street

City State Zip

Phone: 850-570-0269

E-mail: Melissa@frf.org

Speaking: ☐ For ☒ Against ☐ Information

Representing: Florida Retail Federation

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)

April 2, 2013
Meeting Date

Topic: Biosimilars

Bill Number: SB 732 *(if applicable)*

Name: Linda Ruescher

Amendment Barcode: _____ *(if applicable)*

Job Title: Program Director, Lupus Foundation of Florida

Address: 3325 Bayshore Blvd D-33
Street

Tampa, FL 33629
City, State, Zip

Phone: (813) 625-0248

E-mail: editor@lupusflorida.org

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

Representing: Lupus Foundation of Florida

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

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

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

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S-001 (10/20/11)

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: 732 (if applicable)

Name: Beth LABASKY Consultant

Amendment Barcode: _____ (if applicable)

Job Title: 13211 Bowey Rd.

Address: Jacksonville Fla.
Street

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 [ ] 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 4/2/13
Meeting Date

Topic: Biosimilar Drugs

Bill Number: 732 *(if applicable)*

Name: Sally West

Amendment Barcode: *(if applicable)*

Job Title: Manager, State Government Relations

Address: Tallahassee
Street

City *State* *Zip*

Phone: 224-723-2650

E-mail: sally.west@walgreens.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Walgreens

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)

4-2-13
Meeting Date

Topic: Biosimilars

Bill Number: 732 *(if applicable)*

Name: Rebecca O'Hara

Amendment Barcode: *(if applicable)*

Job Title: VP Govt Affairs

Address: 113 E College Ave
Street

Talla 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)

4/2/2013
Meeting Date

Topic _____

Bill Number 732 *(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

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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)

4/2/2013
Meeting Date

Topic: Biosimilar – Pharmacy

Bill Number: 732 *(if applicable)*

Name: MIKE AYOTTE

Amendment Barcode: *(if applicable)*

Job Title: Sr. Director of Government Affairs

Address: 7578 WEST BROAD ST
Street

RICHMOND VA 23112
City *State* *Zip*

Phone: 804 337-4806

E-mail: MICHAEL.AYOTTE@CVSCAREMARK.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing: CVS CAREMARK

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: Bio Similar

Bill Number: SB 732 (if applicable)

Name: Brian Jogerst

Amendment Barcode: _____ (if applicable)

Job Title: _____

Address: 215 S. Monroe St. Suite 703
Street

Tall FL 32301
City State Zip

Phone: 850-222-0191

E-mail: _____

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

Representing: PhRMA

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

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

4-2-13
Meeting Date

Topic: Biosimilars

Bill Number: SB 732 *(if applicable)*

Name: Spencer Lieb

Amendment Barcode: *(if applicable)*

Job Title: HIV/AIDS Research & Coordinator

Address: 410 Victory Garden Dr. #127
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850-345-5049

E-mail: slieb@comcast.net

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

Representing: The AIDS Institute

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)

4-2-13
Meeting Date

Topic: Dr. Bloomingdale

Bill Number: SB732 (if applicable)

Name: Preston McDonald

Amendment Barcode: (if applicable)

Job Title: Pharmacist

Address: 5740 Westmont Road
Street

Milton, FL 32583
City, State, Zip

Phone: 850-982-5087

E-mail: mcphann@mchsi.com

Speaking: ☐ For ☐ Against ☐ Information

Representing: FPA

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)

4/2/13
Meeting Date

Topic: Bio Similar

Bill Number: 732 *(if applicable)*

Name: David Dederichs

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: _____
Street

Bloomington IL
City *State* *Zip*

Phone: _____

E-mail: _____

Speaking: ☐ For ☑ Against ☐ Information

Representing: Express - Scripts

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)

4/2/13
Meeting Date

Topic: SB-732

Bill Number: SB-732 *(if applicable)*

Name: FRANK LAVERNIA MD

Amendment Barcode: *(if applicable)*

Job Title: MD

Address: 4855 W. Hillsboro Blvd.
Street

Coconut Creek FL 33073
City *State* *Zip*

Phone: 954-418-8146

E-mail: diabetescontrol@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

412-K
12:30 pm

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-2013
Meeting Date

Topic: PRESCRIPTION DRUGS (BIO-SIMILARS)

Bill Number: SB 732 *(if applicable)*

Name: STEPHEN R. WINN

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)

4/2/13
Meeting Date

Topic: Biosimilar

Bill Number: SB 732 (if applicable)

Name: Gary Alvarez, Pharm.D.

Amendment Barcode: (if applicable)

Job Title: Pharmacist

Address: 5831 S.W. 88 Terr.
Street

Cooper City, FL 33328
City, State, Zip

Phone: 305-608-2459.

E-mail: galvarez@nova.edu

Speaking: ☐ For ☒ Against ☐ Information

Representing: Florida Pharmacy Association - President

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)

4-2-2013
Meeting Date

Topic: Pharmacy / BioSimilars

Bill Number: SB732 *(if applicable)*

Name: David Root

Amendment Barcode: *(if applicable)*

Job Title:

Address: 212 Spring Branch Rd.
Street

Waverly, VA 23890
City *State* *Zip*

Phone: 804-834-2626

E-mail: droot@primetherapeutics.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: Prime Therapeutics

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: Bio Similars

Bill Number: 732 (if applicable)

Name: Marc Inglese

Amendment Barcode: (if applicable)

Job Title: Assistant Clinical Professor, F.S.U. College of Medicine

Address: 704 Rigby
Street

Tallahassee FL
City State Zip

Phone: 850-877-4134

E-mail:

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

Representing: Florida Society of Dermatology + Dermatologic Surgery

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)

4-2-2013
Meeting Date

Topic: Pharmacy/Biosimilar Drugs

Bill Number: SB 732 *(if applicable)*

Name: Joy Ryan

Amendment Barcode: *(if applicable)*

Job Title:

Address: 204 S. Monroe St.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 681-6710

E-mail: joy@blanklaw.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: AHIP

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)

4/2/13
Meeting Date

Topic _____ Bill Number SB 732 *(if applicable)*

Name Ron Book Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 204 west Jeffeson Phone _____
Street

TLH 32301 E-mail _____
City *State* *Zip*

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

Representing TEVA Pharmaceutical

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)

4/2/13
Meeting Date

Topic

Bill Number 732 (if applicable)

Name Chris Nuland

Amendment Barcode (if applicable)

Job Title

Address 1000 Riverside Ave #115
Street

Jacksonville FL 32204
City State Zip

Phone 904-355-1555

E-mail nulandlaw@aol.com

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

Representing Florida Chapter, American College of Physicians

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)

4/2/13
Meeting Date

Topic _____

Bill Number 732 *(if applicable)*

Name Chris Nuland

Amendment Barcode 834332 *(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 [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)

April 2 2013
Meeting Date

Topic: Biosimilar Substitution

Bill Number: SB 732 w/ Amendments *(if applicable)*

Name: Kimberly Greco

Amendment Barcode: *(if applicable)*

Job Title: Director - R+D Policy

Address: 601 13th St NW
Street

Washington DC 20005
City *State* *Zip*

Phone: 202-585-9619

E-mail: kgreco@Amgen.Com

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

Representing: Amgen

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)

April 2, 2013
Meeting Date

Topic: SB 732 - Support

Bill Number: 732 *(if applicable)*

Name: Brian O'Connor

Amendment Barcode: *(if applicable)*

Job Title: Director, Alliance Development

Address: 1201 Maryland Ave, SW; Ste 900
Street

Washington, DC 20024
City, State, Zip

Phone: 202.962.8637

E-mail: boconnor@bio.org

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

Representing: Biotechnology Industry Organization (BIO)

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: Bio Similar Dederichs

Bill Number: 732 (if applicable)

Name: David Dederichs

Amendment Barcode: (if applicable)

Job Title:

Address: Street

City State Zip

Phone:

E-mail:

Speaking: ☐ For ☑ Against ☐ Information

Representing: Express-Scripts

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

Written Comments of the Generic Pharmaceutical Association to the Senate Committee on Health Policy Re Senate Bill 732

Submitted by
Brynna Clark, Sr. Director of State Affairs

Dear Chairperson Bean, Vice Chairperson Sobel, and Honorable Senators of the Committee on Health Policy,

The Generic Pharmaceutical Association (GPhA) represents the manufacturers and distributors of finished dose generic pharmaceuticals. Generic pharmaceuticals fill 80 percent of the prescriptions dispensed in the U.S. but account for only 27 percent of total drug spending. GPhA's members provide more than 90 percent of the generic medicines dispensed in the U.S.

GPhA respectfully requests that you oppose SB 732 as it is premature; it erects substitution barriers, implements a new pharmacy practice, and creates doubt about the safety and effectiveness of affordable biosimilar drugs. Legislation like this is a typical brand ploy used to thwart competition and is being pushed across the U.S. by two bio-tech companies who stand to lose $60 billion dollars in patent expiry by 2020. Their motives and end-game must be questioned as they do not have a compelling interest in allowing competition to the marketplace. This bill allows for substitution of biosimilars and requires the pharmacist to notify the prescriber of the substitution. Although tere will need to be legislation in the future, but it is too early to accurately determine what this legislation should look like.

Biologics and biosimilar drugs currently treat a variety of diseases such as cancer, HIV, and rheumatoid arthritis. Biosimilar leaders in the generic industry have been successfully producing safe and effective biosimilars for sale outside the U.S. since the early 2000s. This marketplace has opened up competition, lower costs, and more importantly, access.

A biosimilar is a product that is highly similar to a U.S.-licensed reference biological product notwithstanding minor differences in clinically inactive compounds, **and for which there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product.** The Biologics Price Competition and Innovation Act (BPCIA) of 2009, part of the Affordable Care Act, created an abbreviated pathway for the Food and Drug Administration to review and approve biologic medications that are biosimilar to already approved "reference products." FDA is currently establishing standards for approval of "biosimilars."

Once approved, FDA will separately make a determination if a biosimilar can be designated as "interchangeable." According to FDA, a biosimilar deemed interchangeable will produce the same clinical result in a patient as the reference biologic. The patient will experience no greater risk from alternating or switching between the two products than if the patient was to continue using the reference product. Therefore, interchangeability = substitutability. The federal statute explicitly states: [Interchangeable biologic products] **"may be substituted for the reference product without the intervention of the prescribing healthcare provider."** (U.S.C. §262(i)(3)).

For years FDA has reviewed and approved biologic reference products and the FDA will use the **most rigorous standards** to approve a biosimilar product and determine interchangeability. The agency has the skills and expertise to understand the complex nature of biologic products. The strict statutory standard for interchangeability will render any additional state barriers to substitution completely unnecessary for patient protection. These burdens would chill biosimilar substitution, and lead to increased health care costs for consumers and for the state of Florida.

Since the FDA has not issued final guidance, and biosimilars will not be on the marketplace before 2015 – with **interchangeable** biosimilars coming years later– legislation surrounding interchangeability is premature. The FDA has not fully implemented the law, reviewed a biosimilar application, or deemed a product interchangeable. This legislation is being introduced before a single biosimilar is on the marketplace, making it difficult to put an accurate fiscal note on this legislation. However, the fiscal impact will no doubt be significant.

When biologics go off patent, the generic industry is ready to make them widely accessible to consumers. The biosimilars market is primed to take off, as the small molecule generic drug market did after the 1984 Hatch-Waxman Act. This type of legislation was rampant in the 1980s when generic drugs first came on the market and we see the same types of bills every time a blockbuster drug is about to go off patent. "Carve Out" legislation not only treats a certain class of drugs differently, but it also undermines confidence in their safety and effectiveness. Brand-backed legislation like SB 732 has been introduced in 15 states and is rumored in over 20 more. Arizona, Mississippi, and Washington considered similar legislation this session, and rejected it. Indiana sent their bill to a study committee, and Virginia and Utah passed with a two-year sunset clause, effectively gutting the bill.

Florida stands to benefit greatly from the introduction of lower-cost biosimilars. Biologics are a major cost driver for your state Medicaid program. Interchangeable biosimilars have the potential to initially reduce the price by 40 or 50 percent. The average daily cost of a brand name biologic product is approximately **22** times greater than a small-molecule drug and brand companies are focusing on innovating and producing more and more biologics. By 2016 it is estimated that 8 of the top 10 drugs in the United States will be biologics. In 2011 Florida's portion of Medicaid costs for biologics was over **$104 million dollars**. As more biologics are prescribed, this number will increase exponentially with dire budget consequences.

Across the nation this legislation has been sold under the guise of "patient safety" but we at GPhA do not understand how prescriber notification would serve patient safety. GPhA is dedicated to preserving the patient/prescriber relationship and has every interest in insuring patients using our biosimilars are safe. If the concern is for a patient to have a complete record so that adverse reactions could be traced back to a manufacturing defect, this could be more efficiently and completely done using the INN or with Electronic Medical Records, a national track and trace program, E-Prescribing, or another interoperable system like a PDMP, all efforts that the health care industry are committed to. Once the FDA has finalized guidances, there will still be ample time for state lawmakers to craft complete and safe laws on this issue. A larger concern and a trend we have seen before, is that this language is being pushed now as a vehicle for more onerous language in the future.

GPhA has always opposed legislation that creates special prescriber notification and/or consent for the substitution of products the FDA has deemed interchangeable, because it is bad public policy. There is no need for such as it is already in Florida law. Under current Florida law, prescribers have the ultimate authority to determine whether it is appropriate for a pharmacist to substitute biosimilars when issuing a prescription, by writing the words "MEDICALLY NECESSARY," in her or his own handwriting, on the face of a written prescription. FL Statutes 464.025(2)(b).

The FDA is aware of these issues in the states and Dr. Hamburg, the FDA Commissioner commented that, "*The high standard for approval of biosimilar and interchangeable products mean that patients and healthcare professionals can be assured that when those products go to market, they will meet the standards of safety and efficacy and high quality that everyone expects and can count on. Efforts to undermine trust in these products is worrisome and represents a disservice to patients who could benefit from these lower cost treatments.*"[1]

In a time where employers are struggling to provide health benefits to their employees and states are looking for ways to balance Medicaid budgets, policymakers should focus on encouraging the use of safe and cost-effective medications and opening up competition in the biologics sector.

Please let us know if we can provide any additional information. Thank you for your consideration.

Sincerely,

Brynna Clark
Senior Director of State Affairs
Generic Pharmaceutical Association

[1] Dr. Margaret Hamburg, M.D. Commissioner of the FDA, February 22, 2013, http://www.gphaonline.org//gpha-media/press/gpha-feb-2013-webcast

REFERENCE DRUG

NO

PRESCRIBER NOTIFICATION REQUIRED

BIOSIMILAR DRUG

NO

PRESCRIBER NOTIFICATION REQUIRED

- **NO** NOTIFICATION REQUIRED
- **NOT** INTERCHANGEABLE with Reference Drug
- **Congress set a high bar for biosimilar products**
- **BIOSIMILAR drugs are highly similar and differ in NO clinically meaningful way (safety, purity & potency).**
- **In fact only minor differences in clinically inactive components are allowable.**

INTERCHANGEABLE BIOSIMILAR DRUG

PRESCRIBER NOTIFICATION REQUIRED

A HIGHER STANDARD THAN A BIOSIMILAR

- INTERCHANGEABLE / SUBSTITUTABLE with Reference Drug
- APPROVED by FDA as INTERCHANGEABLE
- **ONLY** BIOLOGIC WHERE NOTIFICATION REQUIRED-

MUST BE:

- **Biosimilar – has all the characteristics above AND-**
- **Expectation of the same clinical result in any given patient.**
- **No additional risk to safety or efficacy as a result of switching between Reference and INTERCHANGEABLE Biosimilar.**
- **Must prove that switching between the Interchangeable Biologic and the Reference product is no greater risk than using Reference product without such alteration or switch.**

April 2, 2013

Good afternoon. My name is Kimberly Greco and I am a director of R&D policy at Amgen, a company that is developing both innovative and biosimilar medicines. Thank you for the opportunity to testify regarding SB 732.

This legislation is about patient safety and manufacturer accountability.

Biotech medicines are important therapies that treat serious, often life threatening diseases. Copies of these medicines – called biosimilars because they will not be identical to the original product - have the potential to make these treatments available at a lower cost. Let me say right up front that this legislation is not intended in any way to impede access to biosimilars. As I mentioned, Amgen intends to manufacture biosimilars and has long supported sound, science based policies that protect patients. Amgen and Actavis Pharmaceuticals, Inc. are partnering to develop and commercialize four biosimilar medicines.

As Florida considers its public policy, we should note that biologic medicines are fundamentally different than traditional chemical drugs and the laws around biosimilars must address those scientific differences. Indeed, both Congress and FDA have different rules governing the approval of biologic medicines and copies compared to traditional drugs.

Three key differences between biologics and traditional chemical drugs that have implications for making copies are (1) sensitivity to the manufacturing and handling process, (2) molecular size and (3)molecular complexity of biotech medicines as compared to traditional drugs.

1st – Sensitivity: Biologics are manufactured using living cells to produce the therapeutic protein and will vary based on the cell line and process used to manufacture the medicine. Even seemingly small variations, for example, in brand of tubing, could have clinical implications for patients.

2nd – Size: While traditional drugs generally go unnoticed by the human immune system, biologic molecules are so large that they are seen by the immune system. If a patient's immune system identifies the biologic is a foreign substance, it will mount a response that could range from undetected by the patient to very serious.

3rd – Complexity: Biotech molecules are highly complex, like a tangled ball of yarn as compared to a Lego model that represents a traditional chemical drug. And, unlike traditional generic drugs, copies of biologic medicines will not be structurally identical to the originator. While many structural differences are of no consequence for the patient, the challenge is knowing which differences do matter. That is what makes manufacturing, copying and regulating biologics difficult with the limits of today's scientific knowledge.

In 2010 – more than 25 years after giving FDA the authority to approve copies of generic drugs – Congress authorized the agency to approve copies of biotech medicines.

Under US law, a biologic approved as safe and effective by FDA can be

1. an **originator**, approved on its own data,
2. a **biosimilar**, approved by demonstrating it is **highly similar** to an originator; or
3 an **interchangeable product**, which the law applies a **higher standard** and requires the product satisfy more criteria than simply to be highly similar. It must also be expected to

produce the same result in any given patient AND present no greater risk to the patient as a result of switching than if the patient had stayed on the originator product.

The designation of "interchangeable" is unique to the US. FDA and regulatory authorities around the world have acknowledged that being just "biosimilar" to another product is not enough to make it safe for substituting or switching.

While only FDA has the authority to designate a product as "biosimilar" or "interchangeable", states regulate what each designation means for doctors and pharmacists licensed in their jurisdiction.

SB 732 exercises the State of Florida's authority to permit automatic retail substitution of biologics by pharmacists, without the input of the prescriber when scientifically appropriate. This legislation:

1. Consistent w/ the comments of the FDA, limits substitution to those products deemed interchangeable by FDA.
2. Includes biologics in the doctors current authority to specify "dispense as written"
3. Requires that the patient be informed when a medication dispensed is different than the one prescribed by the doctor, and
4. Facilitates accurate record keeping by requiring the pharmacist to notify the physician of a switch.
5. Both pharmacy and prescriber are required to keep records for 5 years.

We are aware of no objection to the first three and the fifth criteria. The fourth requirement – accurate record keeping – has generated some attention so I will focus my comments there.

This fourth measure to facilitate accurate record keeping depends upon ensuring transparency of biologic substitution information among pharmacists, physicians and patients.

First, let me state Amgen's confidence in FDA to evaluate and approve safe biosimilar and interchangeable products. We also believe that manufacturers intend to produce safe, high quality medicines. But biotech medicines, as discussed above, are complex and highly sensitive products. It is clear from experience in the US and Europe that unexpected reactions to biotech medicines do occur.

Ensuring the safety of biotech medicines does not stop at approval. It is essential that we are able to quickly and clearly identify which product was involved in an adverse reaction to a medicine so that the problem can be identified and solved and patients can be protected. Our investment in accurate record keeping is similar to the air bag in all new cars – we hope it is never needed, but if something goes wrong, we will all be glad it is in place.

"Dispense as Written" authority (known as "DAW") is not an alternative to physician notification. Wide spread use of DAW would thwart substitution overall, which could hinder physician efforts to provide a patient access to the most cost effective medicine. Equally important, should a physician choose not to exercise DAW authority and a substitution occur, the patient's record in the physician office would be incomplete.

This legislative proposal provides flexibility in how a physician is notified of the product actually dispensed to the patient when different from what was prescribed. This law would affect a very tiny fraction of prescriptions. Most biologics are administered by the physician or in a hospital or clinic setting where the patient's record would be automatically updated. Thus the implication for the

pharmacist would be minimal. However, should something unexpected develop with a particular medicine, the accuracy of the physician report to FDA and the manufacturer will depend upon the accuracy of the patient record. If the incorrect product is identified as the source of the problem, the problem may go unidentified and more patients will be exposed.

Taking steps to ensure patient records are accurate is the least we should expect from our health care system.

The time to adopt this legislation is now.

- Biosimilar approvals can happen any time.
- FDA is prohibited by law from delaying approvals as a result of the lack of guidelines
- Clinical trials for at least one biosimilar is expected to be completed in June of this year
- At least one manufacturer is seeking to use data from Europe for its US application – thus its clinical trials may already be complete.
- It will take time to educate pharmacists and doctors and put in place a system of communication.

Nothing the FDA does will change the need for the state to act on substitution policy

In closing, Amgen supports federal and state laws that facilitate the development of the biosimilar pathway that put patient safety first. As a future manufacturer of biosimilars, we believe biosimilar and interchangeable products approved by the FDA will be safe and effective medicines and have a role in the U.S. health care system. We also believe Florida's H.B. 1315 will put in place necessary policies in the state to foster patient safety when interchangeable biologics are substituted.

Thank you again for the opportunity to speak to this important legislation. I would be happy to answer any questions you have.

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 818

INTRODUCER: Senator Garcia

SUBJECT: Pharmacy Technicians

DATE: March 28, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Favorable**
2.			RI	
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 818 allows a pharmacist to supervise up to six pharmacy technicians unless otherwise permitted by the Board of Pharmacy (Board). Currently, in certain circumstances, a pharmacist may supervise up to three pharmacy technicians.

This bill substantially amends section 465.014 of the Florida Statutes:

II. Present Situation:

Pharmacists

Pharmacists are regulated under ch. 465, F.S., the Florida Pharmacy Act (Act), by the Board within the Department of Health (DOH). A pharmacist is any person licensed under the Act to practice the profession of pharmacy.[1] The practice of the profession of pharmacy includes: compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of any medicinal drug; consulting concerning therapeutic values and interactions of patent or proprietary preparations, whether pursuant to prescriptions or in the absence and entirely independent of such prescriptions or orders; and other pharmaceutical services. Other pharmaceutical services include the monitoring of a patient's drug therapy, assisting the patient in the management of his or her drug therapy, and review of the patient's drug therapy and communication with the patient's prescribing health care provider or the provider's agent or other persons as specifically authorized by the patient, regarding the drug therapy. However, a person practicing pharmacy is not authorized to alter a prescriber's directions, diagnoses or treat

[1] Section 465.003(10), F.S.

any disease, initiate any drug therapy, or practice medicine or osteopathic medicine, unless specifically permitted by law. A pharmacist is authorized to transmit information from persons authorized to prescribe medicinal drugs to their patients.[2]

Any person desiring to be licensed as a pharmacist must apply to the DOH to take the licensure examination. The DOH must examine each applicant who the Board certifies has:

- Completed an application form and remitted the required fees.
- Submitted satisfactory proof that the applicant is not less than 18 years of age and is a recipient of a degree from an accredited school or college of pharmacy; or is a graduate of a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, has demonstrated proficiency in English, has passed the Foreign Pharmacy Graduate Equivalency Examination, and has completed a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a pharmacist licensed by the DOH.
- Submitted satisfactory proof that the applicant has completed an internship program, which must not exceed 2,080 hours.

The passing of the examination does not automatically confer rights or privileges upon the applicant in connection with the practice of pharmacy in Florida. To obtain such rights or privileges, the DOH must issue a license to practice pharmacy to the applicant who successfully completed the examination.

Pharmacy Technicians

Pharmacy technicians assist and work under the supervision of licensed pharmacists. Section 465.014, F.S., authorizes a licensed pharmacist to delegate to registered pharmacy technicians those duties, tasks, and functions that do not fall within the definition of the practice of the profession of pharmacy. Registered pharmacy technicians' responsibilities include: [3]

- Retrieval of prescription files;
- Data entry;
- Label preparation;
- Counting, weighing, measuring, pouring, and mixing prescription medication;
- Initiation of communication with a prescribing practitioner or medical staff regarding requests for prescription refill authorization, clarification of missing information on prescriptions, and confirmation of information such as names, medication, and strength; and
- Acceptance of authorization for prescription renewals.

Pharmacy technicians are prohibited from performing the following acts:[4]

- Receiving new verbal prescriptions or any change in the medication, strength, or directions;

[2] Section 465.003(13), F.S.
[3] Rule, 64B16-27.420, F.A.C.
[4] *Id*.

- Interpreting a prescription or medication order for therapeutic acceptability and appropriateness;
- Conducting a final verification of dosage and directions;
- Engaging in prospective drug review;
- Providing patient counseling;
- Monitoring prescription drug usage; and
- Overriding clinical alerts without first notifying the pharmacist.

Any person desiring to become a registered pharmacy technician must register by filing an application with the Board. The Board shall register each applicant who has met the following:

- Completed the application form and submitted the required fees.
- Be at least 17 years of age.
- Completed a pharmacy technician training program approved by the Board. Any pharmacy technician training program sponsored by a Florida permitted pharmacy or affiliated group of pharmacies under common ownership, must contain a minimum of 160 hours of training, that extends over a period not to exceed 6 months; is provided solely to employees of said pharmacy or affiliated group; and has been approved by the Board.[5]
- Any registered pharmacy technician who has worked as a pharmacy technician for a minimum of 1,500 hours under the supervision of a licensed pharmacist or received certification as a pharmacy technician by a certification program accredited by the National Commission for Certifying Agencies is exempt from the requirement to complete an initial training program for purposes of registration.

A person who is licensed by the state as a pharmacy intern may be employed as a registered pharmacy technician without registering as a pharmacy technician.[6]

Pharmacist Supervision

A licensed pharmacist may not supervise more than one registered pharmacy technician unless otherwise permitted by the guidelines adopted by the Board. The Board establishes guidelines to be followed by licensees or permittees in determining the circumstances under which a licensed pharmacist may supervise more than one, but not more than three pharmacy technicians.[7]

The guidelines require a pharmacist to submit a written request and receive approval by the Board before supervising more than one registered pharmacy technician. The Board considers the following in determining the pharmacist-to-pharmacy technician ratio:

- A brief description of the pharmacy's workflow justifying the request,
- The hours the pharmacy is open, and
- The number of pharmacists, pharmacy interns, and pharmacy technicians employed.

[5] 64B16-26.351 FAC
[6] Section 456.014(5), F.S.
[7] Section 456.014, F.S.

The pharmacist-to-pharmacy technician ratio approved by the Board is printed on each pharmacy's license.[8]

At the end of fiscal year 2011-2012, there were 37,379 registered pharmacy technicians, 29,311 pharmacists and 8,869 licensed pharmacies. As of February 20, 2013, 4358 Florida licensed pharmacies had a ratio of three pharmacy technicians to one pharmacist, and 588 pharmacies had a ratio of two pharmacy technicians to one pharmacist.[9]

As of 2009, Florida was among 18 states allowing a maximum 1:3 pharmacist-to-pharmacist technician ratio.[10] Seventeen states and the District of Columbia had no ratio limits; eight states allowed a maximum 1:2 pharmacist-to-pharmacist technician ratio; seven states allowed a 1:4 ratio; and one state allowed a 1:1 ratio. More recently, Indiana and Idaho have allowed a 1:6 ratio.[11] Some states require that higher ratios are contingent on certification or licensure of technicians, or other quality assurance measures.[12]

III. Effect of Proposed Changes:

The bill increases the number of pharmacy technicians that a pharmacist may supervise from one to six, unless otherwise permitted by the Board. The bill also removes provisions that require the Board to establish guidelines to allow more than one pharmacy technician to be under the supervision of a pharmacist, but no more than three.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[5] Rule 64B16-27.410, FAC.
[9] DOH Bill Analysis for SB 818, dated February 17, 2013, on file with the Senate Health Policy Committee.
[10] National Association of Chain Drug Stores, "Standardized Pharmacy Technician Education and Training," May 2009 Available at: http://www.nabp.net/events/assets/AnnualMtgTechTrainStd(Nicholson).pdf (last visited March 28, 2013).
[11] Indiana changed their ratio July 2, 2012. See Indiana Code, 25-26-13-18. See also, Idaho Board of Pharmacy Rule 251, Pharmacy Technicians.
[12] See National Association of Boards of Pharmacy: Kansas News: Pharmacy Technician Ratio (2006), Minnesota Board of Pharmacy (2000), Idaho State Board of Pharmacy News (2009), available at: <http://www.nabp.net/news/kansas-news-pharmacy-technician-ratio> (last visited March 28, 2013).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Pharmacies may experience a favorable impact through efficiencies and may be better able to meet customers' needs.

C. Government Sector Impact:

The Board will need to amend Rule 64B16-27.410, FAC, to allow a pharmacist to supervise up to six pharmacy technicians, licenses would need to be updated and processes would need modification.

The Board and DOH will incur non-recurring costs for rulemaking, which current budget authority is adequate to absorb.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently the statute sets a number of registered pharmacy interns (one) that a pharmacist may supervise without Board approval and authorizes the Board to authorize the supervision of additional registered pharmacy technicians, up to a maximum of three. This bill sets the number (six) that may be supervised without Board approval and authorizes the Board to authorize the supervision of additional registered pharmacy technicians, but does not set a maximum number that the Board may authorize.

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 Garcia

38-01075-13 2013818__

A bill to be entitled

An act relating to pharmacy technicians; amending s. 465.014, F.S.; increasing the number of pharmacy technicians which a licensed pharmacist may supervise; deleting a provision to conform to changes made by the act; providing an effective date.

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

Section 1. Subsection (1) of section 465.014, Florida Statutes, is amended to read:

465.014 Pharmacy technician.—

(1) A person other than a licensed pharmacist or pharmacy intern may not engage in the practice of the profession of pharmacy, except that a licensed pharmacist may delegate to pharmacy technicians who are registered pursuant to this section those duties, tasks, and functions that do not fall within the purview of s. 465.003(13). All such delegated acts must ~~shall~~ be performed under the direct supervision of a licensed pharmacist who is ~~shall be~~ responsible for all such acts performed by persons under his or her supervision. A pharmacy registered technician, under the supervision of a pharmacist, may initiate or receive communications with a practitioner or his or her agent, on behalf of a patient, regarding refill authorization requests. A licensed pharmacist may not supervise more than six ~~one~~ registered pharmacy technicians ~~technician~~ unless otherwise permitted by the guidelines adopted by the board. ~~The board shall establish guidelines to be followed by licensees or permittees in determining the circumstances under which a~~

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

30 ~~licensed pharmacist may supervise more than one but not more~~
31 ~~than three pharmacy technicians.~~
32 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:
Communications, Energy, and Public Utilities, Vice Chair
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:
Joint Committee on Administrative Procedures

SENATOR RENE GARCIA
40th District

March 4, 2013

The Honorable Aaron Bean
Chair, Health Policy Committee
302 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Bean:

This letter should serve as a request to have my bill *SB 818 Pharmacy Technicians* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 40

RG:dm

CC: Sandra Stovall, Staff Director

FLORIDA SENATE
MAR 04 2013
Health Policy Committee

REPLY TO:
❒ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
❒ 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

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)

4-2-13
Meeting Date

Topic: TECHNICIAN/PHARMACIST RATIO

Bill Number: SB 918 *(if applicable)*

Name: PRENTON McDONALD

Amendment Barcode: *(if applicable)*

Job Title: PHARMACIST

Address: 5740 WESTMONT ROAD
Street

MILTON FL FL 32583
City *State* *Zip*

Phone: 850-982-9089

E-mail: MCPHARM@MCHSF.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing: FPA - PHARMACY

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)

1

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic: Pharmacy tech expansion

Bill Number: SB 818 (if applicable)

Name: Goar Alvarez, Pharm.D.

Amendment Barcode: (if applicable)

Job Title: Pharmacist.

Address: 5831 S.W. 88 Terr
Street

Cooper City, FL 33328
City, State, Zip

Phone: 305-608-2459

E-mail: galvarez@nova.edu

Speaking: ☐ For ☒ Against ☐ Information

Representing: Florida Pharmacy Assoc. (President)

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)

4-2-13
Meeting Date

Topic: PHARMACY TECHNICIAN RATIO

Bill Number: SB 818 *(if applicable)*

Name: CHRISTOPHER S. JERRY

Amendment Barcode: *(if applicable)*

Job Title: PRESIDENT & CEO - THE EMILY JERRY FOUNDATION

Address: 7665 MENTOR AVE #343
Street

CLEVELAND OH 44060
City *State* *Zip*

Phone: 440-289-8662

E-mail: CHRIS@EMILYJERRYFOUNDATION.ORG

Speaking: ☐ For ☑ Against ☐ Information

Representing: THE EMILY JERRY FOUNDATION

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)

3

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic: Pharmacy Tech Ratio

Bill Number: SB 818 *(if applicable)*

Name: George MALONE

Amendment Barcode: *(if applicable)*

Job Title: Pharmacy Director

Address: 16017 Bella Woods Dr
Street

Tampa, FL 33647
City, State, Zip

Phone: 813 4940438

E-mail: gdenolam@mac.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: Self / Florida Society of Health System Pharmacist

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)

4

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-13
Meeting Date

Topic: Tech ratio

Bill Number: SB 818 *(if applicable)*

Name: Michael Putze

Amendment Barcode: *(if applicable)*

Job Title: Pharmacist

Address: 805 Bayshore Drive
Street

Tarpon Springs FL 34689
City *State* *Zip*

Phone: 412-716-3457

E-mail:

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)

5

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/5/13
Meeting Date

Topic: Pharmacy Technician Ratio

Bill Number: SB 818 *(if applicable)*

Name: Larry Gonzalez

Amendment Barcode: *(if applicable)*

Job Title: General Counsel

Address: 223 S. Gadsden St.
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 222-0465

E-mail: lawgonz@earthlink.net

Speaking: ☐ For ☒ Against ☐ Information

Representing: Florida Society of Health-System Pharmacists

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)

4/2/13
Meeting Date

Topic: Pharmacy Technician Ratio

Bill Number: SB 818 *(if applicable)*

Name: Bill Mincy

Amendment Barcode: *(if applicable)*

Job Title: VP & Clinical Pharmacist, PPSC

Address: 3375-I Capital Circle NE
Street

Tallahassee, FL 32308
City *State* *Zip*

Phone: 850-656-0100 x 240

E-mail: bill.mincy@ppsconline.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Independent Pharmacy Owners

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)

4/2/13
Meeting Date

Topic: PHARMACY TECHNICIAN RATIO

Bill Number: SB 1818 *(if applicable)*

Name: JIM POWERS

Amendment Barcode: *(if applicable)*

Job Title: PHARMACY CONSULTANT

Address: 1349 OLD VILLAGE Rd
Street

TALLAHASSEE, FLORIDA 32312
City *State* *Zip*

Phone: 850-422-0079

E-mail: THEPOWERS@NETTALK.COM

Speaking: ☐ For ☑ Against ☐ Information

Representing: FLORIDA INDEPENDENT PHARMACY NETWORK

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)

4-2-2013
Meeting Date

Topic: Pharmacy Technicians

Bill Number: SB818 *(if applicable)*

Name: David Root

Amendment Barcode: *(if applicable)*

Job Title:

Address: 212 Spring Branch Rd
Street

Waverly, VA 23890
City *State* *Zip*

Phone: 804-834-2626

E-mail: droot@primetherapeutics.com

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

Representing: Prime Therapeutics

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)

4-2-13
Meeting Date

Topic: Tech Ratio

Bill Number: 818 *(if applicable)*

Name: Dr. Jon Hickman

Amendment Barcode: _____ *(if applicable)*

Job Title: Pharmacists

Address: 2009 West Tenn St
Street

Tallahassee Fl 32304
City *State* *Zip*

Phone: _____

E-mail: DrJmH1@aol.com

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

Representing: Walgreens

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)

4/2/13
Meeting Date

Topic: Pharmacy Tech

Bill Number: SB 818 (if applicable)

Name: Melissa Joiner

Amendment Barcode: (if applicable)

Job Title: Director Gov't Affairs

Address: Street

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic: Pharmacy Tech

Bill Number: 818 *(if applicable)*

Name: David Dederichs

Amendment Barcode: *(if applicable)*

Job Title: Gov Affairs - Express-Scripts

Address: *Street*

City *State* *Zip*

Phone: 954 239 8653

E-mail:

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

Representing: Express-Scripts

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)

4/2/2013
Meeting Date

Topic: TECHNICIANS

Bill Number: SB 818 *(if applicable)*

Name: MIKE AYOTTE

Amendment Barcode: *(if applicable)*

Job Title: SC DIRECTOR GOVERNMENT AFFAIRS

Address: 7573 WEST BROAD ST.
Street

RICHMOND VA 23112
City *State* *Zip*

Phone: 804-337-4006

E-mail: MICHAEL.AYOTTE@CVS.CAREMARK.COM

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

Representing:

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)

4/12/2013
Meeting Date

Topic _____ Bill Number 818 *(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

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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 1482

INTRODUCER: Health Policy Committee and Senator Hays

SUBJECT: Skilled Nursing Facilities

DATE: April 2, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.			AHS	
3.			AP	
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 1482 provides for a certificate of need (CON) exemption up to 240 additional skilled nursing facility (SNF) beds located within a retirement community that:

- Is located in a county that has 25 percent or more of its population aged 65 or older;
- Is located in a county with a ratio of no more than 16.1 beds per 1000 persons aged 65 or older;
- Is zoned for mixed use;
- Is deed restricted for older persons; and
- Has a population of at least 8,000 residents.

This bill creates section 408.0362 of the Florida Statutes.

II. Present Situation:

Certificates of Need

A CON is a written statement issued by the Agency for Health Care Administration (AHCA or Agency) evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice.[1] Under this regulatory program, the Agency must provide approval through the CON review and approval process prior to a provider establishing a new nursing home or adding nursing home beds.

The Florida CON program has three levels of review: full, expedited, and the granting of an exemption.[2] The nursing home projects addressed in s. 408.036, F.S., related to CONs are as follows:

Projects Subject to Full Comparative Review

- Adding beds in community nursing homes; and
- Constructing or establishing new health care facilities, which include SNFs.[3]

Projects Subject to Expedited Review

- Replacing a nursing home within the same district; and
- Relocating a portion of a nursing home's licensed beds to a facility within the same district.

Exemptions from CON Review

- Converting licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital;
- Adding nursing home beds at a SNF that is part of a retirement community which had been in operation on or before July 1, 1949, for the exclusive use of the community residents;
- Combining licensed beds from two or more licensed nursing homes within a district into a single nursing home within that district if 50 percent of the beds are transferred from the only nursing home in a county and that nursing home had less than a 75 percent occupancy rate;[4]
- State veteran's nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs;
- Combining into one nursing home, the beds or services authorized by two or more CONs issued in the same planning subdistrict;
- Separating into two or more nursing homes in the subdistrict, the beds or services that are authorized by one CON;
- Adding no more than 10 total beds or 10 percent of the licensed nursing home beds of that facility, whichever is greater; or if the nursing home is designated as a Gold Seal nursing home, no more than 20 total beds or 10 percent of the licensed nursing home beds of that facility for a facility with a prior 12-month occupancy rate of 96 percent or greater; and

---

[1] S. 408.032(3), F.S.
[2] S. 408.036, F.S.
[3] S. 408.032(16), F.S., defines an SNF as an institution, or a distinct part of an institution, which is primarily engaged in providing, to inpatients, skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.
[4] This exemption is repealed upon the expiration of the moratorium by operation of s. 408.036(3)(f), F.S.

- Replacing a licensed nursing home on the same site, or within three miles, if the number of licensed beds does not increase.

The CON program applies to all nursing home beds, regardless of the source of payment for the beds (private funds, insurance, Medicare, Medicaid, or other funding sources).

Determination of Need
A CON is predicated on a determination of need. The future need for community nursing home beds is determined twice a year and published by the agency as a fixed bed need pool for the applicable planning horizon. The planning horizon for CON applications is 3 years. Need determinations are calculated for subdistricts within the Agency's 11 service districts[5] based on a formula[6] and estimates of current and projected population as published by the Executive Office of the Governor.

Moratorium on Nursing Home CONs

In 2001, the Legislature enacted the first moratorium on the issuance of CONs for additional community nursing home beds until July 1, 2006.[7] The legislation reenacted the moratorium in 2006,[8] and then again in 2011.[9] The current moratorium lasts until October 1, 2016, or until Medicaid managed care is implemented statewide.

The Legislature provided for additional exceptions to the moratorium to address occupancy needs that might arise including:

- Adding sheltered nursing home beds;
- Beds may be added in a county that has no community nursing home beds and the lack of beds is the result of the closure of nursing homes that were licensed on July 1, 2001;[10]
- Adding the greater of no more than 10 total beds or 10 percent of the licensed nursing home beds of a nursing home located in a county having up to 50,000 residents, if:
  - The nursing home has not had any class I or class II deficiencies within the 30 months preceding the request for addition;
  - The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; or
  - For a facility that has been licensed for less than 24 months, the prior 6-month average occupancy rate for the nursing home beds at the facility meets or exceeds 94 percent and the facility has not had any class I or class II deficiencies since its initial licensure; and
- Adding the greater of no more than 10 total beds or 10 percent of the number of licensed nursing home beds if:
  - The facility has not had any class I or class II deficiencies within the 30 months preceding the request for addition;

[5] The nursing home subdistricts are set forth in Rule 59C-2.200, F.A.C.
[6] Rule 59C-1.036, F.A.C.
[7] Ch. 2001-45, L.O.F. s. 52.
[8] Ch. 2006-161, L.O.F.
[9] Ch. 2011-135, L.O.F.
[10] The request to add beds under this exception to the moratorium is subject to the full competitive review process for CONs.

- The prior 12-month average occupancy rate for the nursing home beds at the facility meets or exceeds 96 percent;
- The prior 12-month occupancy rate for the nursing home beds in the subdistrict is 94 percent or greater; and
- Any beds authorized for the facility under this exception in a prior request have been licensed and operational for at least 12 months.[11]

County Populations

According to the AHCA population estimates from 2012,[12] 10 counties[13] have populations of 25 percent or more persons aged 65 or over. Of those counties, five currently also have ratios of 16.1 or less nursing home beds per 1,000 persons aged 65 or older. [14] Within those five counties, only the Villages retirement community, located in Sumter County, and On Top of the World retirement community, located in Marion County, currently meet the remaining criteria listed in the bill for an exemption from the CON process.

Housing for Older Persons

Section 760.29(4), F.S., defines housing for older persons as housing that:

- Is provided for under any state or federal program that the Florida Commission on Human Relations determines is specifically designed and operated to assist elderly persons;
- Is intended for, and solely occupied by, persons age 62 or older; or
- Is intended for, and solely occupied by, persons age 55 or older if:
  - At least 80 percent of the occupied units are occupied by at least one person age 55 or older;
  - The housing facility or community meets policy requirements to demonstrate the intent to restrict the facility to older persons and the facility or community's governing documents meet certain criteria; and
  - The housing facility or community complies with federal law.

Additionally, s. 760.29(4)(c), F.S., states that housing will not fail to be considered housing for older persons if some current residents[15] do not meet the age requirements or if some housing units are vacant as long as any new residents meet the age requirement.

III. Effect of Proposed Changes:

CS/SB 1482 creates s. 408.0362, F.S., to provide for a CON exemption for additional SNF beds located within a retirement community that:

- Is located in a county that has 25 percent or more of its population aged 65 or older;
- Is located in a county with a ratio of no more than 16.1 beds per 1,000 persons aged 65 or older;

[11] The request to add beds under the exception to the moratorium is subject to the procedures related to an exemption to the CON requirements.
[12] On file with Senate Health Policy staff.
[13] Sumter, Chalotte, Citrus, Highlands, Sarasota, Martin, Indian River, Collier, Marion, and Hernando counties.
[14] Sumter, Indian River, Collier, Marion, and Hernando counties.
[15] Residents who have lived in the housing on or after Oct. 1, 1989.

- Is zoned for mixed use;
- Is deed restricted for housing for older persons;[16] and
- Has a population of at least 8,000 residents.

The bill caps the maximum number of beds which may be added within the community to the lesser of 240 or the maximum number of beds required to reach a ratio of 16.1 beds per 1,000 residents aged 65 or older in the county where the community is located. To determine the percentage of older persons in a county, and the ratio of 16.1 beds per person aged 65 or older, the agency must use county population estimates for 3 years in the future.

The bill also requires that, in order to receive the CON exemption, a retirement community must make a written request for the exemption which includes evidence of population, mixed-use status, and data on the gross and net numbers of SNF beds in the county. Also, any SNF built pursuant to the exemption, and all new SNF beds, must be certified under both Medicare and Medicaid programs.

The bill provides for 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:

CS/SB 1482 may have a positive fiscal impact for persons or entities that will be able to open a SNF or add SNF beds where they are now currently restricted by the CON process.

The bill may have a negative fiscal impact on SNFs that are currently serving the area where new nursing facilities are opened if demand decreases due to the increase in the

[16] As defined in s. 760.29, F.S.

number of skilled nursing beds. In addition, if the SNF beds are included in the calculations for future SNF bed need, it could impact the ability of other providers to compete for beds in the district.

Both the negative and positive impacts of this bill will be restrained by the 240 bed cap provided for in the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Health Policy on April 2, 2013:
The CS substantially amends SB 1482 to:

- Conform the bill to the language in CS/HB 1159;
- Exempt the construction of an SNF located in a retirement community from the CON process if the retirement community:
  - Is located in a county that has 25 percent or more of its population aged 65 or older;
  - Is located in a county with a ratio of no more than 16.1 beds per 1,000 persons aged 65 or older;
  - Is zoned for mixed use;
  - Is deed restricted for older persons; and
  - Has a population of at least 8,000 residents.
- Caps the number of additional beds at the lesser of either the maximum number of beds to reach a ratio of 16.1 beds per 1,000 persons aged 65 or older in the county where the community is located or 240 beds per community;
- Details how retirement communities can apply for the exemption, what beds qualify, and how the 16.1 beds per 1,000 persons aged 65 or older ratio must be determined.

B. Amendments:

None.

918804

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Section 408.0362, Florida Statutes, is created
6 to read:
7 408.0362 Skilled nursing facility in retirement community;
8 exempt from review.—
9 (1) Upon request by a deed-restricted retirement community,
10 the construction of a skilled nursing facility licensed under
11 part II of chapter 400 for the addition of community skilled
12 nursing home beds located within the retirement community is

918804

13 exempt from s. 408.036 if:
14 (a) The retirement community is located in a county that
15 has 25 percent or more of its population consisting of persons
16 aged 65 and older;
17 (b) The retirement community is located in a county that
18 has a rate of no more than 16.1 beds per thousand persons aged
19 65 years or older. The rate shall be determined by using the
20 current number of licensed and approved community skilled
21 nursing home beds in the agency's most recent published
22 inventory;
23 (c) The retirement community is zoned for a mix of
24 residential and nonresidential uses;
25 (d) The residential use area of the retirement community is
26 deed-restricted as housing for older persons as defined in s.
27 760.29; and
28 (e) The retirement community has a population of at least
29 8,000 residents, based on a population data source accepted by
30 the agency.
31 (2) The number of community skilled nursing home beds
32 allowed in a retirement community under the exemption shall be
33 calculated at a rate of 16.1 beds per thousand persons aged 65
34 years and older in the county in which the retirement community
35 is located. To determine whether or not the county in which the
36 retirement community is located is at or above the rate of 16.1
37 beds per 1,000 elderly, the agency must use a prospective county
38 population estimate 3 years in the future to demonstrate:
39 (a) That the number of persons aged 65 years and older will
40 comprise at least 25 percent of the county's population at the
41 end of the 3 years. From this result, the current number of

918804

42 licensed community skilled nursing home beds in the agency's
43 published inventory shall be subtracted to determine the net
44 number of additional community skilled nursing home beds that
45 the agency shall grant for development under the exemption; and
46 (b) That the rate of community skilled nursing home beds in
47 the county will either remain at 16.1 beds per thousand persons
48 aged 65 years or older or will be less after 3 years, prior to
49 approval of additional community skilled nursing home beds under
50 the exemption.
51 (3) A retirement community that qualifies for the exemption
52 provided in this section shall provide a written request for an
53 exemption in accordance with the applicable rules. In the
54 request, the retirement community shall provide evidence of
55 population, mixed-use status, and the results of the calculation
56 showing the gross and net numbers of community skilled nursing
57 home beds in the county.
58 (4) The number of community skilled nursing home beds that
59 are added pursuant to the exemption shall at no time exceed 240
60 in any qualifying retirement community.
61 (5) Any skilled nursing home facility built pursuant to the
62 exemption shall be certified under both the Medicare and
63 Medicaid programs. All beds in the skilled nursing home facility
64 shall be certified under both the Medicare and Medicaid
65 programs.
66 Section 2. This act shall take effect upon becoming a law.
67
68 ========== T I T L E A M E N D M E N T ==========
69 And the title is amended as follows:
70 Delete everything before the enacting clause

918804

71 and insert:
72 A bill to be entitled
73 An act relating to skilled nursing facilities;
74 creating s. 408.0362, F.S.; providing an exemption
75 from certificate-of-need requirements for construction
76 of a licensed skilled nursing facility in a retirement
77 community; providing an effective date.

By Senator Hays

11-00639A-13 20131482__

A bill to be entitled

An act relating to skilled nursing facilities; amending s. 408.036, F.S.; providing an exemption from certificate-of-need requirements for the construction of specified licensed skilled nursing facilities; providing an effective date.

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

Section 1. Paragraphs (d) through (s) of subsection (3) of section 408.036, Florida Statutes, are redesignated as paragraphs (e) through (t), respectively, and a new paragraph (d) is added to that subsection, to read:

408.036 Projects subject to review; exemptions.—

(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(d) For the construction of skilled nursing facilities licensed under chapter 400 for the addition of such skilled nursing home beds located within a retirement community that is deed-restricted for older persons as defined in part II of chapter 760 with a population of at least 20,000 residents, which community provides within its boundaries a continuum of health care services for older persons and which has an agreement with a state university to coordinate and assist in providing comprehensive health care services to the retirement community residents.

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

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

Subject: Committee Agenda Request

Date: March 7, 2013

I respectfully request that **Senate Bill #1482**, relating to Skilled Nursing Facilities, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011

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)

4/2/2013
Meeting Date

Topic: Skilled Nursing Facilities

Bill Number: SB 1482 *(if applicable)*

Name: Sharon Gordon-Girvin

Amendment Barcode: 918804 *(if applicable)*

Job Title: Consultant

Address: 307 West Park Avenue, Suite 211
Street

Tallahassee, FL 32301
City, State, Zip

Phone: (850) 681-8705

E-mail: sgirvin@girvingroup.com

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

Representing: at the request of Sen. Alan Hays

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)

4/2/2013
Meeting Date

Topic: Skilled Nursing Facilities

Bill Number: SB 1482 *(if applicable)*

Name: Reggie Bouthillier

Amendment Barcode: 918804 *(if applicable)*

Job Title: Attorney, Greenberg Traurig PA

Address: 101 E College Avenue
Street

Tallahassee — *City*
FL — *State*
32301 — *Zip*

Phone: (850) 222-6891

E-mail: Bouthillierr@gtlaw.com

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

Representing: On Top of the World Communities, Inc.

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

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

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APPEARANCE RECORD

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

4/2/2013
Meeting Date

Topic: Skilled Nursing Facilities

Bill Number: SB 1482 *(if applicable)*

Name: Nancy Linnan

Amendment Barcode: 918804 *(if applicable)*

Job Title: Attorney, Carlton Fields PA

Address: 215 S. Monroe Street, Suite 500
Street

Tallahassee — *City*
FL — *State*
32301 — *Zip*

Phone: 850-224-1585

E-mail: nlinnan@carltonfields.com

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

Representing: The Villages

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/2/2013
Meeting Date

Topic: Skilled Nursing Facilities

Bill Number: SB 1482 *(if applicable)*

Name: Rheb Harbison

Amendment Barcode: 918804 *(if applicable)*

Job Title: Senior Government Consultant, Carlton Fields, PA

Address: 215 S. Monroe Street, Suite 500
Street

Tallahassee — *City*
FL — *State*
32301 — *Zip*

Phone: 850-224-1585

E-mail: rharbison@carltonfields.com

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

Representing: The Villages

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)

4/2/13
Meeting Date

Topic _____

Bill Number SB 1482 *(if applicable)*

Name Tom Groesbeck

Amendment Barcode _____ *(if applicable)*

Job Title ~~E~~

Address 307 W Park Ave
Street

Tallahassee FL 33301
City *State* *Zip*

Phone 727-492-3779

E-mail tgroesbeck@aiamid.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Health Care

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

4/2/13
Meeting Date

Topic: CON

Bill Number: 1482 *(if applicable)*

Name: TONY MARSHALL

Amendment Barcode: *(if applicable)*

Job Title: SR. DIRECTOR OF REIMBURSEMENT

Address: 307 W. PARK AVE.
Street

TALLAHASSEE, FL 32301
City, State, Zip

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

Representing: FLORIDA HEALTH CARE 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)

4/2/13
Meeting Date

Topic: CON - Nursing Homes

Bill Number: SB 1482 *(if applicable)*

Name: Carol Berkowitz

Amendment Barcode: *(if applicable)*

Job Title:

Address: 1812 Biggins Rd
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Tallahassee, FL 32308
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Phone:

E-mail: cberkowitz@leadingagefloridaorg

Speaking: ☐ For ☑ Against ☐ Information

Representing: LeadingAge 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.

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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/CS/SB 468

INTRODUCER: Health Policy Committee, Banking and Insurance Committee and Senator Hukill

SUBJECT: Property and Casualty Insurance Rates and Forms

DATE: April 2, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**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 468 expands the number of commercial lines insurance that are exempt from the rate filing and review requirements of s. 627.062(2)(a) and (f), F.S, to include:

- Medical malpractice for a facility that is not a hospital, nursing home, or assisted living facility.
- Medical malpractice for a health care practitioner that is not a licensed dentist, physician, osteopathic physician, chiropractic physician, or podiatric physician.

The rate filing requirements that these types of medical malpractice insurance are exempt from are:

- The requirement to file with the Office of Insurance Regulation (OIR) rates, rating schedules, or rating manuals via the “file and use” method (at least 90 days prior to the proposed effective date) or the “use and file” method (within 30 days after the effective date of the filing).

- The authority of the OIR to require an insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rate filing.

The bill also creates an alternative mechanism to the form filing and approval process required by s. 627.410, F.S., for all lines of property and casualty insurance, except workers' compensation and personal lines. Insurers may elect to self-certify that their forms comply with Florida law instead of having to file forms and obtain OIR approval under s. 627.410, F.S., if:

- The form is electronically submitted to the OIR in an informational filing 30 days before delivery of the form within the state; and
- The informational filing includes a certification of compliance.

If the form is not in compliance with state laws and rules, the form filing is subject to the prior approval requirements of s. 627.410, F.S. A Notice of Change in Policy Terms form is also required as a part of the informational filing for any renewal policy that contains a change.

This bill substantially amends the following sections of the Florida Statutes: 627.062 and 627.410.

The bill creates the following section of the Florida Statutes: 627.4102.

II. Present Situation:

Ratemaking Regulation for Property, Casualty, and Surety Insurance

The rating requirements for property, casualty, and surety insurance are located in part I of ch. 627, F.S., which is entitled the "Rating Law," and applies to all property, casualty, and surety insurance. Section 627.062(1), F.S., specifies that the rates for all classes to which part I applies "shall not be excessive, inadequate, or unfairly discriminatory."

Section 627.062(2)(a), F.S., describes the filing process and time frames that must be followed by all insurers subject to its provisions. Generally, insurers may choose to submit their rate to the OIR pursuant to either the "file and use" method or the "use and file" method. Under "file and use," the insurer submits to the OIR their proposed rate at least 90 days before the rate's effective date and shall not implement the rate until it is approved. Under "use and file," the insurer may implement the rate before filing for approval, but must then submit the filing within 30 days of the rate's effective date. Under "use and file," if a portion of the rate is subsequently found to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive.

For those insurers that file under s. 627.062(2)(a), F.S., the OIR applies the following factors in determining whether a rate is excessive, inadequate, or unfairly discriminatory.

- Past and prospective loss experience in Florida and in other jurisdictions.
- Past and prospective expenses.
- Degree of competition to insure the risk.
- Investment income reasonably expected by the insurer.

- Reasonableness of the judgment reflected in the filing.
- Dividends, saving, or unabsorbed premium deposits returned to Florida insureds.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors, including those for actual losses per insured unit.
- Catastrophe and conflagration hazards, when applicable.
- Projected hurricane losses, if applicable.
- A reasonable margin for underwriting profit and contingencies.
- Cost of medical services, when applicable.
- Other relevant factors impacting frequency and severity of claims or expenses.

Section 627.062(2)(f), F.S., provides that during its review process, the OIR can require an insurer to submit at the insurer's expense all information that the OIR deems necessary to evaluate the condition of the insurer and the reasonableness of the filing.

Types of Insurance Exempt from Filing and Review Requirements

The following types of insurance are exempt from the filing and review requirements of s. 627.062(2)(a) and (f), F.S.

- Excess or umbrella.
- Surety and fidelity.
- Boiler and machinery and leakage and fire-extinguishing equipment.
- Errors and omissions.
- Directors and officers, employment practices and management liability.
- Intellectual property and patent infringement liability.
- Advertising injury and Internet liability.
- Property risks rated under a highly protected risks rating plan.
- General liability.
- Nonresidential property, except for collateral protection insurance as defined in s. 624.6085, F.S.
- Nonresidential multiperil.
- Excess property.
- Burglary and theft.
- Any other commercial lines categories of insurance or commercial lines risks that the OIR determines should not be subject to the filing and review requirements of paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to filing and review requirements of paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the OIR.

These types of insurance coverages continue to be subject to s. 627.062(1), F.S., which requires that rates shall not be excessive, inadequate, or unfairly discriminatory.

An insurer or rating organization which is exempt under this provision must notify the OIR of any changes for the types of insurance subject to this provision, no later than 30 days after the effective date of the change in rates. The notice to the OIR must include the following:

- The name of the insurer or rating organization.
- The type of insurance.
- The total premium written during the immediately preceding year for that type of insurance (for notice filed by an insurer).
- Loss costs during the immediately preceding year for that type of insurance (for notice filed by a rating organization).
- The average statewide percentage change in rates or loss costs.

Underwriting files, premiums, losses, and expense statistics must be maintained by the insurer and are subject to inspection by the OIR. Loss and exposure statistics must be maintained by the rating organization and are subject to inspection by the OIR. The OIR may require the insurer to provide, at the insurer's expense, all information.

OIR Approval of Forms

Each basic insurance policy form,[1] unless otherwise exempted,[2] must be approved by the OIR before the form can be used by an insurance company.[3] Each form must be filed at least 30 days prior to its use in policies delivered or issued for delivery in this state. The OIR must approve or disapprove the form within 30 days or it is deemed approved.[4] The OIR, however, under s. 627.410(4), F.S., has the authority to exempt by order an insurance form or type of form from the approval process for as long as it deems proper[5] if the filing and approval process cannot be practicably applied or is not desirable or necessary for the protection of the public.[6]

In 2012, the OIR issued three orders exempting certain insurance forms from being filed and approved prior to use. The first order, issued on April 9, 2012, exempted specified commercial insurance lines[7] from the prior approval requirement of s. 627.410, F.S., for one year.[8] Instead,

[1] Statutorily required forms requiring OIR approval prior to use are basic insurance policies, annuity contracts, application forms where a written application is required and is part of the policy or contract, group certificates issued under a master contract delivered in Florida, and printed riders, endorsement forms, or forms of renewal certificates.
[2] Statutorily exempted forms are surety bonds or policies, riders, endorsements, or forms of unique character that are designed and used with relation to insurance upon a particular subject (other than health insurance).
[3] s. 627.410(1), F.S.
[4] The Office may extend the form review process 15 days.
[5] s. 627.410(4), F.S.
[6] Id.
[7] The commercial lines exempted by the order from the form review process were those that are exempted from prior rate review by s. 627.062(3)(d), F.S. The categories of commercial risks exempted from prior rate review are (a) Excess or umbrella, (b) surety and fidelity, (3) boiler and machinery and leakage and fire extinguishing equipment, (d) errors and omissions, (e) directors and officers, employment practices, fiduciary liability, and management liability, (f) intellectual property and patent infringement liability, (g) advertising injury and Internet liability insurance, (h) property risks rated under a highly protected risks rating plan, (i) general liability, (j) nonresidential property, except for collateral protection insurance, (k) nonresidential multiperil, (l) excess property, (m) burglary and theft, and (n) any other commercial lines that the OIR determines should not be subject to prior rate review because a competitive market for such existence exists, such insurance is similar to other types of exempt insurance, or if the exemption will improve the general operational efficiency of the office.

such commercial insurers were permitted to make an informational form filing 30 days prior to using the forms, accompanied by a notarized certification that the submitted form filing complies with Florida law and acknowledging that if the forms are not in compliance, the company is subject to appropriate regulatory action. The OIR premised its order on the rate review exemption granted these types of commercial insurance policies, that the consumers of commercial insurance products are sophisticated parties with experience in insurance transactions, and the office's high volume of commercial form filings which had taxed its review resources and resulted in a lengthier review period for many commercial forms.

The second order, issued on June 25, 2012, exempted all property and casualty insurance forms, except workers' compensation, from the prior approval requirements for one year.[9] Insurers were permitted to make an informational filing accompanied with a notarized certification 30 days prior to using the forms. This order was predicated on findings that insurers had recently filed a historically high number of property and casualty forms with the OIR due to law changes, and that requiring the OIR to review and approve forms before they could be used in the market was not practicable where the form had been diligently and thoroughly reviewed by the insurer for quality and legal sufficiency. The third OIR order issued on December 2, 2012, provided a clarification relating to the insurer's certification of compliance, but otherwise did not change the order of June 25, 2012. To date, approximately 20 percent of form filings eligible for self-certification under the order have utilized the exemption.

Representatives from the OIR indicate that, historically, over 90 percent of all property and casualty insurance form filings contain a violation of Florida law that must be addressed prior to the filing being approved. The lines of business that historically have the highest indices of non-compliant forms are the automobile and property lines of business (both personal and commercial), which OIR representatives opined likely stem from the high number of regulations that apply to these lines, the frequency of regulatory changes, and perhaps a high incidence of litigation.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.062, F.S., to amend the insurance "Rating Law," to expand the number of specified types of commercial lines insurance that are exempt from the rate filing and review requirements of s. 627.062(2)(a) and (f), F.S. The bill adds the following types of insurance to be exempt:

- Medical malpractice for a facility that is not a licensed hospital, nursing home, or assisted living facility. Examples of such facilities: laboratories, imaging facilities, dialysis centers, drug and alcohol rehabilitation facilities and hospice facilities.
- Medical malpractice for a health care practitioner that is not a licensed dentist, physician, osteopathic physician, chiropractic physician, or podiatric physician. Examples of such health care practitioners to whom the exemption would apply include: occupational and

[8] Office of Insurance Regulation, *Order Exempting Specified Forms From The Requirements of Section 627.410, Florida Statutes*, (April 9, 2012).
[9] Office of Insurance Regulation, *Order Exempting Specified Forms From The Requirements of Section 627.410, Florida Statutes*, (June 25, 2012).

physical therapists, nurses, audiologists, social workers, counselors, physician assistants, pharmacists, medical testing technicians, and medical lab and pharmacy technicians.

The rate filing requirements that these lines of insurance are exempt from are:

- Section 627.062(2)(a), F.S.: The requirement to file with the OIR rates, rating schedules, or rating manuals that allow the insurer a reasonable rate of return. Such filings must be made via the "file and use" method (at least 90 days prior to the proposed effective date) or the "use and file" method (within 30 days after the effective date of the filing).
- Section 627.062(2)(f), F.S.: Authorizes the OIR to require an insurer to provide, at the insurer's expense, all information necessary to evaluate the condition of the company and the reasonableness of the rate filing.

The bill also reduces to two years the requirement that insurers retain actuarial data and documents for rates on coverage that is exempt from the rate filing requirements of s. 627.062(2)(a) and (2)(f), F.S. The bill also specifies that the OIR may require an insurer to incur the costs of an examination of the actuarial data.

Section 2. Amends s. 627.410, F.S., making technical changes to conform with the creation of s. 627.4102, F.S. in Section 3 of the bill.

Section 3. Creates s. 627.4102, F.S., which allows an alternative mechanism to the current form filing and approval process required by s. 627.410, F.S. The bill specifies that except for workers' compensation and personal lines forms, all property and casualty forms are exempt from the requirements of s. 627.410, F.S., if they meet the requirements of s. 627.4102, F.S., which are:

- The form must be electronically submitted to the OIR in an informational filing 30 days before delivery of the form within the state.
- The informational filing must include a certification of compliance signed by the insurer's president, chief executive officer, general counsel, or an employee of the insurer responsible for the filing on behalf of the insurer. The bill specifies the language that must be included in the certification.
- If the form is not in compliance with state laws and rules, the form filing is subject to the prior approval requirements of s. 627.410, F.S.
- For a renewal policy that contains a change, a Notice of Change in Policy Terms form must be included as a part of the informational filing.

The bill specifies the provisions of Section 3 of the bill supersede the OIR order exempting self-certified property and casualty forms from the prior review and approval requirements of s. 627.410, 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:

Proponents for exempting certain lines of medical malpractice insurance from specified rate filing requirements assert that a competitive market exists for those types of insurance. Although the bill exempts the specified lines from the filing and review requirements, these types of insurance coverage continue to be subject to the requirement that rates shall not be excessive, inadequate, or unfairly discriminatory.

Allowing certain insurers to self-certify their own forms will be more convenient for the industry but potentially hazardous for customers. Since these forms will no longer require pre-approval from the OIR before they may be used, some might not be in compliance with Florida law.

C. Government Sector Impact:

CS/CS/SB 468 relieves the specified types of medical malpractice insurance from rate filing and review requirements; however, those products must still meet the requirement that rates shall not be excessive, inadequate or unfairly discriminatory. The OIR will no longer be required to review rate filings for the types of insurance that are being exempted from that requirement.

Exempting all property and casualty forms, other than workers' compensation and personal lines, to be self-certified by the insurer should reduce the volume of form filings received by the OIR. According to the OIR order dated December 3, 2012, authorizing insurer self-certification of all property and casualty insurance forms until June 24, 2013, "insurers have filed a historically high number of property and casualty insurance forms" that have "taxed the OIR's review resources and resulting in a lengthier period of review for many filings." Allowing property and casualty insurers to certify forms as complying with Florida law in lieu of obtaining prior approval from the OIR will result in a decrease in the office's workload and may reduce its funding needs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1770 contains similar provisions to those contained in Section 2 and Section 3 of this bill.

Proponents of previously granted exemptions to s. 627.062(3), F.S., often justified their exemptions by asserting that the purchaser would likely be a sophisticated business entity. It is uncertain that health care practitioners such as occupational and physical therapists, nurses, audiologists, social workers, counselors, physician assistants, pharmacists, medical testing technicians, and medical lab and pharmacy technicians are sophisticated purchasers of coverage.

Similarly, the initial OIR order of April 9, 2012, that authorized self-certification for only commercial property and casualty forms cited as justification that the purchasers of commercial lines products "are sophisticated parties, and are more experienced in insurance transactions than consumers." However, not all small businesses may be so savvy or have such experience, which includes small insurers of automobiles or property, two lines that have historically had the highest incidence of non-compliant forms.

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 April 2, 2013:
States that forms related to personal lines are not exempt from the OIR approval process.

CS by Banking and Insurance on March 20, 2013:

- Specifies the practice chapters of physicians whose medical malpractice insurance policies may not be exempted from the full rate filing requirements of s. 627.062(2)(a) and (2)(f), F.S.
- Revises the contents of the notarized self-certification an insurer must execute to exempt property and casualty insurance forms from prior review by the OIR, to state that if the certification is not in compliance with Florida law, the form will be disapproved, rather than subjecting the company to appropriate regulatory action.
- Specifies that the provisions of Section 3 of the bill supersede the OIR order exempting self-certified property and casualty forms from the prior review and approval requirements of s. 627.410, F.S.

B. Amendments:

None.

728820

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/02/2013	.	
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The Committee on Health Policy (Sobel) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 145 and 146
insert:
(9) All property and casualty insurance policies, except for policies issued for workers' compensation, must include a per-policy fee in the amount of 25 cents which shall be paid to the office for the specific purpose of hiring sufficient qualified staff to conduct the review required under this section. This fee is not part of the premium.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======

728820

13 And the directory clause is amended as follows:
14 Delete lines 121 - 122
15 and insert:
16 Section 2. Subsection (1) of section 627.410, Florida
17 Statutes, is amended, and subsection (9) is added to that
18 section, to read:
19
20
21 ========== T I T L E A M E N D M E N T ==========
22 And the title is amended as follows:
23 Delete line 12
24 and insert:
25 conforming provisions to changes made by the act;
26 authorizing the imposition of a per-policy fee to pay
27 for conducting form reviews;

392338

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/02/2013	.	
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The Committee on Health Policy (Sobel) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 146 - 190.
4
5 ========== T I T L E A M E N D M E N T ==========
6 And the title is amended as follows:
7 Delete lines 13 - 23.

936032

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
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	.	

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

1 **Senate Amendment**
2
3 Delete line 150
4 and insert:
5 compensation and personal lines forms, are exempt from the
6 approval process

740652

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/02/2013	.	
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	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete line 188
4 and insert:
5 (5) If, when reviewing form certifications submitted by an
6 insurer, the office finds evidence of noncompliant forms for any
7 personal lines insurance product or products, the office may, by
8 order, suspend the authority of the insurer to file forms for
9 such insurance products for up to 18 months and shall
10 immediately notify the presiding officers of the Legislature and
11 the Financial Services Commission. Upon review, the office may
12 extend the order for up to an additional 18 months.

740652

13 (6) The provisions of this section supersede and replace
14
15 ========== T I T L E A M E N D M E N T ==========
16 And the title is amended as follows:
17 Delete line 23
18 and insert:
19 authorizing the Office of Insurance Regulation to
20 suspend the authority of an insurer to file certain
21 forms for a specified time if the insurer filed
22 noncompliant forms, and requiring the office to notify
23 the Legislature and Financial Services Commission;
24 providing for construction and applicability;

By the Committee on Banking and Insurance; and Senator Hukill

597-02826-13 2013468c1

A bill to be entitled

An act relating to property and casualty insurance rates and forms; amending s. 627.062, F.S.; exempting medical malpractice insurance that covers certain providers and practitioners from specified rate filing requirements; revising provisions relating to notification of rate changes to codify the amendments made to s. 627.062(3)(d)3., F.S., by s. 1, ch. 2011-160, Laws of Florida, in lieu of the amendments made by s. 12, ch. 2011-39, Laws of Florida, and making editorial changes; amending s. 627.410, F.S.; conforming provisions to changes made by the act; creating s. 627.4102, F.S.; providing for an informational filing of certain forms that are exempt from the Office of Insurance Regulation's approval process; requiring an informational filing to include a notarized certification from the insurer and providing a statement that must be included in the certification; authorizing the office to require prior review and approval of a form that is not in compliance; requiring a Notice of Change In Policy Terms form to be filed with a changed renewal policy; providing for construction and applicability; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) and paragraph (e) of subsection (7) of section 627.062, Florida Statutes, are

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

30 amended to read:
31 627.062 Rate standards.—
32 (3)
33 (d)1. The following categories or kinds of insurance and
34 types of commercial lines risks are not subject to paragraph
35 (2)(a) or paragraph (2)(f):
36 a. Excess or umbrella.
37 b. Surety and fidelity.
38 c. Boiler and machinery and leakage and fire extinguishing
39 equipment.
40 d. Errors and omissions.
41 e. Directors and officers, employment practices, fiduciary
42 liability, and management liability.
43 f. Intellectual property and patent infringement liability.
44 g. Advertising injury and Internet liability insurance.
45 h. Property risks rated under a highly protected risks
46 rating plan.
47 i. General liability.
48 j. Nonresidential property, except for collateral
49 protection insurance as defined in s. 624.6085.
50 k. Nonresidential multiperil.
51 l. Excess property.
52 m. Burglary and theft.
53 n. Medical malpractice for a facility that is not a
54 hospital licensed under chapter 395, a nursing home licensed
55 under part II of chapter 400, or an assisted living facility
56 licensed under part I of chapter 429.
57 o. Medical malpractice for a health care practitioner who
58 is not a dentist licensed under chapter 466, a physician

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

59 licensed under chapter 458, an osteopathic physician licensed
60 under chapter 459, a chiropractic physician licensed under
61 chapter 460, or a podiatric physician licensed under chapter
62 461.
63 p.~~n.~~ Any other commercial lines categories or kinds of
64 insurance or types of commercial lines risks that the office
65 determines should not be subject to paragraph (2)(a) or
66 paragraph (2)(f) because of the existence of a competitive
67 market for such insurance, similarity of such insurance to other
68 categories or kinds of insurance not subject to paragraph (2)(a)
69 or paragraph (2)(f), or to improve the general operational
70 efficiency of the office.
71 2. Insurers or rating organizations shall establish and use
72 rates, rating schedules, or rating manuals to allow the insurer
73 a reasonable rate of return on insurance and risks described in
74 subparagraph 1. which are written in this state.
75 3. An insurer shall ~~must~~ notify the office of any changes
76 to rates for insurance and risks described in subparagraph 1.
77 within 30 days after the effective date of the change. The
78 notice must include the name of the insurer, the type or kind of
79 insurance subject to rate change, ~~total premium written during~~
80 ~~the immediately preceding year by the insurer for the type or~~
81 ~~kind of insurance subject to the rate change,~~ and the average
82 statewide percentage change in rates. Actuarial data
83 ~~Underwriting files, premiums, losses, and expense statistics~~
84 with regard to rates for such ~~insurance and~~ risks ~~written by an~~
85 ~~insurer~~ must be maintained by the insurer for 2 years after the
86 effective date of changes to those rates and are subject to
87 examination by the office. The office may require the insurer to

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

88 incur the costs associated with an examination. Upon
89 examination, the office, in accordance with generally accepted
90 and reasonable actuarial techniques, shall consider the rate
91 factors in paragraphs (2)(b), (c), and (d) and the standards in
92 paragraph (2)(e) to determine if the rate is excessive,
93 inadequate, or unfairly discriminatory.
94 4. A rating organization shall ~~must~~ notify the office of
95 any changes to loss cost for insurance and risks described in
96 subparagraph 1. within 30 days after the effective date of the
97 change. The notice must include the name of the rating
98 organization, the type or kind of insurance subject to a loss
99 cost change, loss costs during the immediately preceding year
100 for the type or kind of insurance subject to the loss cost
101 change, and the average statewide percentage change in loss
102 cost. Actuarial data with regard to changes to loss cost for
103 risks not subject to paragraph (2)(a) or paragraph (2)(f) must
104 be maintained by the rating organization for 2 years after the
105 effective date of the change and are subject to examination by
106 the office. The office may require the rating organization to
107 incur the costs associated with an examination. Upon
108 examination, the office, in accordance with generally accepted
109 and reasonable actuarial techniques, shall consider the rate
110 factors in paragraphs (2)(b)-(d) and the standards in paragraph
111 (2)(e) to determine if the rate is excessive, inadequate, or
112 unfairly discriminatory.
113 (7) The provisions of this subsection apply only to rates
114 for medical malpractice insurance and control to the extent of
115 any conflict with other provisions of this section.
116 (e) For medical malpractice rates subject to paragraph

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

117 (2)(a), the ~~each~~ medical malpractice insurer shall ~~must~~ make a
118 rate filing under this section, sworn to by at least two
119 executive officers of the insurer, at least once each calendar
120 year.
121 Section 2. Subsection (1) of section 627.410, Florida
122 Statutes, is amended to read:
123 627.410 Filing, approval of forms.—
124 (1) A ~~No~~ basic insurance policy or annuity contract form,
125 or application form where written application is required and is
126 to be made a part of the policy or contract, ~~or~~ group
127 certificates issued under a master contract delivered in this
128 state, or printed rider or endorsement form or form of renewal
129 certificate, may not ~~shall~~ be delivered or issued for delivery
130 in this state~~,~~ unless the form has been filed with the office by
131 or on ~~in~~ behalf of the insurer that ~~which~~ proposes to use such
132 form and has been approved by the office or filed pursuant to s.
133 627.4102. This provision does not apply to surety bonds or to
134 policies, riders, endorsements, or forms of unique character
135 that ~~which~~ are designed for and used with ~~relation to~~ insurance
136 on ~~upon~~ a particular subject, ~~(~~other than as to health
137 insurance~~)~~, or that ~~which~~ relate to the manner of distributing
138 ~~distribution of~~ benefits or to the reservation of rights and
139 benefits under life or health insurance policies and are used at
140 the request of the individual policyholder, contract holder, or
141 certificateholder. For ~~As to~~ group insurance policies
142 effectuated and delivered outside this state but covering
143 persons resident in this state, the group certificates to be
144 delivered or issued for delivery in this state shall be filed
145 with the office for information purposes only.

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

146 Section 3. Section 627.4102, Florida Statutes, is created
147 to read:
148 627.4102 Informational filing of forms.—
149 (1) Property and casualty forms, except workers'
150 compensation forms, are exempt from the approval process
151 required under s. 627.410 if:
152 (a) The form has been electronically submitted to the
153 office in an informational filing made through I-File 30 days
154 before the delivery or issuance for delivery of the form within
155 this state; and
156 (b) At the time the informational filing is made, a
157 notarized certification is attached to the filing that certifies
158 that each form within the filing is in compliance with all
159 applicable state laws and rules. The certification must be on
160 the insurer's letterhead and signed and dated by the insurer's
161 president, chief executive officer, general counsel, or an
162 employee of the insurer responsible for the filing on behalf of
163 the insurer. The certification must contain the following
164 statement, and no other language: "I, ...[name]..., as
165 ...[title]... of ...[insurer name]..., do hereby certify that
166 this form filing has been thoroughly and diligently reviewed by
167 me and by all appropriate company personnel, as well as company
168 consultants, if applicable, and certify that each form contained
169 within the filing is in compliance with all applicable Florida
170 laws and rules. Should a form be found not to be in compliance
171 with Florida laws and rules, I acknowledge that the Office of
172 Insurance Regulation shall disapprove the form."
173 (2) If the filing contains a form that is not in compliance
174 with state laws and rules, the form filing, at the discretion of

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

175 the office, is subject to prior review and approval pursuant to
176 s. 627.410, and the period for review and approval established
177 under s. 627.410(2) begins to run on the date the office
178 notifies the insurer of the discovery of the noncompliant form.
179 (3) A Notice of Change in Policy Terms form required under
180 s. 627.43141(2) shall be filed as a part of the informational
181 filing for a renewal policy that contains a change. If a renewal
182 policy that was certified requires such form, the insurer must
183 provide a sample copy of the form to the named insured's agent
184 before or upon providing the form to the named insured.
185 (4) This section does not preclude an insurer from electing
186 to file any form for approval under s. 627.410 that would
187 otherwise be exempt under this section.
188 (5) The provisions of this section supersede and replace
189 the existing order issued by the office exempting specified
190 property and casualty forms from the requirements of s. 627.410.
191 Section 4. 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:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

March 20, 2013

The Honorable Aaron Bean
530 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Bean:

Senate Bill 468 relating to Property and Casualty Insurance Rates and Forms has been referred to the Health Policy Committee. I am requesting your consideration on placing SB 468 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: Sandra Stovall, Staff Director of the Health Policy Committee
Celia Georgiades, Administrative Assistant of the Health Policy Committee

REPLY TO:
209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

FLORIDA SENATE
MAR 20 2013
Health Policy Committee

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-2013
Meeting Date

Topic: Pharmacy + Pharmacist Liability Coverage

Bill Number: 468 *(if applicable)*

Name: Lori Weems

Amendment Barcode: _____ *(if applicable)*

Job Title: General Counsel

Address: 216 S. Monroe St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850-668-5379

E-mail: lori@pwlobby.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: Florida Pharmacy Ass'n

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)

Meeting Date

Topic: Insurance

Bill Number: 468 (if applicable)

Name: ED Zebeosky

Amendment Barcode: 936032 (if applicable)

Job Title: Attorney

728820
392338

Address: Street

Phone:

City State Zip

E-mail:

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

Representing: FJA

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)

4/2/13
Meeting Date

Topic: Med Mal Insurance

Bill Number: 468 (if applicable)

Name: Adam Giery (Gear-e)

Amendment Barcode: (if applicable)

Job Title: Dir of Policy

Address: 136 Sth Bronough
Street

City State Zip

Phone:

E-mail:

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

Representing: FL Chamber of Commerce

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)

4/2/2013
Meeting Date

Topic _____

Bill Number 468 *(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)

Meeting Date: _____

Topic: Insurance

Bill Number: 468

Name: Edmond Zebersky

Amendment Barcode (if applicable): Flores + Sobel Amendment.

Job Title: Attorney

Address: _____ (Street)

FT Lauderdale FL (City, State, Zip)

Phone: _____

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)

Durell Peaden, M.D., Chair

Rose M. Naff, CEO

April 2, 2013

Brief History

- Speaker Rubio's 100 Great Ideas for Florida
- 2008 created 408.910 F.S.
- 2010 CEO hired
- 2011 technical revisions to 408.910 F.S.
- 2011 Agent and Vendor steering committees
- 2011 Small group pilot design
- 2012 Third Party Administrator selected, development begins
- 2012 Agent registration, Vendor on-boarding
- 2013 Go Live decision April 26?

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- Agent “home” office
- New distribution method for Florida insurers

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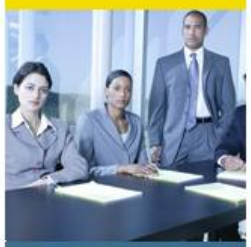

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12:40 PM
1/7/2013

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 Appropriations

BILL: SPB 7144

INTRODUCER: For Consideration by Committee on Health Policy

SUBJECT: Health Choice Plus Program

DATE: April 2, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Submitted as Committee Bill**
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7144 creates a new health care services program, the Health Choice Plus (HCP) program within the Florida Health Choices Corporation (Corporation). The Corporation will phase-in the HCP program and be responsible for its on-going oversight, including the delivery of services, management of contracts and collection of enrollee or employer contributions.

The HCP is created as an alternative health benefits program for uninsured, low income Floridians with incomes at or below 100 percent of the federal poverty level meeting other designated eligibility criteria. Enrollees and the state will jointly fund health benefits accounts, to the extent funds are appropriated annually in the General Appropriations Act, that are managed by the corporation. Enrollees may utilize funds in those accounts to purchase a range of health care products from the corporation's marketplace or to offset other out of pocket health care costs. At a minimum, enrollees must contribute $20 per month and the state will contribute no more than $10 per month. These amounts may be adjusted annually in the General Appropriations Act.

Continued enrollment in HCP is contingent upon several factors, including but not limited to, an enrollee health assessment within the first 3 months of enrollment, continued payment of the monthly contribution requirement, and the enrollee's employment or full-time school enrollment. Exceptions to full-time employment may be made for an enrollee's medical condition or where the enrollee is the primary caregiver for a relative with a chronic medical condition that requires at least 40 hours of care per week. Supplemental payments may also be deposited to an enrollee's health benefits account for successful achievement of optional healthy living goals, subject to a specific appropriation for this purpose. Enrollment in the program must cease once full and is based upon the availability of funds.

The program is subject to automatic repeal on July 1, 2016, unless re-enacted by the Legislature.

SPB 7144 has a significant state fiscal impact of an estimated $15,275,000 for state fiscal year 2013-2014.

The bill is effective July 1, 2013.

The bill amends s. 408.910, F.S. and creates s. 408.9105, F.S.

II. Present Situation:

Florida provides health insurance coverage options to low income Floridians through a variety of programs utilizing state and federal funds. As of February 28, 2013, more than 3.2 million individuals received coverage through some Medicaid eligibility category.[1] Enrollment in the Florida Kidcare program (non-Medicaid funded components) for the same time period was an additional 256,721 children.[2]

Florida's Medicaid program is expected to expend $21 billion for the state fiscal year 2012-2013, to provide coverage to its enrollees making it fifth largest in the nation for expenditures.[3] The Medicaid program is jointly funded between the state and federal governments; 52.73 percent of the costs for health care services are paid by federal funds and 42.27 percent is state share in the current fiscal year. Funding for the Florida Kidcare program's Title XXI components has an enhanced federal match of 70.66 percent for federal fiscal year 2012-13.[4]

According to the most recent data from the American Community Survey (ACS) of the federal Census Bureau, an estimated 4 million Floridians are uninsured.[5] Of that number according to the ACS data, 594,000 are children.[6] Dividing Florida's uninsured by income level, more than 1.6 million adults are under 139 percent of the federal poverty level (FPL) according to statistics for 2010-2011.[7] Lower income adults, those below 100 percent of the FPL, number at 1.1 million of the 1.9 million for that same time period.[8]

---

[1] Agency for Health Care Administration, *Report of Medicaid Eligibles*, http://ahca.myflorida.com/Medicaid/about/pdf/age_assistance_category_130228.pdf (last visited Mar. 17, 2013).
[2] Agency for Health Care Administration, *Florida KidCare Enrollment Report – February 2013*, (copy on file with the Senate Health Policy Committee).
[3] Agency for Health Care Administration, Presentation to House Health and Human Services Committee, *Florida Medicaid: An Overview - December 5, 2012*, http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2714&Session=2013&DocumentType=Meeting Packets&FileName=HHSC_Mtg_ 12-5-12_ONLINE.pdf (last visited Mar. 17, 2013).
[4] Florida KidCare Coordinating Council, *2013 Annual Report and Recommendations*, p. 5, (January 2013), http://www.floridakidcare.org/council/reports/2013_KCC_Report.pdf (last visited Mar. 17, 2013).
[5] Office of Economic and Demographic Research, Florida Legislature, *Economic Analysis of PPACA and Medicaid Expansion*, Presentation to Senate Select Committee on Patient Protection and Affordable Care Act (Mar. 4, 2013), http://www.floridakidcare.org/council/reports/2013_Recommendations.pdf (last visited Mar. 17, 2013).
[6] Id.
[7] Kaiser Family Foundation, statehealthfacts.org, *Health Insurance Coverage of the Non-Elderly (0-64) with Incomes up to 139% of FPL (2010-2011)*, http://www.statehealthfacts.org/profileind.jsp?ind=849&cat=3&rgn=11&cmprgn=1 (last visited Mar. 17, 2013).
[8] Id.

Eligibility for the Medicaid program is based on a number of factors, including age, household or individual income, and assets. The Department of Children and Families (DCF) determines eligibility for the Medicaid program but the Agency for Health Care Administration (AHCA) is the single state Medicaid agency under s. 409.963, F.S., and has the lead responsibility for the overall program.[9]

Recipients in the Medicaid program receive their benefits through several different delivery systems depending on their individual situation. Delivery systems currently include fee for service providers, prepaid dental plans, provider service networks, and Medicaid managed care plans. In July 2006, the AHCA implemented the Medicaid Managed Care Pilot Program as directed by the 2005 Legislature through s. 409.91211, F.S. The pilot program operates under an 1115 Research and Demonstration Waiver approved by the Centers for Medicare and Medicaid Services (CMS). The pilot program was initially authorized for Broward and Duval counties with expansion to Baker, Clay and Nassau the following year.

Under the current pilot program, most Medicaid recipients in the five pilot counties (Broward, Duval, Baker, Clay and Nassau counties) are required to receive their benefits through either health maintenance organizations (HMOs), provider service networks (PSNs) or a specialty plan. In addition to the minimum benefits package, plans may provide enhanced services such as over the counter benefits, preventive dental care for adults, and health and wellness benefits.

Medicaid Statewide Managed Medical Care Program

In 2011, the Legislature passed HB 7107, creating the Statewide Medicaid Managed Care (SMMC) Program as ch. 409, part IV, F.S. The SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits, for the delivery of primary and acute care as well as long-term care services. The SMMC has two components: the Long Term Care Managed Care program and the Managed Medical Assistance (MMA) program.

The AHCA has primary responsibility for the management and operations of the state's Medicaid program. To implement these two programs and receive federal Medicaid funding, the AHCA was required to seek federal authorization through two different Medicaid waivers from CMS. The first component authorized was the LTC Managed Care Program's 1915(b) and (c) waiver. Approval was granted on February 1, 2013.

The LTC Managed Care Program will serve Medicaid-eligible recipients who are also determined to require a nursing facility level of care. Medicaid recipients who qualify will receive all of their long-term care services from the long term care managed care plan.

Implementation of the LTC Managed Care Program started July 1, 2012, with completion expected by October 1, 2013. The AHCA released an Invitation to Negotiate (ITN) on June 29,

[9] Agency for Health Care Administration, *Welcome to Medicaid!*, http://ahca.myflorida.com/Medicaid/index.shtml (last visited Mar. 17, 2013).

2012, and on January 15, 2013, notices of contract awards to managed care plans under that ITN were announced.

For the medical assistance component, the AHCA sought to modify the existing Medicaid Reform 1115 Demonstration waiver with the CMS to expand the program statewide. The AHCA initiated the SMMC project in January 2012 and released a separate ITN to competitively procure managed care plans on a statewide basis on December 28, 2012. Bids were due to the AHCA on March 29, 2013, and awards are expected to be announced on September 16, 2013.

Plans can supplement the minimum benefits in their bids and offer enhanced options. The number of plans to be selected by region is prescribed under s. 409.974, F.S. Specialty plans that serve specific, targeted populations based on age, medical condition and diagnosis are also included under the SMMC program. Under s. 409.967, F.S., accountability provisions for the managed care plans specify several conditions or requirements including emergency care and physician reimbursement standards, access and credentialing requirements, encounter data submission guidelines, grievance and resolutions, and medical loss ratio calculations.

Statewide implementation of SMMC is expected to be completed by October 1, 2014. Final approval of the necessary Medicaid waiver by the federal government has not yet been received; however, on February 20, 2013, the AHCA and the CMS reached an "Agreement in Principle" on the proposed plan.

Under SMMC, all persons meeting applicable eligibility requirements of Title XIX of the Social Security Act must be enrolled in a managed care plan. Medicaid recipients who (a) have other creditable care coverage, excluding Medicare, (b) reside in residential commitment facilities operated through the Department of Juvenile Justice, group care facilities operated by the DCF, and treatment facilities funded through DCF Substance Abuse and Mental Health Program; (c) are eligible for refugee assistance; or (d) residents of a developmental disability center, may voluntarily enroll in the SMMC program. If they elect not to enroll, they will be served through the Medicaid fee for service system.

Cover Florida and Florida Health Choices

In 2008, the Florida Legislature created two programs simultaneously to address the issue of Florida's uninsured: Cover Florida Health Access Program and the Florida Health Choices Program.[10] The two programs offered two unique methods of addressing Florida's uninsured population.

Cover Florida Health Access Program

Cover Florida is designed to provide affordable health care options for uninsured residents between the ages of 19 and 64 and who met other criteria under s. 408.9091, F.S. The AHCA and the Office of Insurance Regulation (OIR) have joint responsibility for the program and were directed to issue an Invitation to Negotiate (ITN) to secure plans for the delivery of services by

[10] *See* Chapter Law 2008-32.

July 1 2008. An ITN was released July 2, 2008, and as a result of that ITN, 2-year contracts were executed with two statewide plans and four regional plans.11

The Cover Florida plans are not subject to the Florida Insurance Code and chapter 641, relating to HMOs. Two plan options were required for development: plans with catastrophic coverage and plans without catastrophic coverage. Plans without catastrophic coverage were required to include other benefit options such as:[12]

- Incentives for routine preventive care;
- Office visits for diagnosis and treatment of illness or injury;
- Behavioral health services;
- Durable medical equipment and prosthetics; and,
- Diabetic supplies.

Plans that did include catastrophic coverage were to include all of the benefits above, plus have options for these additional benefits:[13]

- Inpatient hospital stays;
- Hospital emergency care services;
- Urgent care services; and,
- Outpatient facility services, outpatient surgery, and outpatient diagnostic services.

All plans are guarantee issue policies and are required to include prescription drug benefits. Plans could also require limits on services and cap benefits and copayments.

To be eligible, the enrollee must be:

- Resident of Florida;
- Ages 19 to 64;
- Not covered by private insurance or eligible for public insurance, unless eligibility for coverage lapses due to no longer meeting income or categorical requirements; and,
- Uninsured for at least the prior 6 months, with exceptions for persons who lose coverage within the past 6 months under certain conditions.

As of December 17, 2010, no insurers or HMOs offered any new policies under Cover Florida.[14] The six insurers selected by the state in 2009 to participate in Cover Florida ceased enrollment in

[11] Agency for Health Care Administration, *Cover Florida Health Care Access Program Annual Report (March 2013), p. 1,* *http://ahca.myflorida.com/MCHQ/Managed_Health_Care/CHMO/docs/CoverFLReport-Mar2013.pdf* (last visited Mar. 22, 2013).
[12] *See* s. 409.9091(4)(6)(a).
[13] *See* s. 409.9091(4)(a)(7).
[14] Department of Financial Services, *Cover Florida Health Care Access Program Defined*, http://www.myfloridacfo.com/consumers/insurancelibrary/insurance/l_and_h/cover_florida/cover_florida_-_defined.htm (last visited Mar. 22, 2013).

2011 due to lack of participation by both insurers and participants.[15] Currently, 1,997 enrollees participate in two plans and both plans will terminate those policies in 2014.[16]

Florida Health Choices Program

The Florida Health Choices Program (Program) is created as a private, non-profit, corporation under s. 408.917, F.S., and is led by a 15-member board of directors. The Program is designed as a single, centralized marketplace for the purchase of health products including, but not limited to, health insurance plans, HMO plans, prepaid services, services contracts, and flexible spending accounts. Policies sold as part of the program are exempt from regulation under the Insurance Code and laws governing HMOs. The following entities are authorized to be eligible vendors under the Program:

- Insurers authorized under ch. 624, F.S.;
- HMOs authorized under ch. 641, F.S.;
- Prepaid health clinics licensed under ch. 641, part II, F.S.;
- Health care providers, including hospitals and other licensed health facilities, health care clinics, pharmacies, and other licensed health care providers;
- Provider organizations, including service networks, group practices, and professional associations; and,
- Corporate entities providing specific health services.

The Program is authorized to collect premiums and other payments from employers. The law further specifies who may participate as either an employer or an individual. Employers eligible to enroll include:[17]

- Employers that meet criteria established by the corporation and elect to make their employees eligible;
- Fiscally constrained counties described in s. 218.67, F.S.;
- Municipalities having populations of fewer than 50,000 residents;
- School districts in fiscally constrained counties; or,
- Statutory rural hospitals.

Individuals eligible to participate include:[18]

- Individual employees of enrolled employers;
- State employees not eligible for state employee health benefits;
- State retirees; or,
- Medicaid participants who opt out.

For phase one of Florida Health Choices' launch in 2013, the Marketplace will serve small businesses with 2 to 50 employees.[19] The initial list of vendors will include plans from Florida

[15] South Florida Business Journal, Brian Bandell, http://www.bizjournals.com/southflorida/print-edition/2011/03/25/cover-florida-health-plan-program.html?s=print, Mar. 25, 2011, (last visited Mar. 22, 2013).
[16] *Supra* note 11, at 2.
[17] *See* s. 408.910(4)(a), F.S.
[18] *See* s. 408.910(4)(b), F.S.

Blue, Florida Health Care Plans, Argus Dental and Liberty Dental.[20] The pilot will last 6 months and then the Program will evaluate adding other services.[21]

Patient Protection and Affordable Care Act (PPACA)

In March 2010, the Congress passed and the President signed the PPACA.[22] Under the PPACA, one of the key components required the states to expand Medicaid to a minimum national eligibility threshold of 133 percent of the FPL or as it is sometimes expressed 138 percent of the FPL with the automatic 5 percent income disregard applied, effective January 1, 2014.[23] While the funding for the newly eligible under this expansion would be initially funded at 100 percent federal funds for the first 3 calendar years, the states would gradually be required to pay a share of the costs, starting at 5 percent in calendar year 2017 before leveling off at 10 percent in 2020.[24] States that refused to expand to the new national eligibility threshold faced the loss of *all* of their federal Medicaid funding.[25]

Florida, along with 25 other states challenged the constitutionality of the law. In *NFIB v. Sebelius*, the Supreme Court found the enforcement provisions of the Medicaid expansion unconstitutional.[26] As a result, states could voluntarily expand their Medicaid populations to 133 percent of the FPL and receive the enhanced federal match, but could not be required to do so for the population defined as newly eligible in the law, which was interpreted to be only the adult population (childless adults aged 19 - 64).[27] States were unable to receive the enhanced federal matching fund for partial Medicaid expansions.[28]

While finding the adult expansion of Medicaid optional, subsequent federal guidance has also emphasized state flexibility in how states expand coverage to those defined as the newly eligible population. In a letter to the National Governors Association January 14, 2013, Health and Human Services Secretary Sebelius reminded states of their ability to design flexible benefit packages without the need for waivers and the alternative benefit plans available.[29] This letter had been preceded by the Frequently Asked Questions document on Exchange, Market Reforms

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[19] Florida Health Choices, *2012 Annual Report*, p. 4, http://myfloridachoices.org/wp-content/uploads/2011/03/FHC-AnnualReport-2012_v4a.pdf (last visited Mar. 22, 2013).
[20] Florida Health Choices, *Florida Health Choices Announces Initial Offerings*, (Feb. 22. 2013) http://myfloridachoices.org/florida-health-choices-announces-initial-offerings/ (last visited Mar. 25, 2013).
[21] *Supra* Note 19 at 3.
[22] Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).
[23] 42 U.S.C. s. 1396a(10).
[24] 42 U.S.C. s. 1396d(y)(1).
[25] 42 U.S.C. s. a1396c
[26] *See supra* note 1.
[27] Department of Health and Human Services, *Secretary Sebelius Letter to Governors, July 10, 2012*, http://capsules.kaiserhealthnews.org/wp-content/uploads/2012/07/Secretary-Sebelius-Letter-to-the-Governors-071012.pdf (last visited Mar. 16, 2013).
[28] Centers for Medicare and Medicaid Services, *Frequently Asked Questions on Exchanges, Market Reforms and Medicaid (December 10, 2012)*, p.12, http://medicaid.gov/State-Resource-Center/Frequently-Asked-Questions/Downloads/Governor-FAQs-12-10-12.pdf (last visited April 1, 2013).
[29] *Letter to National Governor's Association from Secretary Sebelius*, January 14, 2013 (copy on file with Senate Health Policy Committee).

and Medicaid on December 10, 2012, that discussed promotion of personal responsibility wellness benefits and state flexibility to design benefits.[30]

A State Medicaid Director Letter on November 20, 2012 (ACA #21), further addressed state options for the adult Medicaid expansion group and the alternative benefit plans available under Section 1937 of the Social Security Act.[31] Under Section 1937, state Medicaid program have the option of providing certain groups with benchmark or benchmark equivalent coverage based on four products: (1) the standard Blue Cross/Blue Shield Preferred Provider option offered to federal employees; (2) state employee coverage that is generally offered to all state employees; (3) the commercial HMO with the largest insured, non-Medicaid enrollment in the state or (4) Secretary approved coverage.[32] For children under the age of 21, the coverage must include the Early and Periodic Screening, Diagnostic and Treatment Service (EPSDT). Other aspects of the essential health benefit requirements of the PPACA, as discussed further below, may also be applicable, depending on the benefit package utilized.

In addition to the Medicaid expansion component, the federal reform law imposes a mandate on individuals to buy insurance, or pay a penalty. Currently, many uninsured individuals are eligible for Medicaid or Kidcare coverage, but are not enrolled. The existence of the federal mandate to purchase insurance will result in many eligibles coming forward and enrolling in Medicaid who had not previously chosen to do so. While these eligibles are currently entitled to Medicaid coverage, their participation will result in increased costs and would not likely have occurred without the catalyst of the federal legislation.

To obtain insurance coverage, the PPACA authorized the state-based American Health Benefit Exchanges and Small Business Health Options Program (SHOP) Exchanges. These exchanges are to be administered by governmental agencies or non-profit organizations and be ready to accept applications for coverage beginning October 1, 2013, for January 1, 2014, coverage dates. The exchanges, at a minimum, must:[33]

- Certify, re-certify and de-certify plans participating on the exchange;
- Operate a toll-free hotline;
- Maintain a website;
- Provide plan information and plan benefit options;
- Interact with the state's Medicaid and CHIP programs and provide information on eligibility and determination of eligibility for these programs;
- Certify individuals who gain exemptions from the individual responsibility requirement; and,
- Establish a navigator program.

The initial guidance from the Department of Health and Human Services in November 2010 set forward a number of principles and priorities for the exchanges. Further guidance was issued on

[30] *See Supra* note 28, at 15-16.
[31] Centers for Medicare and Medicaid Services, *State Medicaid Director Letter: Essential Health Benefits in the Medicaid Program* (November 20, 2012), http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SMD-12-003.pdf (last visited Mar. 17, 2013).
[32] *See supra* note 31, at 2.
[33] Centers for Medicare and Medicaid Services, Initial Guidance to States on Exchanges, November 18, 2010, http://cciio.cms.gov/resources/files/guidance_to_states_on_exchanges.html (last visited Mar. 16, 2013).

May 16, 2012, detailing the proposed operations of the federally facilitated exchanges for those states that elected not to implement a state-based, separate system. On November 16, 2012, Florida Governor Rick Scott notified the Health and Human Services Secretary, Kathleen Sebelius, that Florida had too many unanswered questions to commit to a state-based exchange under PPACA for the first enrollment period on January 1, 2014.[34]

The PPACA also includes a tax penalty for those individuals that do not have qualifying health insurance coverage beginning January 1, 2014. The penalty is the greater of $695 per year up to a maximum of three times that amount per family or 2.5 percent of household income. The penalty, however, is phased in and exemptions may be granted for financial hardships such as those that may have been eligible under a Medicaid expansion in states that did not opt in, religious objections, American Indians and undocumented immigrants, incarcerated individuals, and lack of access to affordable coverage.[35] Qualifying coverage may be obtained through an employer, the federal or state exchanges created under the PPACA or private individual or group coverage meeting the minimum essential benefits coverage standard.

Employers with more than 50 full-time employees also share a financial responsibility under the PPACA. Employers with more than 50 full-time employees that do not offer coverage meeting the essential benefits coverage standard and who have at least one employee receive a premium tax credit will be assessed a fee of $2,000 per full-time employee, after the 30th employee.[36] If an employer does offer coverage and an employee receives a premium tax credit, the employer is assessed the lesser of $3,000 per employee receiving the credit or $2,000 per each employee after the 30th employee.[37]

Premium credits and other cost sharing subsidies are available to United States citizens and legal immigrants within certain income limits for coverage purchased through the exchanges. Legal immigrants with incomes at or below 100 percent of the FPL who are not eligible for Medicaid during their first 5 years are eligible for premium credits.[38] Premium credits are set on a sliding scale based on the percent of the FPL for the household and reduce the out of pocket costs incurred by individuals and families.

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[34] *Letter from Governor Rick Scott to Health and Human Services Secretary Kathleen Sebelius,* November 16, 2012 http://www.flgov.com/2012/11/16/letter-from-governor-rick-scott-to-u-s-secretary-of-health-and-human-services-kathleen-sebelius/ (last visited Mar. 16, 2013).
[35] 26 U.S.C. s. 36(B)(c).
[36] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[37] Kaiser Family Foundation, *Summary of New Health Reform Law,* Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[38] 26 U.S.C. s. 36B(c).

The amount for premium tax credits, as a percentage of income, are set in section 36B of the Internal Revenue Code follows[39]:

Premium Tax Credits	
Income Range	**Premium Percentage Range** (% of income)
Up to 133% FPL	2%
133% to 150%	3% - 4%
150% to 200%	4% - 6.3%
200% to 250%	6.3% - 8.05%
250% to 300%	8.05% - 9.5
300% to 400%	9.5%

Subsidies for cost sharing are also applicable for those between 100 percent of the FPL and 400 percent of the FPL.[40] For 2013, 100 percent of the FPL equates to the following by family size:[41]

2013 Federal Poverty Guidelines – 100% FPL	
Family Size	Maximum Annual Income
1	$11,490
2	$15,510
3	$19,530
4	$23,550

The cost sharing credits reduce the out of pocket amounts incurred by individuals on essential health benefits and will also impact the actuarial value of a health plan. Actuarial value reflects the average share of covered benefits paid by the insurer or health plan. For example, if the actuarial value of a plan is 90 percent, the health plan is paying 90 percent of the costs and the enrollee 10 percent. Under the PPACA, the maximum amount of cost sharing under this component range from 94 percent for those between 100 percent of the FPL to 150 percent FPL to 70 percent for those between 250 percent of the FPL and 400 percent of the FPL.

Select Committee on Patient Protection and Affordable Care Act

In December 2012, Florida Senate President Don Gaetz formed the Select Committee on PPACA to launch a comprehensive assessment on the impact of the law on Florida, evaluate the state's options under the law, and to make recommendations to the full Senate membership on any actions necessary to mitigate cost increases, preserve a competitive insurance market, and protect Florida's consumers.[42] The Select Committee received public testimony, expert presentations

[39] 26 U.S.C. s. 36B(c).
[40] Kaiser Family Foundation, *Summary of New Health Reform Law*, Last Modified April 15, 2011, http://www.kff.org/healthreform/upload/8061.pdf (last viewed Mar. 16, 2013).
[41] *See* Annual Update of the HHS Poverty Guidelines, 78 Fed. Reg. 5182, 5183 (January 24, 2013) https://www.federalregister.gov/articles/2013/01/24/2013-01422/annual-update-of-the-hhs-poverty-guidelines#t-1 (last visited Mar. 29, 2013).
[42] *See* Florida Senate, *Patient Protection and Affordable Care Act*, http://www.flsenate.gov/topics/ppaca (last visited: April 1, 2013).

and staff reports over nine meetings before it developed three specific recommendations relating to the development of a health care exchange, coverage for certain state employees and the expansion of Medicaid. On Medicaid, the Select Committee voted 7-4 to recommend to the full Senate to not expand Medicaid under the current state plan or pending waivers.[43] Following that vote, two alternative proposals for coverage of the population under 138 percent of the FPL that utilize the private insurance market were put forward for further discussion and debate.[44]

III. Effect of Proposed Changes:

Section 1 revises the legislative intent for the Florida Health Choices program to recognize the Health Choice Plus Program (HCP).

Section 2 creates s. 408.9105, F.S., and a new program called Health Choice Plus (HCP). The HCP program is managed by the Florida Health Choices Corporation (Corporation) under its existing infrastructure and governance and provides a benefit program to uninsured Floridians under 100 percent of the FPL. The bill establishes health benefit accounts for enrollees with financial contributions from the enrollee, the state, subject to available appropriations, and other sources such as the enrollee's employer; and provides a marketplace for enrollees to purchase health care goods and services utilizing funds from the health benefits account. Examples of products that may be purchased include, but are not limited to, discount medical plans, limited benefit plans, health flex plans, individual health insurance plans, bundled services or other prepaid health care coverage.

Under SPB 7144, definitions and their application to HCP are provided for the following:

- CHIP;
- Corporation;
- Corporation's marketplace;
- Enrollee;
- Program;
- Vendor;
- Health benefits account;
- Lawful permanent resident;
- Parent or caretaker relative;
- Goods and services; and,
- Patient Protection and Affordable Care Act.

The bill provides specific criteria for initial eligibility for HCP and conditions for continued enrollment. To be eligible, SPB 7144 requires that the individual meet the following conditions:

- Be a resident of Florida;
- Be between the ages of 19 and 64;

[43] Florida Senate Select Committee on Patient Protection and Affordable Care Act, *Letter to Senate President Don Gaetz on Medicaid Recommendation* http://www.flsenate.gov/usercontent/topics/ppaca/03-12-13MedicaidRecommendation.pdf (last visited: April 1, 2013).
[44] Id.

- Have a modified adjusted gross income of less than 100 percent of the FPL based on the individual's last tax return or other documentation;
- Be a United States citizen or a lawful permanent resident;
- Not be eligible for Medicaid;
- Not be eligible for employer sponsored coverage (with some exceptions); and,
- Meet on-going criteria based on whether or not the enrollee meets the definition of a childless adult or parent/relative caretaker.

SPB 7144 requires HCP to establish guidelines for financial participation by enrollees. At a minimum, an enrollee is required to contribute $20 per month towards his or her health benefit account. The enrollee contribution amount may be adjusted annually through the General Appropriations Act. The amount paid into the account by the state will be determined by the corporation based on the availability of state, local or federal funding. SPB 7144 provides that it may not exceed $10 per enrollee per month; however, this amount may be adjusted annually in the General Appropriations Act. HCP is also directed to implement an employer based contribution option. An employer may contribute towards an employee's health benefits account, including making the entire payment amount, at any time.

The bill directs HCP to develop and maintain an education and public outreach campaign and to provide a secure website that provides information and facilitates the purchase of goods and services. Information must also be provided about other insurance affordability programs.

To enroll in HCP, the bill provides that HCP must hold at least one open enrollment period per year, subject to available funding. Eligibility must be determined utilizing electronic means to the fullest extent possible. Once the program is full, enrollment will cease. Under subsection (3) of s. 408.9105, F.S., enrollment may occur through the Florida Health Choices portal, a referral from the DCF, the Florida Healthy Kids Corporation, or the exchange, as defined under the PPACA.

Once eligibility is confirmed, the bill directs the corporation to determine the amount of funds that will be deposited into each enrollee's account based upon the availability of funds and other factors. Enrollees must make a financial contribution to their health benefits account in order to maintain enrollment and the corporation is required to establish disenrollment criteria for non-payment of those minimum contributions. A maximum waiting period of 1 month prior to reinstatement to HCP for non-payment of any required payment may be imposed.

SPB 7144 requires the establishment of an optional incentives program for the achievement of healthy living goals. The program will establish annual healthy living goals, as provided under section (8)(b), and provide supplemental payments into an enrollee's health benefits account for meeting those goals, subject to the availability of funds.

The Corporation must establish the goals each fiscal year and publish the goals, procedures and timeframes for the achievement of those optional goals by July 1 and distribute to new enrollees within 30 calendar days after enrollment. The bill directs HCP to publish goals for the 2014 calendar year by October 1, 2013. Bonus funds may accumulate in an enrollee's account until program termination.

SPB 7144 provides that continued enrollment in HCP and receipt of state contributions on the enrollee's behalf is contingent upon the enrollee obtaining a health assessment from a county health department, federally qualified health center or other approved health care provider within the first 3 months of enrollment, making the required financial contribution, and meeting the categorical eligibility requirements.

The following additional criteria apply based on the enrollee's category of eligibility:

Criteria	**Childless Adult**	**Parent\Relative Caretaker**
Any dependent child in the household must be enrolled in Medicaid or CHIP, if eligible		X
Proof of 20 hours of employment or effort to seek employment; or, in lieu of employment volunteer hours at school or non-profit or enrollment as full-time student	X Volunteer hours - 20	X Volunteer hours – 10
Health Assessment in first 3 months	X	X
One preventive visit in first 6 months, repeat every 18 months thereafter	X	X

Failure to meet the ongoing eligibility criteria will result in the enrollee's disenrollment. One 30 day extension may be granted by HCP to comply. If disenrolled, the enrollee may not re-apply for coverage until the next open enrollment period or 90 days, whichever occurs later.

Subsection (5)(d) encourages the marketplace to utilize existing community programs and partnerships to deliver services, including but not limited to rural health clinics, federally qualified health centers, county health departments, emergency room diversion programs and community mental health centers. Any health care entity that receives state funding is required to participate in HCP and to offer services or products through the marketplace or directly to enrollees, as appropriate. Providers may charge nominal copayments for these services. The Corporation may establish the amount of allowable copayments when applicable.

Funds deposited into an enrollee's health benefits account may be used by the enrollee to offset health care costs or to purchase other health care services offered in the marketplace. Except for supplemental funds deposited under subsection (5)(c), funds deposited in an enrollee's account belong to the enrollee and are available for health care related expenditures. The bill provides under subsection (8)(c) that the optional bonus payments will be paid into the enrollee's account at the end of the quarter in which the goal was completed.

SPB 7144 requires the corporation to establish a refund process for enrollees who request the closure of their health benefits accounts and the return of any unspent individual contributions. Enrollees may only be refunded any funds that the enrollee or employer has contributed to their health benefits account. All other state funds revert to the corporation.

Under subsection (6), HCP is authorized to accept funds from employers to deposit into their employees' health benefits accounts, when not in conflict with any other provisions of this

act. The corporation is also permitted to accept state and federal funds or to seek other grants to help administer HCP. An assessment on vendors may be utilized to fund administration.

SPB 7144 specifically excludes the HCP from the Florida Insurance Code and affirms that coverage under HCP is not insurance. The bill under subsection (10), designates the coverage as a non-entitlement and affirms that a cause of action does not arise against the state, a local governmental entity, any other political subdivision of the state or the corporation or its board of directors, for failure to make coverage available to eligible persons or for the discontinuation of any coverage under HCP.

The bill requires the corporation to include information about the program into its regular annual report. A separate evaluation of HCP is also required under subsection (11) and is due to the Governor and Legislature by January 1, 2016.

A program sunset clause is provided in subsection (12) repealing the program effective July 1, 2016 unless saved from repeal through re-enactment by the Legislature.

Section 3 provides an effective date of July 1, 2013.

Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill contemplates the corporation contracting with private providers of health care services and products to deliver health care benefits to an additional population of currently uninsured individuals who may or may not be seeking health care services now. Physicians, hospitals and other health care providers may be impacted by additional individuals seeking out health care coverage and there may be a higher demand for such services once implemented.

Additionally, those safety net and other providers who serve this same population and are not receiving compensation or are receiving reduced compensation for those services from those individuals may have an additional avenue for revenue.

C. Government Sector Impact:

The bill requires enrollees to receive certain health assessments from county health departments, federally qualified health centers and other approved health care providers within the first 3 months of enrollment as a condition of continued enrollment. For those county health departments with primary care services, there could be an increased demand for their services as individuals seek to comply with this requirement.

In addition to the increased demand for services, the program includes state contributions to the health benefit accounts on a monthly basis and incentives for achievement on optional healthy living performance goals based on an initial enrollment of 60,000 members for 12 months. No federal funds are expected for this program.

The following is the estimated state fiscal impact for 60,000 members over 12 months:

		PMPM Enrollee	**PMPM State**	**Annual State PMPM**	**TOTAL**
Health Benefits Account Funds		$20.00	$10.00	$120.00	$7,200,000
Incentives $25 Each Healthy Living Goal					
100% Achieve 2	$3,000,000				$3,000,000
25% Achieve 3	$1,125,000				$1,125,000
5% Achieve 4	$300,000				$300,000
2% Achieve 5	$150,000				$150,000
Administration (FHC)	$1,500,000				$1,500,000
Direct Services (Community and safety net provider supplement for HBAs)	$2,000,000				$2,000,000
Grand Total:					$15,275,000

V. Technical Deficiencies:

None.

VI. Related Issues:

The Florida Health Choices Corporation will be receiving and reviewing medical records and personal health information of enrollees in the Health Choice Plus program. The exemption from public records under s. 408.910(14) F.S., only applies to the Florida Health Choices Corporation and enrollees and participants of the Florida Health Choices program. An exemption for the Health Choice Plus program would be appropriate to ensure that medical records and personal

information of enrollees and applicants to the program would remain confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. 1 of the State Constitution.

VII. 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.

364114

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/02/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2 Delete lines 191 - 192.
3 Delete lines 212 - 213.
4 Delete lines 325 - 367
5 and insert:
6 Section 1. (b) The program shall post on its website, by July
7 1st of each fiscal year, a list of optional healthy living
8 performance goals and the proposed incentives for achievement of
9 each goal. The corporation shall establish a procedure for the
10 documentation of such goals, timeframes for achievement of the
11 optional goals and the payment of supplemental amounts into an
12 enrollee's health benefits account, subject to available
13 funding.

803852

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/02/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment**
2
3 Between lines 251 and 252
4 insert:
5 3. The enrollee's employer may contribute toward an
6 employee's health benefits account under the program, including
7 making the enrollee's required contribution, in whole or in
8 part, to the enrollee's health benefits account at any time.

FOR CONSIDERATION By the Committee on Health Policy

588-03162A-13 20137144__

1 A bill to be entitled
2 An act relating to the Health Choice Plus Program;
3 amending s. 408.910, F.S.; conforming provisions to
4 changes made by the act; creating s. 408.9105, F.S.;
5 creating the Health Choice Plus Program; providing
6 legislative intent; providing definitions; providing
7 eligibility requirements; providing exceptions in
8 specific situations; providing for enrollment in the
9 program; providing for disenrollment in specific
10 situations; providing for reenrollment in specific
11 situations; providing requirements and procedures for
12 use of funds in a health benefits account; authorizing
13 the Florida Health Choices, Inc., to accept funds from
14 various sources to deposit into health benefits
15 accounts, subsidize the costs of coverage, and
16 administer and support the program; requiring the
17 corporation to manage the health benefits accounts and
18 provide the marketplace of options that an enrollee in
19 the program may use; specifying healthy living
20 performance goals; providing for payment for achieving
21 health living performance goals; providing that the
22 Florida Insurance Code is not applicable to the
23 program; providing that coverage under the program is
24 not an entitlement; prohibiting a cause of action
25 against certain entities under certain circumstances;
26 requiring the corporation to submit to the Governor
27 and the Legislature information about the program in
28 its annual report and an evaluation of the
29 effectiveness of the program; providing for a program

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30 review and repeal date; providing an effective date.
31
32 Be It Enacted by the Legislature of the State of Florida:
33
34 Section 1. Subsection (1) of section 408.910, Florida
35 Statutes, is amended to read:
36 408.910 Florida Health Choices Program.—
37 (1) LEGISLATIVE INTENT.—The Legislature finds that a
38 significant number of the residents of this state do not have
39 adequate access to affordable, quality health care. The
40 Legislature further finds that increasing access to affordable,
41 quality health care can be best accomplished by establishing ~~a~~
42 competitive markets ~~market~~ for purchasing health insurance and
43 health services. It is therefore the intent of the Legislature
44 to create the Florida Health Choices Program and the Health
45 Choice Plus Program to:
46 (a) Expand opportunities for Floridians to purchase
47 affordable health insurance and health services.
48 (b) Preserve the benefits of employment-sponsored insurance
49 while easing the administrative burden for employers who offer
50 these benefits.
51 (c) Enable individual choice in both the manner and amount
52 of health care purchased.
53 (d) Provide for the purchase of individual, portable health
54 care coverage.
55 (e) Disseminate information to consumers on the price and
56 quality of health services.
57 (f) Sponsor ~~a~~ competitive markets ~~market~~ that stimulate
58 ~~stimulates~~ product innovation, quality improvement, and

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59 efficiency in the production and delivery of health services.
60 Section 2. Section 408.9105, Florida Statutes, is created
61 to read:
62 408.9105 Health Choice Plus Program.—
63 (1) LEGISLATIVE INTENT.—The Legislature recognizes that
64 there are more than 600,000 uninsured residents in this state
65 who have incomes at or below 100 percent of the federal poverty
66 level. Many insurance options are not affordable, and the
67 Legislature intends to provide a benefit program to those
68 individuals who seek assistance with coverage and who assume
69 individual responsibility for their own health care needs. It is
70 therefore the intent of the Legislature to expand the services
71 provided by the Florida Health Choices Program and begin the
72 phase-in of the Health Choice Plus Program starting July 1,
73 2013. The Health Choice Plus Program must:
74 (a) Use the existing Florida Health Choices Corporation's
75 infrastructure and governance to manage the program described in
76 this section.
77 (b) Offer goods and services to individuals who are between
78 19 to 64 years of age, inclusive.
79 (c) Establish guidelines for financial participation in the
80 program which allows for enrollees and others to contribute
81 toward a health benefits account.
82 1. An enrollee shall contribute at least $20 per month
83 toward the health benefits account. This amount may be adjusted
84 annually in the General Appropriations Act.
85 2. The level of benefit paid into an enrollee's account
86 using state funds is to be determined by the corporation based
87 upon the availability of state, local, and federal funding. The

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88 amount may not exceed $10 per individual per month. This amount
89 may be adjusted annually in the General Appropriations Act.
90 (d) Implement an employer-based contribution option.
91 (e) Develop and maintain an education and public outreach
92 campaign for the Health Choice Plus Program.
93 (f) Provide a secure website to facilitate the purchase of
94 goods and services and to provide public information about the
95 program. The website must also provide information about the
96 availability of insurance affordability programs targeted at
97 this population.
98 (g) Establish an incentive program that rewards enrollees
99 for achievements in reaching healthy living goals.
100 (2) DEFINITIONS.—For the Health Choice Plus Program, the
101 following terms are applicable:
102 (a) "CHIP" means Children's Health Insurance Program as
103 authorized under Title XXI of the Social Security Act.
104 (b) "Corporation" means Florida Health Choices, Inc., as
105 established under s. 408.910.
106 (c) "Corporation's marketplace" means the single,
107 centralized market established by the corporation which
108 facilitates the purchase of products made available in the
109 marketplace.
110 (d) "Enrollee" means an individual who participates in or
111 receives benefits under the Health Choice Plus Program.
112 (e) "Program" means the Health Choice Plus Program
113 established under this section.
114 (f) "Vendor" means an entity that meets the requirements
115 under s. 408.910(4)(d) and is accepted by the corporation.
116 (g) "Health benefits account" means the account established

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117 for an enrollee at the corporation into which funds may be
118 deposited by the state, the enrollee, other individuals, or
119 organizations for the purchase of health care goods and services
120 on the enrollee's behalf.
121 (h) "Parent" or "caretaker relative" means an individual
122 who is a relative that has primary custody or legal guardianship
123 of a dependent child and provides the primary care and
124 supervision to that dependent child in the same household. A
125 caretaker relative must be related to the dependent child by
126 blood, marriage, or adoption within the fifth degree of kinship.
127 (i) "Goods and services" means the individual products
128 offered for sale to an enrollee on the corporation's marketplace
129 or other health care-related items that may be purchased by an
130 enrollee in the private market. An enrollee may purchase these
131 products using funds accumulated in his or her health benefits
132 account.
133 (j) "Lawful permanent resident" means a non-United States
134 citizen who resides in the United States under legally
135 recognized and lawfully recorded permanent residence as an
136 immigrant. This individual may also be known as a permanent
137 resident alien.
138 (k) "Patient Protection and Affordable Care Act" or "PPACA"
139 means the federal law enacted as Pub. L. No. 111-148, as further
140 amended by the federal Health Care and Education Reconciliation
141 Act of 2010, Pub. L. No. 111-152, and any amendments.
142 (3) ELIGIBILITY.—
143 (a) To be eligible for the Health Choice Plus Program, an
144 individual must be a resident of this state and meet all of the
145 following criteria:

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146 1. Be between 19 and 64 years of age, inclusive.
147 2. Have a modified adjusted gross income that does not
148 exceed 100 percent of the federal poverty level based on the
149 individual's most recent federal tax return, or if the
150 individual did not file a tax return, the individual's most
151 recent monthly income.
152 3. Be a United States citizen or a lawful permanent
153 resident.
154 4. Not be eligible for Medicaid.
155 5. Not be eligible for employer-sponsored insurance
156 coverage. If the enrollee is eligible for employer-sponsored
157 coverage but the cost of that coverage for the enrollee's share
158 for individual coverage would exceed 5 percent of the enrollee's
159 total modified adjusted gross household income or the enrollee's
160 share of family coverage would exceed 5 percent of enrollee's
161 total modified adjusted gross household income, the enrollee is
162 not eligible for employer-sponsored coverage under this section.
163 6. Not be enrolled in other coverage that meets the
164 definition of essential benefits coverage under PPACA.
165 (b) In addition to the requirements in paragraph (a), an
166 enrollee must meet the following categorical requirements in
167 order to maintain enrollment in the program:
168 1. For an enrollee who is also a parent or a caretaker
169 relative, the enrollee must do all of the following:
170 a. Maintain enrollment in Medicaid or CHIP for any
171 dependent child in the household who is eligible for Medicaid or
172 CHIP and who must be enrolled in Medicaid or CHIP throughout the
173 enrollee's participation in the Health Choice Plus program.
174 b. Complete a health assessment within the first 3 months

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175 after enrollment at a county health department, federally
176 qualified health center, or other approved health care provider.
177 c. Schedule and keep at least one preventive visit with a
178 primary care provider within 6 months after enrollment and
179 repeat the preventive visit at least once every 18 months
180 thereafter.
181 d. Provide proof of employment for at least 20 hours a week
182 or of efforts made to seek employment. In lieu of employment,
183 the enrollee may provide proof of volunteering for at least 10
184 hours a month at a school or at a nonprofit organization or
185 enrollment as as full-time student at an accredited educational
186 institution. Exceptions to this requirement may be made on a
187 case-by-case basis for medical conditions for the enrollee or if
188 the enrollee is the primary caretaker for a family member who
189 has a chronic and severe medical condition that requires a
190 minimum of 40 hours a week of care.
191 e. Meet at least two of the healthy living performance
192 goals specified in subsection (7).
193 2. For an enrollee who is also a childless adult, the
194 enrollee must do all of the following:
195 a. Provide proof of employment for at least 20 hours a week
196 or of efforts made to seek employment. In lieu of employment,
197 the enrollee may provide proof of volunteering for at least 20
198 hours a month at a school or at a nonprofit organization or
199 enrollment as a full-time student at an accredited educational
200 institution. Exceptions to this requirement may be made on a
201 case-by-case basis for medical conditions for the enrollee or if
202 the enrollee is the primary caretaker for a family member who
203 has a chronic and severe medical condition that requires a

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204 minimum of 40 hours a week of care.
205 b. Complete a health assessment within the first 3 months
206 after enrollment at a county health department, federally
207 qualified health center, or other approved health care provider;
208 c. Schedule and keep at least one preventive visit with a
209 primary care provider within the first 6 months after enrollment
210 and repeat the preventive visit at least once every 18 months
211 thereafter.
212 d. Meet at least two of the healthy living performance
213 goals specified in subsection (7).
214
215 If the enrollee fails to meet the requirements specified in this
216 subsection, the enrollee is disenrolled from the program at the
217 end of the month in which the enrollee has not met the
218 requirements. The enrollee may receive one 30-day extension to
219 comply before cancellation of coverage. If an enrollee's
220 coverage is canceled, the enrollee may not reapply for coverage
221 until the next open enrollment period or 90 days after
222 cancellation of coverage occurs, whichever occurs later. The
223 individual's reenrollment is subject to available funding.
224 (4) ENROLLMENT.—
225 (a) Enrollment in the Health Choice Plus Program may occur
226 through the portal of the Florida Health Choices Program, a
227 referral process from the Department of Children and Families,
228 the Florida Healthy Kids Corporation, or the exchange as defined
229 by the federal Patient Protection and Affordable Care Act.
230 (b) Subject to available funding, the corporation shall
231 establish at least one open enrollment period each year. When
232 the program is full based on available funding, enrollment must

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233 cease.
234 (c) Eligibility is determined by using electronic means to
235 the fullest extent practicable before requesting any written
236 documentation from an applicant.
237 (5) HEALTH BENEFITS ACCOUNT.—
238 (a) A health benefits account is established for each
239 enrollee upon confirmation of eligibility in the program. The
240 corporation shall determine the deposit amount and frequency of
241 deposits based on the availability of funds, the number of
242 enrollees, and other factors.
243 (b) An enrollee shall make a financial contribution toward
244 his or her own health benefits account in order to maintain
245 enrollment in accordance with paragraph (1)(c).
246 1. The corporation shall establish disenrollment criteria
247 for failure to pay the required minimum contribution.
248 2. The disenrollment criteria must include waiting periods
249 of not more than 1 month before reinstatement to the program if
250 the enrollee is still eligible and has paid all required
251 financial obligations.
252 (c) Subject to appropriations available for this specific
253 purpose, the corporation shall establish a procedure for the
254 deposit of supplemental or bonus funds into an enrollee's health
255 benefits account if certain healthy living performance goals are
256 achieved. These goals must be established no later than July 1
257 in each fiscal year and distributed to all enrollees, published
258 on the corporation's website, and distributed to new enrollees
259 within 30 calendar days after enrollment. For calendar year
260 2014, the goals must be established no later than October 1,
261 2013.

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262 1. An enrollee may use funds deposited in a health benefits
263 account to offset other health care costs or to purchase other
264 products and services offered by the marketplace, subject to
265 guidelines established by the corporation and in accordance with
266 federal law.
267 2. Bonus funds may accumulate in the enrollee's health
268 benefits account for the duration of the program and must
269 automatically expire and return to the corporation upon the
270 termination of the program.
271 (d) The marketplace is encouraged to use existing community
272 programs and partnerships to deliver services and to include
273 traditional safety net providers for the delivery of services to
274 enrollees, including, but not limited to, rural health clinics,
275 federally qualified health centers, county health departments,
276 emergency room diversion programs, and community mental health
277 centers. A health care entity that receives state funding must
278 participate in the Health Choice Plus Program and offer services
279 or products through the marketplace or to enrollees, as
280 appropriate. An enrollee may be required to make nominal
281 copayments to providers for any nonpreventive services. The
282 corporation may establish the amount of the copayments when
283 applicable.
284 (e) Except for supplemental funds described under paragraph
285 (c), funds deposited in a health benefits account belong to the
286 enrollee when deposited and are available for health-care-
287 related expenditures, including, but not limited to, physician's
288 fees, hospital costs, prescriptions, insurance premium payments,
289 copayments, and coinsurance. The corporation shall establish a
290 process or contract with another entity for the management of

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291 the funds. The process must ensure the timely distribution and
292 the appropriate expenditure of the state's contributions.
293 (f) The corporation shall establish a refund process for an
294 enrollee who requests the closure of a health benefits account
295 and the return of any unspent individual contributions. The
296 enrollee may be refunded only those funds that the enrollee or
297 employer has contributed to his or her health benefits account.
298 All other state funds in the enrollee's health benefits account
299 revert to the corporation.
300 (6) FUNDING.—
301 (a) The corporation may accept funds from an employer to
302 deposit in an enrollee's health benefits account to supplement
303 funds if such a deposit is not in conflict with other provisions
304 of this section.
305 (b) The corporation may accept state and federal funds to
306 further subsidize the costs of coverage and to administer the
307 program.
308 (c) The corporation shall seek other grants and donations
309 to support the program.
310 (d) An assessment on vendors that participate in the
311 marketplace may be used to fund the administration of the
312 program.
313 (7) SERVICES.—The corporation shall manage the health
314 benefits accounts and provide a marketplace of options from
315 which an enrollee may also use his or her health benefits
316 account to purchase individual services and products, including,
317 but not limited to, discount medical plans, limited benefit
318 plans, health flex plans, individual health insurance plans,
319 bundled services, or other prepaid health care coverage.

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320 (8) HEALTHY LIVING PERFORMANCE GOALS AND PAYMENT.—
321 (a) To the extent that funds are made available for this
322 purpose, an enrollee is rewarded for achieving a healthy
323 lifestyle and using preventive health care services
324 appropriately.
325 (b) Healthy living performance goals for the program
326 include, but are not limited to:
327 1. Visiting a primary care provider for preventive care,
328 including well-woman exams.
329 2. Receiving dental preventive exams and cleanings.
330 3. Maintaining a Body Mass Index (BMI) of less than 25, or
331 if the enrollee's BMI is more than 25 on July 1 of the previous
332 year, reducing the BMI by 5 percent as measured on July 1 of the
333 following year.
334 4. Maintaining an HDL cholesterol level of no less than 40
335 mg/dL for men or 50 mg/dL for women, or if an enrollee's HDL
336 cholesterol level is less than these levels, increasing the HDL
337 cholesterol level by at least 5 points.
338 5. Maintaining an LDL cholesterol level at no more than 130
339 mg/dL, or if an enrollee's LDL is higher than this level,
340 reducing the LDL cholesterol level by at least 5 points.
341 6. Maintaining a triglyceride level at no more than 150
342 mg/dL, or if an enrollee's triglyceride level is higher than
343 this level, reducing the triglyceride level by at least 5
344 points.
345 7. For women, obtaining a mammogram, as appropriate. For
346 men, obtaining a prostate exam, as appropriate, based on
347 standards of the United States Preventive Services Task Force.
348 8. Maintaining blood pressure no higher than 140(systolic)

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349 and 90 (diastolic). Both numbers must be achieved to receive
350 credit for the goal.
351 9. Obtaining an annual flu shot.
352 10. Being up to date on adult vaccinations.
353 11. Ceasing to smoke or showing evidence of participating
354 in a formal smoking cessation program.
355 12. Demonstrating evidence of an exercise regimen,
356 including an exercise program or other formal training program.
357 13. Participating and achieving any other goals established
358 by the program.
359
360 The program shall post on its website, by July 1 of each fiscal
361 year in which a goal is deemed eligible or ineligible, any other
362 goal that an enrollee is eligible for payment or the elimination
363 of a goal. The corporation shall establish a procedure for the
364 documentation of such goals, timeframes for achievement of the
365 goals if not otherwise provided in this paragraph, and payments
366 of supplemental amounts into an enrollee's health benefits
367 account.
368 (c) Bonus payments for achieving a healthy living
369 performance goal shall be paid into an enrollee's health
370 benefits account at the end of the quarter in which the goal is
371 achieved. The amount of the payment is based upon the schedule
372 posted by the program on July 1 of that fiscal year.
373 (9) APPLICABILITY OF INSURANCE CODE.—Coverage offered under
374 this program is not insurance. Any standard forms, website
375 design, or marketing communication developed by the corporation
376 and used by the corporation or any vendor that meets the
377 requirements of s. 408.910(4)(f) is not subject to the Florida

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378 Insurance Code.
379 (10) LIABILITY.—Coverage under the Health Choice Plus
380 Program is not an entitlement, and a cause of action does not
381 arise against the state, a local governmental entity, any other
382 political subdivision of the state, or the corporation or its
383 board of directors for failure to make coverage under this
384 section available to an eligible person or for discontinuation
385 of any coverage.
386 (11) PROGRAM EVALUATION.—The corporation shall include
387 information about the Health Choice Plus Program in its annual
388 report under s. 408.910. The corporation shall complete and
389 submit by January 1, 2016, a separate independent evaluation of
390 the effectiveness of the Health Choice Plus Program to the
391 Governor, the President of the Senate, and the Speaker of the
392 House of Representatives.
393 (12) PROGRAM REVIEW.—The Health Choice Plus Program is
394 subject to repeal on July 1, 2016, unless reviewed and saved
395 from repeal through reenactment by the Legislature.
396 Section 3. 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)

4/2/2013
Meeting Date

Topic _____

Bill Number 7144 *(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)

4/2/13
Meeting Date

Topic: Health Choice Plus

Bill Number: SB 7144 (if applicable)

Name: Karen Woodall

Amendment Barcode: (if applicable)

Job Title:

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Tallahassee, Fl
City, State, Zip

Phone: 850-321-9386

E-mail: kwtally@aol.com

Speaking: ☐ For ☑ Against ☑ Information

Representing: Florida Center for Fiscal + Economic Policy

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 898

INTRODUCER: Senator Joyner

SUBJECT: Health Care Coverage

DATE: April 1, 2013 REVISED: 04/03/2013

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Fav/1 amendment**
2.			BI	
3.			AHS	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [ ] Statement of Substantial Changes

B. AMENDMENTS..... [ ] Technical amendments were recommended

[ ] Amendments were recommended

[X] Significant amendments were recommended

I. Summary:

SB 898 requires health insurers, corporations and health maintenance organizations (HMOs) to provide coverage for telemedicine services under certain types of policies, contracts or plans. The bill prohibits the insurer, corporation or HMO from excluding coverage for a service solely because the service was delivered through telemedicine services rather than face to face. Reimbursement for services through telemedicine must be on the same basis as if treated face to face.

The bill also authorizes the application of a deductible, copayment or coinsurance for services through telemedicine so long as it does not exceed the amounts that would have been applicable under a face to face diagnosis, consultation or treatment, and a separate lifetime or annual benefit maximum is also not permitted for telemedicine services. These provisions are applied to policies, contracts or plans that are delivered, re-issued, or extended in this state on or after July 1, 2013.

The bill requires coverage for telemedicine services under Medicaid plans if the health care services would have been covered through an in-person consultation, including those services delivered in the patient's home.

Certain policy types are excluded from the telemedicine services requirement including short term coverage and limited benefit coverage and coverage under state or federal governmental plans. In the case of adverse decisions, SB 898 requires the insurer, corporation or HMO to notify the covered individual and their health plan to conduct a utilization review.

The bill creates a medical assistance program for eligible individuals with chronic conditions and provides health home services under a Medicaid waiver or state plan amendment. The program is created through provisions authorized under 42 U.S.C. s. 1396w-4.

The bill includes an interagency study led by the Department of Health (DOH). The study focuses on options for inclusion of telemedicine in a comprehensive state plan that includes multi-payor coverage and reimbursement for stroke diagnosis, high-risk pregnancies, premature births and emergency services. A final report is due to the Legislature by July 1, 2014.

The DOH is provided rulemaking authority with the appropriate medical boards to implement the provisions relating to telemedicine services and the coverage of those services by the applicable health care practitioners.

The act has an effective date of July 1, 2013.

This bill creates undesignated sections of the Florida Statutes:

II. Present Situation:

Telemedicine utilizes various advances in communication technology to provide healthcare services through a variety of electronic mediums. Telemedicine is not a separate medical specialty and does not change what constitutes proper medical treatment and services. According to the American Telemedicine Association, services provided through telemedicine include:[1]

- **Primary Care and Specialist Referral Services** – involves a primary care or allied health professional providing consultation with a patient or a specialist assisting the primary care physician with a diagnosis. The process may involve live interactive video or the use of store and forward transmission of diagnostic images, vital signs and/or video clips with patient data for later review.
- **Remote patient monitoring** – includes home telehealth, uses devices to remotely collect and send data to home health agencies or remote diagnostic testing facilities.
- **Consumer medical and health information** – offers consumers specialized health information and on-line discussions groups for peer to peer support
- **Medical education** - provides continuing medical education credits.

[1] American Telemedicine Association, *What is Telemedicine*, http://www.americantelemed.org/learn/what-is-telemedicine (last visited Mar. 26, 2013).

Telemedicine Services in Florida

Since 2006, the Children's Medical Services Network (CMS Network) has provided specified telemedicine services under Florida's 1915(b) Medicaid Managed Care Waiver in compliance with federal and state regulations. Authorized CMS Network telemedicine services include certain evaluation and consultation services already covered by the Medicaid state plan.

The Child Protection Team (CPT) program under Children's Medical Services also utilizes a telemedicine network. The CPT is a medically directed multi-disciplinary program that works with local Sheriffs offices and the Department of Children and Family Services in cases of child abuse and neglect to supplement investigative activities.[2] The telemedicine network works by connecting the child in one location ("remote site") where a Registered Nurse greets the child and assists with the examination by the health care professionals in another location ("hub site").[3] The hub site is a comprehensive medical facility with a wide range of medical and interdisciplinary staff that can assist with the exam and review. Special equipment allows for live assessments between the remote and hub sites in telemedicine, including permitting professional participation from multiple locations.[4]

The use of telemedicine for the CPTs is further defined under rule at Rule 64C-8.001, F.A.C. Rule 64C-8.003, F.A.C, allows medical diagnosis and evaluation to be conducted in person or through telemedicine. However, the use of telemedicine specifically requires the presence of a CMS approved physician or Advanced Registered Nurse Practitioner at the hub site and a Registered Nurse at the remote site.

In December 2010, Florida Medicaid submitted a state plan amendment to the federal Centers for Medicare and Medicaid Services (CMS) to allow for the provision of specified physician, dental, mental health, and substance abuse treatment telemedicine services. The amendment had been requested because Medicaid had been only reimbursing the physician rendering services using telemedicine, not the provider who is with the patient. The state plan amendment specifies that covered telemedicine services under Medicaid must include, at a minimum, audio and video equipment permitting two-way, real time interactive communication between the Medicaid recipient and the health care practitioner.[5] Telephone conversations, chart review, electronic mail messages or facsimile transmissions are not considered telemedicine.[6]

Only a specific list of provider types are eligible for Medicaid reimbursement for telemedicine services and such providers or entities must be licensed under chs. 394, 397, 458, 459, 464, 466, 490, or 491, F.S.[7] The state plan amendment was approved in March 2011 and was retroactively

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[2] Florida Department of Health, *Child Protection Teams*, http://www.cms-kids.com/families/child_protection_safety/child_protection_teams.html (last visited Mar. 26, 2013).
[3] Florida Department of Health, *CPT Telemedicine and Telehealth Network*, http://www.cms-kids.com/families/child_protection_safety/cpt_telemedicine.html (last visited Mar. 26, 2013).
[4] Florida Department of Health, *Child Protection Team Telemedicine Network Fact Sheet*, http://www.cms-kids.com/families/child_protection_safety/documents/cpt_telemedicine_fact_sheet.pdf (last visited Mar. 26. 2013).
[5] Florida Medicaid State Plan, Attachment 3.1-B, Page 11.
[6] Ibid.
[7] The eligible provider types are: physicians, dentists, psychiatric nurses, registered nurses, advanced registered nurse practitioners, physician's assistants, clinical social workers, mental health counselors, marriage and family therapists, masters level certified addiction professionals (CAP) and psychologists.

effective to October 1, 2010. The 2012-2015 Model Contracts with the Medicaid Managed Care Organizations, however, limit telemedicine services to behavioral health care and dental services.[8,9]

The contract language specifically excludes reimbursement for telephone conversations, video cell phone interactions, electronic mail messages, facsimile transmission, telecommunications with the enrollee at a location other than the spoke site; and, "store and forward" visits and consultations that are transmitted after the Medicaid recipient is no longer available.[10] Medicaid does not reimburse for the costs or fees of any of the equipment necessary to provide the services. The spoke site is the provider office location where an approved service is being furnished.[11]

Fee for service (FFS) Medicaid providers may provide telemedicine services within the requirements of the current Medicaid Services Coverage and Limitations Handbook.[12] Currently, the approved FFS providers are physicians, dental and behavioral health care providers.[13] The managed care contracts are currently being amended to include the provision of telemedicine services by physicians.[14]

Florida law allows the Florida Board of Medicine (Board) to establish by rule standards of practice and standards of care for particular practice settings, including, but not limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedures manuals. In 2003, the Board adopted Rule 64B8-9.014, F.A.C., "Standards for Telemedicine Prescribing Practice." The rule prohibits prescribing based solely on an electronic questionnaire. The rule permits a doctor to provide treatment recommendations, include issuing a prescription if they do so based on a documented patient evaluation, discussion between the patient and physician regarding treatment and treatment options and maintenance of appropriate medical records.

Patient Protection and Affordable Care Act

In March 2010, the Congress passed and the President signed the Patient Protection and Affordable Care Act (PPACA).[15] Under PPACA, qualified health plans (QHP) would be available from the state or federal Exchange beginning January 1, 2014. The PPACA required the Secretary of Health and Human Services to establish a minimum package of essential health

---

[8] According to the February 17, 2010 minutes of a Medicaid Medical Advisory Committee meeting, Medicaid reimburses telemedicine dental services for oral prophylaxis, topical fluoride application, oral hygiene instructions when a dental hygienists performs these services via video teleconferencing with a supervising licensed dentist.
[9] Agency for Health Care Administration, *House Bill 499/Senate Bill 898 Bill Analysis and Economic Impact Statement*, p. 2, (Mar. 27, 2013) (on file with the Senate Health Policy Committee).
[10] Agency for Health Care Administration, 2012-2015 Health Plan Model Contract Attachment II – Core Contract Provisions, Paragraph 22, http://ahca.myflorida.com/MCHQ/Managed_Health_Care/MHMO/docs/contract/1215_Contract/2012-2015/Jan2013/2012-15_HP-ContractAtt-II_GEN-AMEND1-JAN-2013-CLEAN.pdf (last visited Mar. 26, 2013).
[11] Ibid.
[12] Agency for Health Care Administration, *supra*, note 9, at 2.
[13] Ibid.
[14] Agency for Health Care Administration, *supra*, note 9, at 2.
[15] Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).

benefits (EHB) for individual and small group health insurance.[16] The EHB package must cover benefits across ten general categories from preventive services, maternity care, hospital services to prescription drugs.[17]

Section 1311(d)(3)(B) of the PPACA, allows a state to require QHPs to cover additional benefits above those required under the EHB; however, the law also directs the state or the issuer to offset the costs of those supplemental benefits to the enrollee.[18] The exchange is charged with making the determination as to whether a benefit constitutes a mandate thus requiring a state to fund the additional costs.

In addition to these provisions, certain plans under the PPACA received "grandfather status." A grandfathered health plan is a plan that existed on March 23, 2010, the date that the PPACA was enacted, and that at least one person had been continuously covered for one year.[19] Some consumer protection elements do not apply to grandfathered plans that were part of the PPACA but others are applicable, regardless of the type of plan. Providing the essential health benefits are also not required of grandfathered health plans.[20] A grandfathered plan can lose its status if significant changes to benefits or cost sharing changes are made to the plan since attaining its grandfathered status.[21] Grandfathered plans are required to disclose their status to their enrollees every time plan materials are distributed and to identify the consumer protections that are not available as a grandfathered plan.[22] Even though exempt from the EHB, a grandfathered plan could still be required to meet a new a requirement under state law if otherwise required under state requirements.[23]

The provisions of the PPACA include annual limitations on cost sharing in section 1302(c)(1) and an annual limitation on deductibles on small group plan deductibles in section 1302(c)(2) of the Affordable Care Act effective January 1, 2014. The type of plan an individual is enrolled in and the level of benefits selected will determine the amount of out of pocket costs that an individual may incur; however, out of pocket costs must still remain within certain guidelines.

The federal law further prohibits the imposition of annual and lifetime benefit limits, except for certain grandfathered plans, effective January 1, 2014. These protections went into effect for children earlier, September 23, 2010, and apply to grandfathered group health insurance plans.

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[16] Ibid.
[17] Center for Consumer Information and Insurance Oversight, *Essential Health Benefits Coverage Bulletin*, (1), Dec. 16, 2011, available at: http://cciio.cms.gov/resources/files/Files2/12162011/essential_health_benefits_bulletin.pdf (last visited: Mar. 26, 2013).
[18] 78 Fed. Reg. 12838, 12865 (February 25, 2013), available at: http://www.gpo.gov/fdsys/pkg/FR-2012-11-26/pdf/2012-28362.pdf (last visited Mar. 26, 2013).
[19] Healthcare.gov, *Grandfathered Health Plans, http://www.healthcare.gov/law/features/rights/grandfathered-plans/* (last visited Mar. 26, 2013).
[20] Healthcare.gov, *Essential Health Benefits, Actuarial Value, and Accreditation Standards: Ensuring Meaningful, Affordable Coverage*, http://www.healthcare.gov/news/factsheets/2012/11/ehb11202012a.html (last visited: Mar. 26, 2013).
[21] Sarah Barr, *FAQ: Grandfathered Health Plans¸http://www.kaiserhealthnews.org/stories/2012/december/17/grandfathered-plans-faq.aspx* (last visited: Mar. 26, 2013).
[22] Ibid.
[23] 75 Fed. Reg. 34, 538, 34,540 (June 17, 2010).

Florida Mandates

A "mandate" is usually defined as required health coverage for specific type of treatments, benefits, providers or categories of dependants.[24] In Florida, health insurance coverage mandates are spread throughout the insurance statutes depending on the coverage type and insurance product. In addition, some types of health insurance coverage are exempt from state mandates, such as self-funded or ERISA plans.[25,26] As a result, specific mandates may not be applicable to all insured persons as not all benefits are applicable to all insurance coverage types.[27] Florida has at least 52 different "mandates" falling across the small group, individual or large group health insurance market, including health maintenance organizations (HMOs).[28]

Required Study by Advocates

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal that would mandate specific health coverage to submit to the Agency for Health Care Administration (AHCA) and the appropriate legislative committee a report reviewing the social and financial impacts of the proposed coverage. The statute lists twelve components for assessment, if available:

- To what extent is the treatment or service generally used by a significant portion of the population?
- To what extent is the insurance coverage generally available?
- If the insurance coverage is not generally available, to what extent does the lack of coverage result in persons avoiding necessary health care treatment?
- If the coverage is not generally available, to what extent does the lack of coverage result in unreasonable financial hardship?
- The level of public demand for the treatment or service.
- The level of public demand for insurance coverage of the treatment or service.
- The level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.
- To what extent will the coverage increase or decrease the cost of the treatment or service?
- To what extent will the coverage increase the appropriate uses of the treatment or service?
- To what extent will the coverage increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders?
- The impact of this coverage on the total cost of health care.

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[24] National Conference of State Legislatures, *Mandated Health Insurance Benefits and State Laws*, *http://www.ncsl.org/issues-research/health/mandated-health-insurance-benefits-and-state-laws.aspx* (last visited: Mar. 26, 2013).
[25] Florida Department of Financial Services, *Insurance Library*, *http://www.myfloridacfo.com/consumers/insuranceLibrary/Insurance/L_and_H/Health_Care/Self-Funded_Medical_Plans/Self-Funded_-_Regulation.htm* (last visited: Mar. 26, 2013).
[26] Federal Employee Retirement Income Act of 1974 (ERISA) governs self insured health plans.
[27] Florida Department of Financial Services, *Insurance Library, available at: http://www.myfloridacfo.com/consumers/insuranceLibrary/Insurance/L_and_H/Health_General/MandatedHealthInsAndHMOBenefits.pdf* (last visited: Mar. 26, 2013).
[28] Ibid.

SB 898 requires coverage of a specific health care service, telemedicine. No study on the impact of this potential mandate has been received on the bill.

Statewide Medicaid Managed Care (SMMC)

In 2011, the Legislature also passed HB 7107 creating the SMMC program as ch. 409, part IV, F.S. The SMMC requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits, for the delivery of primary and acute care. Under s. 409.966(c)(2), F.S., the Agency is required to give preference to plans that have well designed programs for recognizing patient-centered medical homes and providing for increased compensation for recognized medical homes.

The AHCA began implementing the SMMC in January 2012 and recently released an Invitation to Negotiate (ITN) to competitively procure managed care plans on a statewide basis. Plans can supplement the minimum benefits in their bids and offer enhanced options.[29] Statewide implementation of SMMC is expected to be completed by October 1, 2014. Final approval of the necessary Medicaid waiver by the federal government has not yet been received; however on February 20, 2013, the AHCA and the Centers for Medicare and Medicaid Services reached an "Agreement in Principle" on the proposed plan.[30]

Health Homes for Enrollees with Chronic Conditions

Under the PPACA, a new option under the Medicaid state plan was made available to states for the provision of health homes to individuals with chronic conditions.[31] States electing this option under Section 1945 of the Social Security Act would receive 90 percent federal medical assistance (FMAP) for the first eight fiscal quarters that the state plan amendment is in place.

The health home model seeks to integrate medical, behavioral and social support services for individuals with chronic conditions through an expanded medical home model. The chronic conditions that have been identified include: a mental health condition, a substance abuse disorder, asthma, diabetes, heart disease, and being overweight, as evidenced by a body mass index over 25.[32] To be eligible, a recipient must meet the following requirements:[33]

- Have at least two chronic conditions;
- Have at least one chronic condition and is at risk of having a second chronic condition; or,
- Have at least one serious and persistent mental health condition.

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[29] Agency for Health Care Administration, *Senate Bill 896 Bill Analysis and Economic Impact Statement*,(Mar. 11, 2013) (on file with the Senate Health Policy Committee).
[30] *See* Correspondence between Agency for Health Care Administration and the Centers for Medicare and Medicaid Services, http://ahca.myflorida.com/Medicaid/statewide_mc/pdf/mma/Letter_from_CMS_re_Agreement_in_Principal_2013-02-20.pdf (last visited Mar. 27, 2013).
[31] 42 U.S.C. 1396w-4.
[32] Centers for Medicare and Medicaid Services, *Dear State Medicaid Director and Dear State Health Official Letter, ACA #12 (Health Homes for Enrollees with Chronic Conditions), November 16, 2010, http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD10024.pdf* (last visited: Mar. 26, 2013).
[33] Ibid.

States may elect to provide health homes services to individuals eligible for all of the chronic conditions listed in statute or provide services only to a select few conditions.[34] The population, however, must include all categorically eligible individuals who meet the criteria and may include the medically needy population.[35] Planning grants are available to the states for purposes of drafting and submitting state plan amendments.

The statute also prescribes the services to be covered under health homes and include:

- Comprehensive care management;
- Care coordination and health promotion;
- Comprehensive transitional care, including appropriate follow up;
- Referral to community and social support services, if needed; and,
- Use of health information technology, as feasible and appropriate.

As of November 2012, eight states had approved Health Home State Plan Amendments and three more states had pending amendment requests.[36] Several more states had draft amendments under review or had received planning grants from CMS to draft their state plan amendments.[37] Florida Medicaid has not pursued this option.[38]

III. Effect of Proposed Changes:

Section 1 of the bill creates an undesignated statutory section requiring insurers, HMOs, and corporations issuing health care policies, contracts or plans that provide hospital, medical, surgical or major medical coverage to provide coverage for the cost of health care services provided through telemedicine services.

Telemedicine services are defined as the delivery of health care services through synchronous video conferencing, remote patient monitoring, asynchronous health images or other health transmissions supported by mobile devices or other technology for the purposes of diagnosis, consultation or treatment. Telemedicine does not mean audio-only telephone, e-mail messages or facsimile transmission.

An "adverse decision" is defined as a determination that the use of a telemedicine service or a proposed use is not covered under the plan, policy or contract. The bill also defines "utilization review" to mean the review for the determination of the appropriateness of telemedicine services or if the coverage of proposed telemedicine services is required. Utilization review for coverage for telemedicine must be made in the same manner as those determinations are made for the treatment of any other illness, condition, or disorder covered under the policy, contract, or plan. The bill permits the insurer, corporation, or HMO to conduct utilization reviews. If an adverse decision is made, the bill requires the insurer, corporation, or HMO to notify the covered

[34] Ibid.
[35] Ibid.
[36] Center for Medicare and Medicaid Services, *State Health Home CMS Proposal Status (November 2012),* *http://www.medicaid.gov/State-Resource-Center/Medicaid-State-Technical-Assistance/Health-Homes-Technical-Assistance/Downloads/HHMap_v15_2.pdf* (last visited: Mar. 26, 2013).
[37] Ibid.
[38] Agency for Health Care Administration, *supra* note 9, at 2.

individual and the health care provider and if a written request is received from either the individual or the provider, utilization review must be conducted.

Medical services rendered using telemedicine cannot be excluded from coverage solely because the service is provided through telemedicine rather than through a face to face consultation or face to face contact between the provider and patient. An insurer, corporation, or HMO is not required to reimburse the telemedicine provider for any technology fees or costs related to the provision of telemedicine services.

Telemedicine services may not be subject to a different deductible, copayment, or coinsurance requirement than applies to the same service if it had been provided through face to face diagnosis, consultation, or treatment. Additionally, the health insurance or contract cannot impose different annual, calendar year, or lifetime dollar maximum limits to telemedicine services than are equally imposed upon all terms and services covered under the health care policy or contract, or plan.

Telemedicine applies to any insurance policy, contract, or plan that is delivered, issued for delivery, reissued or extended in this state on or after July 1, 2013. For Medicaid plans, if the health care service would be covered through an in-person consultation between the Medicaid recipient and the provider, including services from the recipient's home, then the telemedicine services would be covered.

The bill does not require telemedicine coverage for short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts. Coverage is also not required under Medicare coverage or any other similar coverage under state or federal governmental plans.

Section 2 of the bill refers to an optional Medicaid program that creates "health homes" for Medicaid beneficiaries with chronic conditions under 42 U.S.C. 1396w-4. A state plan or waiver of the Medicaid state plan would be required to implement the program along with approval of that amendment or waiver by the federal Centers for Medicare and Medicaid Services before such services could be available under Florida Medicaid.

Section 3 of the bill requires the DOH to lead and conduct an interagency study on options for a comprehensive telemedicine services and coverage state plan that would address multi-payer coverage and reimbursement for stroke diagnosis, high-risk pregnancies, premature births, and emergency services. The final report is due to the Legislature by July 1, 2014.

Section 4 of the bill permits the DOH to adopt rules in consultation with the appropriate boards relating to health care practitioners to address the provision of telemedicine services and the coverage of those services.

Section 5 of the bill 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:

Individuals with an individual, group accident or sickness insurance policy, or a health plan provided by an HMO, may see an increase in the cost of their health insurance coverage related to the telemedicine coverage requirement. The amount of any increase is not known. Self-insured or ERISA plans would not be subject to the provisions of this bill as they are regulated by the federal government. Approximately 60 percent of employees are in ERISA plans.

C. Government Sector Impact:

SB 898 excludes the application of the telemedicine coverage requirement from policies or contracts under state or governmental plans. State and governmental plans are not defined in the bill so it is unclear which governmental plans have been excluded.

The AHCA indicates that implementation of the health homes option would have no fiscal impact the first year as the time to receive approval of a state plan amendment would put implementation in the last part of state fiscal year 2014-2015.[39] Because states are eligible for 90 percent federal match for the first eight fiscal quarters, the AHCA reports that there would be little fiscal in the second fiscal year 2014-2015.[40]

VI. Technical Deficiencies:

The Office of Insurance Regulation (OIR) notes that "Corporation" is not a type of insurance product.[41] This term needs to be defined in the bill. It is unclear whether this refers to self insured

[39] Agency for Health Care Administration, *supra* note 9, at 5.
[40] Ibid.
[41] Office of Insurance Regulation, *SB 898 Bill Analysis (February 18, 2013)*(on file with Senate Health Policy Committee).

plans, employer group policies, Employment Retirement Income Security Act (ERISA) plans, etc.[42]

The OIR also notes that the bill refers to the applicability of policies that are "extended." OIR suggests that if "extended" means renewed, then the same terminology should be used throughout the bill.[43]

Subsection (7)(b) of the bill refers to "Medicaid plans" but does not define a Medicaid plan. Additionally, the following paragraph (8), appears to contradict the Medicaid requirement by excluding application of the section to "any coverage under state or federal governmental plans." Medicaid is already covering some telemedicine services currently according to the bill analysis submitted by the AHCA.

Section 2 of the bill cites a Medicaid option for health homes and coverage for eligible individuals under a state plan amendment or waiver. This optional service is not currently available in Florida Medicaid. The bill does not provide any direction or authority to the AHCA or any agency to seek approval of a state plan amendment or waiver that would accomplish implementation of the option.

Section 4 of the bill authorizes the DOH to adopt rules relating to health care practitioners and the implementation of this act relating to the provision of telemedicine services and coverage by such practitioners. The AHCA notes in their bill analysis that as the single state agency for Medicaid, the AHCA has the authority for determining coverage requirements for Medicaid services and the bill appears to delegate some of its rulemaking authority to the DOH.[44]

VII. Related Issues:

The AHCA has released an ITN covering all Medicaid services as part of the Statewide Medicaid Managed Care program (SMMC). This ITN includes health home services as part of those comprehensive medical services and requires the managed care organizations to cover all benefits. Creating a separate health home project through a Medicaid waiver or state plan amendment may be contrary to integrated care model of the SMMC program and the services already incorporated in the ITN.

Section 409.961, F.S., provides that if any conflict exists between provisions contained in the Medicaid Managed Care Part (part IV) and in other parts of the chapter, the provisions of part IV would control.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

[42] Ibid.
[43] Ibid.
[44] Agency for Health Care Administration, *supra*, note 9, at 4.

B. Amendments:

Barcode 159956 by Health Policy on April 2, 2013:
The strike-all amendment revises the definition of "telemedicine" to clarify what is included in the types of telecommunication technology included in telemedicine. The definition and provisions for "utilization review" are deleted.

The amendment requires that any health insurance policy issued, amended, or renewed on or after January 1, 2014, may not require face to face contact between patient and provider as a prerequisite for payment for services that have been appropriately provided based on generally accepted community practices at the time. Medicaid services provided through fee for service or managed care may not be denied on the basis that the services were provided through telemedicine. The amendment clarifies that any health care services provided through telemedicine technology shall be treated equivalent to in-person consultations for purposes of insurance coverage and payment.

The amendment maintains the provision that a health insurer or health plan may impose deductibles or copayments or coinsurance requirements for telemedicine health care services provided that such amounts are equal to the amounts applicable to an in-person consultation.

The amendment provides that a licensed health care practitioner under s. 456.001, F.S., is not practicing medicine without a license if employing telemedicine technology or participating in the application of telemedicine within the scope of his or her practice or under the direction and supervision of another health professional with such scope of practice. Any health care practitioner utilizing telemedicine must have sufficient training, education and knowledge about the procedure and technology or the health care practitioner will face disciplinary action from the appropriate board or if there is no board, then the DOH.

Provisions in the bill as filed, relating to a health homes waiver for chronically ill individuals under Medicaid, are deleted.

The amendment clarifies the provision that permits the DOH, in consultation, with those boards with regulatory authority or rulemaking authority relating to health care practitioners, to adopt rules relating to the provision of telemedicine services and to repeal any rules that prohibit the use of telemedicine.

The amendment retains the provision in the bill as filed that directs the DOH to lead and conduct an interagency study on options for a comprehensive telemedicine services and coverage state plan that would address multi-payer coverage and reimbursement for stroke diagnosis, high-risk pregnancies, premature births, and emergency services. The final report is due to the Legislature by July 1, 2014. (WITH TITLE AMENDMENT)

698240

LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
04/03/2013	.	
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	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Telemedicine services.—
6 (1) As used in this section, the term "telemedicine
7 services," as it pertains to the delivery of health care
8 services, means synchronous video conferencing, remote patient
9 monitoring, asynchronous health images, or other health
10 transmissions supported by mobile devices, such as mHealth, or
11 other telecommunications technology used for the purpose of
12 diagnosis, consultation, treatment, transfer of medical data, or

698240

13 exchange of medical education information by means of audio,
14 video, or data communications. The term does not include an
15 audio-only telephone call, e-mail message, or facsimile
16 transmission.
17 (2) On or after January 1, 2014, a health insurance policy
18 that is issued, amended, or renewed may not require face-to-face
19 contact between a health care provider and a patient as a
20 prerequisite for payment for services appropriately provided
21 through telemedicine in accordance with generally accepted
22 health care practices and standards prevailing in the applicable
23 professional community at the time the services are provided.
24 This requirement is subject to all terms and conditions
25 negotiated between the provider and the health insurer or health
26 plan. Medicaid services provided through fee-for-service or a
27 managed care delivery system may not be denied as a creditable
28 Medicaid service on the basis that the coverage is provided
29 through telemedicine. Health care services covered through in-
30 person consultations or through telemedicine shall be treated as
31 equivalent services from an insurance coverage and payment
32 perspective.
33 (3) This section does not prevent a health insurer or
34 health plan from imposing deductibles or copayment or
35 coinsurance requirements for a health care service provided
36 through telemedicine if the deductible, copayment, or
37 coinsurance does not exceed the deductible, copayment, or
38 coinsurance applicable to an in-person consultation for the same
39 health care service.
40 (4) This section does not preclude a health professional,
41 acting within the scope of the health professional’s practice,

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42 from employing the technology of telemedicine or participating
43 in the application of telemedicine within the health
44 professional's practice or under the direction of another health
45 professional with such scope of practice. Such action may not be
46 interpreted as practicing medicine without a license.
47 (5) The Department of Health, in consultation with those
48 boards within the department which exercise regulatory or
49 rulemaking functions relating to health care practitioners as
50 defined in s. 456.001, Florida Statutes, may adopt rules, as
51 necessary, to implement the requirements of this section
52 relating to the provision of telemedicine services by such
53 practitioners, and shall repeal any rules that prohibit the use
54 of telemedicine in this state.
55 Section 2. The Department of Health shall lead and conduct
56 an interagency study, which also includes the Department of
57 Children and Families and the Agency for Health Care
58 Administration, on options for implementing telemedicine
59 services and coverage, including multipayer coverage and
60 reimbursement, for stroke diagnosis, high-risk pregnancies,
61 premature births, mental health services, and emergency
62 services. The Department of Health shall submit a final report
63 of its findings and recommendations to the President of the
64 Senate and the Speaker of the House of Representatives by July
65 1, 2014.
66 Section 3. This act shall take effect July 1, 2013.
67
68 ========== T I T L E A M E N D M E N T ==========
69 And the title is amended as follows:
70 Delete everything before the enacting clause

698240

71 and insert:
72 A bill to be entitled
73 An act relating to telemedicine; defining the term
74 “telemedicine”; providing that a health insurance
75 policy or Medicaid may not require face-to-face
76 contact between a health care provider and patient as
77 a prerequisite to coverage or reimbursement for
78 services; authorizing the Department of Health to
79 adopt rules and to repeal any rules that prohibit the
80 use of telemedicine; requiring the department to
81 conduct a study, which includes the Department of
82 Children and Families and the Agency for Health Care
83 Administration, on options for implementing
84 telemedicine for certain services; requiring the
85 Department of Health to submit a report to the
86 Legislature; providing an effective date.
87
88 WHEREAS, telemedicine services are those services that use
89 electronic technology to overcome a geographic distance between
90 patients and health care providers for the purposes of
91 assessing, monitoring, intervening, clinical managing, or
92 educating patients, and
93 WHEREAS, the Legislature recognizes the demonstrated cost-
94 effectiveness, improvements in disease management, and improved
95 patient outcomes that result from the provision of telemedicine
96 services, and that studies have demonstrated significant
97 reductions in hospitalizations and otherwise necessary medical
98 care as a result of telemedicine intervention, and
99 WHEREAS, geography, weather, availability to specialists,

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100 transportation, and other factors can create barriers to
101 accessing appropriate health and mental health care, and that
102 one way to provide, ensure, or enhance access to care given
103 these barriers is through the appropriate use of technology to
104 allow health care consumers access to qualified health care
105 providers, and
106 WHEREAS, the Legislature seeks to embrace efforts that will
107 encourage health insurers and health providers to support the
108 use of telemedicine and that will also encourage all state
109 agencies to evaluate and amend their policies and rules to
110 remove any regulatory barriers prohibiting the use of
111 telemedicine, NOW THEREFORE,

769334

LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
04/03/2013	.	
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The Committee on Health Policy (Joyner) recommended the following:

1 **Senate Amendment to Amendment (698240) (with title**
2 **amendment)**
3
4 Delete lines 40 - 46
5 and insert:
6 (4) This section does not preclude a licensed health care
7 practitioner, as defined in s. 456.001, Florida Statutes, who is
8 acting within the scope of his or her practice from employing
9 the technology of telemedicine, applying telemedicine within his
10 or her practice, or using telemedicine technology under the
11 direction and supervision of another health care practitioner
12 who is using telemedicine technology within the supervising

769334

13 practitioner's scope of practice. When acting under the
14 direction and supervision of another health care practitioner,
15 the use of telemedicine technology may not be interpreted as
16 practicing medicine without a license. However, any health care
17 practitioner employing telemedicine technology must be trained,
18 educated, and knowledgeable about the procedure and technology
19 and may not perform duties for which the practitioner does not
20 have sufficient training, education, or knowledge. Failure to
21 have adequate training, education, and knowledge is grounds for
22 disciplinary action by the board, or the department if there is
23 no board.
24
25
26 ========== T I T L E A M E N D M E N T ==========
27 And the title is amended as follows:
28 Delete line 78
29 and insert:
30 services; clarifying that the use of telemedicine
31 technology under the supervision of another health
32 care practitioner may not be interpreted as practicing
33 medicine without a license; authorizing the Department
34 of Health to

159956

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/03/2013	.	
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	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Telemedicine services.—
6 (1) As used in this section, the term "telemedicine
7 services," as it pertains to the delivery of health care
8 services, means synchronous video conferencing, remote patient
9 monitoring, asynchronous health images, or other health
10 transmissions supported by mobile devices, such as mHealth, or
11 other telecommunications technology used for the purpose of
12 diagnosis, consultation, treatment, transfer of medical data, or

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13 exchange of medical education information by means of audio,
14 video, or data communications. The term does not include an
15 audio-only telephone call, e-mail message, or facsimile
16 transmission.
17 (2) On or after January 1, 2014, a health insurance policy
18 that is issued, amended, or renewed may not require face-to-face
19 contact between a health care provider and a patient as a
20 prerequisite for payment for services appropriately provided
21 through telemedicine in accordance with generally accepted
22 health care practices and standards prevailing in the applicable
23 professional community at the time the services are provided.
24 This requirement is subject to all terms and conditions
25 negotiated between the provider and the health insurer or health
26 plan. Medicaid services provided through fee-for-service or a
27 managed care delivery system may not be denied as a creditable
28 Medicaid service on the basis that the coverage is provided
29 through telemedicine. Health care services covered through in-
30 person consultations or through telemedicine shall be treated as
31 equivalent services from an insurance coverage and payment
32 perspective.
33 (3) This section does not prevent a health insurer or
34 health plan from imposing deductibles or copayment or
35 coinsurance requirements for a health care service provided
36 through telemedicine if the deductible, copayment, or
37 coinsurance does not exceed the deductible, copayment, or
38 coinsurance applicable to an in-person consultation for the same
39 health care service.
40 (4) This section does not preclude a licensed health care
41 practitioner, as defined in s. 456.001, Florida Statutes, who is

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42 acting within the scope of his or her practice from employing
43 the technology of telemedicine, applying telemedicine within his
44 or her practice, or using telemedicine technology under the
45 direction and supervision of another health care practitioner
46 who is using telemedicine technology within the supervising
47 practitioner's scope of practice. When acting under the
48 direction and supervision of another health care practitioner,
49 the use of telemedicine technology may not be interpreted as
50 practicing medicine without a license. However, any health care
51 practitioner employing telemedicine technology must be trained,
52 educated, and knowledgeable about the procedure and technology
53 and may not perform duties for which the practitioner does not
54 have sufficient training, education, or knowledge. Failure to
55 have adequate training, education, and knowledge is grounds for
56 disciplinary action by the board, or the department if there is
57 no board.
58 (5) The Department of Health, in consultation with those
59 boards within the department which exercise regulatory or
60 rulemaking functions relating to health care practitioners as
61 defined in s. 456.001, Florida Statutes, may adopt rules, as
62 necessary, to implement the requirements of this section
63 relating to the provision of telemedicine services by such
64 practitioners, and shall repeal any rules that prohibit the use
65 of telemedicine in this state.
66 Section 2. The Department of Health shall lead and conduct
67 an interagency study, which also includes the Department of
68 Children and Families and the Agency for Health Care
69 Administration, on options for implementing telemedicine
70 services and coverage, including multipayer coverage and

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71 reimbursement, for stroke diagnosis, high-risk pregnancies,
72 premature births, mental health services, and emergency
73 services. The Department of Health shall submit a final report
74 of its findings and recommendations to the President of the
75 Senate and the Speaker of the House of Representatives by July
76 1, 2014.
77 Section 3. This act shall take effect July 1, 2013.
78
79 ========== T I T L E A M E N D M E N T ==========
80 And the title is amended as follows:
81 Delete everything before the enacting clause
82 and insert:
83 A bill to be entitled
84 An act relating to telemedicine; defining the term
85 “telemedicine”; providing that a health insurance
86 policy or Medicaid may not require face-to-face
87 contact between a health care provider and patient as
88 a prerequisite to coverage or reimbursement for
89 services; clarifying that the use of telemedicine
90 technology under the supervision of another health
91 care practitioner may not be interpreted as practicing
92 medicine without a license; authorizing the Department
93 of Health to adopt rules and to repeal any rules that
94 prohibit the use of telemedicine; requiring the
95 department to conduct a study, which includes the
96 Department of Children and Families and the Agency for
97 Health Care Administration, on options for
98 implementing telemedicine for certain services;
99 requiring the Department of Health to submit a report

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100 to the Legislature; providing an effective date.
101
102 WHEREAS, telemedicine services are those services that use
103 electronic technology to overcome a geographic distance between
104 patients and health care providers for the purposes of
105 assessing, monitoring, intervening, clinical managing, or
106 educating patients, and
107 WHEREAS, the Legislature recognizes the demonstrated cost-
108 effectiveness, improvements in disease management, and improved
109 patient outcomes that result from the provision of telemedicine
110 services, and that studies have demonstrated significant
111 reductions in hospitalizations and otherwise necessary medical
112 care as a result of telemedicine intervention, and
113 WHEREAS, geography, weather, availability to specialists,
114 transportation, and other factors can create barriers to
115 accessing appropriate health and mental health care, and that
116 one way to provide, ensure, or enhance access to care given
117 these barriers is through the appropriate use of technology to
118 allow health care consumers access to qualified health care
119 providers, and
120 WHEREAS, the Legislature seeks to embrace efforts that will
121 encourage health insurers and health providers to support the
122 use of telemedicine and that will also encourage all state
123 agencies to evaluate and amend their policies and rules to
124 remove any regulatory barriers prohibiting the use of
125 telemedicine, NOW THEREFORE,

By Senator Joyner

19-01298-13 2013898__

A bill to be entitled

An act relating to health care coverage; requiring health insurers, corporations, and health maintenance organizations issuing certain health policies to provide coverage for telemedicine services; providing definitions; prohibiting the exclusion of telemedicine cost coverage solely because the services were not provided face to face; specifying conditions under which an insurer, corporation, or health maintenance organization must reimburse a telemedicine provider for certain fees and costs; authorizing provisions requiring a deductible, copayment, or coinsurance requirement for telemedicine services under certain circumstances; prohibiting the imposition of certain dollar and durational coverage limitations or copayments, coinsurance, or deductibles on telemedicine services unless imposed equally on all terms and services; providing for applicability and construction; requiring a utilization review under certain circumstances; providing coverage under the state plan or a waiver for health home services provided to eligible individuals with chronic conditions; requiring the Department of Health to conduct an interagency study relating to telemedicine services and coverage; requiring a report to the Legislature; authorizing the department to adopt rules in consultation with certain boards; providing an effective date.

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

30 WHEREAS, today, more and more people take advantage of
31 telemedicine and e-health opportunities, including participating
32 in consultations with doctors and joining monitoring programs
33 for patients with chronic disease, and
34 WHEREAS, by connecting residents of the state with
35 geographically distant specialists, telemedicine can improve the
36 quality of care that residents may expect to receive and reduce
37 costs by providing services that might otherwise require long-
38 distance travel or admission to a health care facility, NOW,
39 THEREFORE,
40
41 Be It Enacted by the Legislature of the State of Florida:
42
43 Section 1. Coverage for telemedicine services.—
44 (1) An insurer, corporation, or health maintenance
45 organization must provide coverage for the cost of health care
46 services provided through telemedicine services under the
47 following policies, contracts, and plans:
48 (a) An individual or group accident and sickness insurance
49 policy issued by an insurer to provide hospital, medical and
50 surgical, or major medical coverage on an expense-incurred
51 basis.
52 (b) An individual or group accident and sickness
53 subscription contract entered into by a corporation.
54 (c) A health care plan for health care services provided by
55 a health maintenance organization.
56 (2) As used in this section, the term:
57 (a) “Adverse decision” means a determination that the use
58 of telemedicine services rendered or proposed to be rendered is

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

59 not covered under the policy, contract, or plan.
60 (b) "Telemedicine services," as it pertains to the delivery
61 of health care services, means synchronous video conferencing,
62 remote patient monitoring, asynchronous health images, or other
63 health transmissions supported by mobile devices (mHealth) or
64 other telecommunications technology used for the purpose of
65 diagnosis, consultation, or treatment at a site other than the
66 site where the provider is located. The term does not include an
67 audio-only telephone, e-mail messages, or facsimile
68 transmission.
69 (c) "Utilization review" means a review to determine the
70 appropriateness of telemedicine services, or whether coverage of
71 the delivery of telemedicine services rendered or proposed to be
72 rendered by a health care provider is required, if the
73 determination is made in the same manner as those determinations
74 are made for the treatment of any other illness, condition, or
75 disorder covered under the policy, contract, or plan.
76 (3) An insurer, corporation, or health maintenance
77 organization may not exclude a service from coverage solely
78 because the service is provided through telemedicine services
79 rather than face-to-face consultation or contact between a
80 health care provider and a patient.
81 (4) An insurer, corporation, or health maintenance
82 organization is not required to reimburse the telemedicine
83 provider or the consulting provider for technology fees or costs
84 related to the provision of telemedicine services; however, an
85 insurer, corporation, or health maintenance organization must
86 reimburse the telemedicine provider or the consulting provider
87 for the diagnosis, consultation, or treatment of the insured

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

88 delivered through telemedicine services on the same basis that
89 the insurer, corporation, or health maintenance organization is
90 responsible for coverage of the same services through face-to-
91 face diagnosis, consultation, or treatment.
92 (5) An insurer, corporation, or health maintenance
93 organization may offer a health care plan containing a
94 deductible, copayment, or coinsurance requirement for a health
95 care service provided through telemedicine services if the
96 deductible, copayment, or coinsurance does not exceed the
97 deductible, copayment, or coinsurance that would be applicable
98 if the same services were provided through face-to-face
99 diagnosis, consultation, or treatment.
100 (6) An insurer, corporation, or health maintenance
101 organization may not impose any annual or lifetime dollar
102 maximum on coverage for telemedicine services other than an
103 annual or lifetime dollar maximum that applies in the aggregate
104 to all items and services covered under the policy, contract, or
105 plan and may not impose upon any person receiving benefits under
106 this section any copayment, coinsurance, or deductible amount,
107 or any policy year, calendar year, lifetime, or other durational
108 benefit limitation or maximum for benefits or services, that is
109 not equally imposed upon all terms and services covered under
110 the policy, contract, or plan.
111 (7) This section applies to:
112 (a) An insurance policy, contract, or plan that is
113 delivered, issued for delivery, reissued, or extended in this
114 state on or after July 1, 2013; a policy, contract, or plan for
115 which any term of the policy, contract, or plan is changed or
116 any premium adjustment is made on or after July 1, 2013; and,

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

117 effective July 1, 2014, any other policy, contract, or plan. For
118 purposes of this paragraph, a policy, contract, or plan is
119 deemed to be renewed no later than the next annual anniversary
120 date of the contract, policy, or plan.
121 (b) Medicaid plans, if the health care service would be
122 covered were it provided through in-person consultation between
123 the recipient and a health care provider, including statewide
124 coverage, services originating from a recipient's home or any
125 other place where the recipient is located, and the provision of
126 any telemedicine services, including, but not limited to,
127 asynchronous health images or other health transmissions
128 supported by mobile devices provided by authorized health care
129 professions if such health care services would otherwise be
130 covered under the state Medicaid plan.
131 (8) This section does not apply to short-term travel,
132 accident-only, limited or specified disease, or individual
133 conversion policies or contracts; policies or contracts designed
134 for issuance to persons eligible for Medicare coverage under
135 Title XVIII of the federal Social Security Act; or any other
136 similar coverage under state or federal governmental plans.
137 (9) This section does not preclude an insurer, corporation,
138 or health maintenance organization providing coverage for
139 telemedicine services under an insurance policy, contract, or
140 plan from conducting a utilization review. After making an
141 adverse decision, an insurer, corporation, or health maintenance
142 organization must notify the covered individual and the
143 individual's health care provider and must conduct a utilization
144 review after receiving a written request to conduct such a
145 review from a covered individual or the individual's health care

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

146 provider.
147 Section 2. Under the state plan or a waiver of the state
148 plan, eligible individuals with chronic conditions as defined in
149 42 U.S.C. s. 1396w-4 are eligible for medical assistance that
150 provides health home services in compliance with 42 U.S.C. s.
151 1396w-4.
152 Section 3. Interagency telemedicine study by Department of
153 Health.—The Department of Health shall lead and conduct an
154 interagency study on options for inclusion in a comprehensive
155 state plan to implement telemedicine services and coverage that
156 includes multipayer coverage and reimbursement for stroke
157 diagnosis, high-risk pregnancies, premature births, and
158 emergency services. By July 1, 2014, the Department of Health
159 shall submit a final report of its findings and recommendations
160 concerning the study to the President of the Senate and the
161 Speaker of the House of Representatives.
162 Section 4. The Department of Health may adopt rules in
163 consultation with those boards that exercise regulatory or
164 rulemaking functions within the department relating to health
165 care practitioners as defined in s. 456.001(4), Florida
166 Statutes, to implement the requirements of this act relating to
167 the provision of telemedicine services and coverage by such
168 health care practitioners.
169 Section 5. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ARTHENIA L. JOYNER
19th District

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations Subcommittee on General Government
Ethics and Elections
Health Policy
Judiciary
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

February 19, 2013

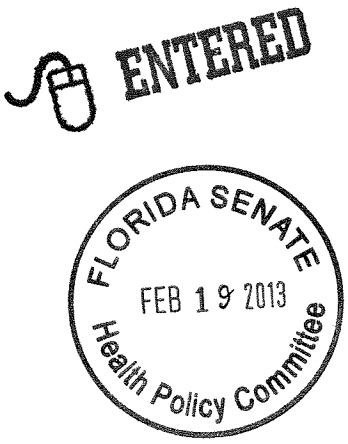
Senator Aaron Bean, Chair
Senate Committee on Health Policy
530 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Bean:

This is to request that Senate Bill 898, Health Care Coverage (Telemedicine), be placed on the agenda for the Committee on Judiciary. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
State Senator, District 19



REPLY TO:
❒ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
❒ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

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)

4/2/13
Meeting Date

Topic: SB 898 Telemedicine

Bill Number: 898 *(if applicable)*

Name: Chip Mitchell

Amendment Barcode: *(if applicable)*

Job Title: citizen

Address: 1112 Beachum Dr. Tall. FL 32304
Street

City *State* *Zip*

Phone: 850-228-6471

E-mail: chipm@netally.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.

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)

4-2-13
Meeting Date

* Support Amendment

Topic: Telemedicine

Bill Number: 898 *(if applicable)*

Name: Rich Rasmussen

Amendment Barcode: 698240 *(if applicable)*

Job Title:

Address: 306 E. College Ave
Street

Tall, Fl
City, State, Zip

Phone: 850-222-9800

E-mail: Rich@fha.org

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

Representing: Florida Hospital 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)

4-2-13
Meeting Date

Topic: Telemedicine

Bill Number: 898 *(if applicable)*

Name: JUDY Griffin

Amendment Barcode: 698240 *(if applicable)*

Job Title:

Address: 1300 Miccosukee RD
Street

Tall 32308
City *State* *Zip*

Phone:

E-mail:

Speaking: ☐ For ☐ Against ☑ Information

Representing: Tallahassee Memorial

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)

April 2, 2013
Meeting Date

Topic: Health Care Coverage

Bill Number: 898 *(if applicable)*

Name: Layne Smith

Amendment Barcode: 698240 *(if applicable)*

Job Title: Director, State Government Relations

Address: 4500 San Pablo Road
Street

Jacksonville — FL — 32224
City — *State* — *Zip*

Phone: 904-953-7334

E-mail: smith.layne@mayo.edu

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

Representing: Mayo Clinic

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)

SB 898 – A citizen's perspective by Chip Mitchell

Picture this. Your 74 year old father with Parkinson's disease has a routine appointment with his primary care physician. He cannot safely walk more than about 15 feet, and that's with his walker. He also has significant urinary incontinence. Other family members are unable to assist due to their own chronic health conditions. To safely transport your father to his appointment you must use a wheelchair to get him from the house to the car, transfer him from the wheelchair to the car and reverse the process at the doctor's office. Once in the office lobby his incontinence calls and he must use the bathroom. You help him into the bathroom and assist him in using the toilet. Once In the exam room the nurse takes his blood pressure, temperature, and his pulse. While waiting for the doctor your father says he needs to stand up to keep from getting too contracted sitting in the wheel chair slumped over (he cannot hold himself up straight in the wheelchair.) You help him stand for a while until the doctor arrives. The doctor asks how he's doing, looks at the chart, and listens to his lungs and heart with a stethoscope. Your father says he is having more difficulty sleeping so the doctor makes a change in his medication. That completes the visit. Upon leaving, your father needs to use the restroom again. For the return trip you repeat the wheelchair exit/entry and transfers. By this time he is exhausted and glad to be back in the comfort of his recliner.

You thank the Lord you are retired and in good health so that you can get your father to his appointments. Otherwise, he would have had to pay a medical transportation service over $100 per visit and that would not include accompaniment in the appointment or assistance in using the restroom. You also are thankful that the stress of the trip did not make your father's condition worse and that there were no mishaps in the transfers to and from the wheelchair and in using the bathroom.

Then you happen to share your experience with a physical therapist who tells you about her patients with chronic conditions and mobility impairments getting to appointments with doctors. Some were so exasperated with the experience that they just decided they would not try to go any more. Some actually fell in the transportation process and became worse off than before. You begin to think that *there has to be a better way* for someone in your father's condition to get a routine medical consultation. You even wonder if the whole evolution might violate the physician's ethical principle of "first, do no harm". Finally, you wonder if this same scenario is being played out each day thousands of times all over America.

Fast forward nine months. You have purchased an iPad with secure high speed cellular connectivity, a digital blood pressure cuff, digital thermometer, electronic stethoscope, and digital scales. You re-enact the above appointment with the primary care physician and his nurse, only this time your father never leaves the comfort of his recliner at his home. The physician at the remote "office" end sees no deficiency in the consultation, and remarks that the visibility of the patient might actually be better than in person due to the ability to zoom the camera in on any part of your father's anatomy.

Now, you say, *let's do this*! But wait, we forgot a few details. Even though the ***patient*** is thrilled, what about the ***caregiver***, the ***physician***, and the ***payer***? The caregiver likes the idea so much that they would even attend training to ensure they can competently obtain vital signs. When confronted with patients whose condition and circumstances severely limit their ability to travel and such a reasonable alternative is available the professionalism and compassion of most physicians surely will persuade them to participate in this modality. Finally, the payer must approve the remote delivery of services. VA Healthcare and Medicare have proven the efficacy and efficiency of telemedicine, so what can you do? As an elected representative of many suffering from chronic health conditions and limited ability to travel you can support legislation which requires payers to reimburse for remotely delivered services at the same rate as in-person delivered services. Who knows? Your family may be next to need this critical healthcare option! Thank you for your consideration!

(850)228-6471 or, chipm@nettally.com

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 1094

INTRODUCER: Health Policy Committee and Senator Flores

SUBJECT: Home Health Agencies

DATE: April 2, 2013 REVISED:

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

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1094 reduces the mandatory fine amount levied against Home Health Agencies (HHA) that fail to file a quarterly report to the Agency for Health Care Administration (AHCA) from the current fine of $5,000 to a fine of $200 per day up to a maximum of $5,000 per quarter. The bill also exempts HHAs that do not bill Medicare or Medicaid, and are not owned by a health care entity which bills Medicare or Medicaid, from the fine for failing to file the quarterly report.

This bill substantially amends section 400.474 of the Florida Statutes.

II. Present Situation:

An HHA is an organization that provides home health services and staffing services.[1] Home health services provided by an HHA include health and medical services and medical equipment provided to an individual in his or her home, such as nursing care, physical and occupational therapy, and home health aide services.[2] Home health agencies are regulated by the AHCA pursuant to ch. 400, part III, F.S.

[1] S. 400.462(12), F.S.
[2] S. 400.462(14)(a)-(c), F.S.

In 2008 the Florida Legislature passed chapter 2008-246, L.O.F., with anti-fraud measures including the requirement for an HHA quarterly report to be submitted to the Agency within 15 days following the end of each quarter. The Legislature passed chapter 2008-246, L.O.F., to combat an increase in Medicaid fraud in HHAs during the early to mid 2000s. In fiscal year 2004-2005, the AHCA's Bureau of Medicare Program Integrity (MPI) opened 47 investigations of HHAs for Medicaid fraud, 72 in fiscal year 2005-2006, and 144 in fiscal year 2006-2007.[3] Between 2004 and 2007, nineteen HHAs were terminated from the Medicaid program in Miami-Dade County alone.[4]

Section 400.474(6)(f), F.S., enacted in chapter 2008-246, L.O.F., requires HHAs to report data as it existed on the last day of the quarter for four items that are markers for possible fraudulent activity. These items include:

- The number of insulin-dependent diabetic patients receiving insulin injection services;
- The number of patients receiving both home health services from the HHA and a hospice services;
- The number of patients receiving HHA services; and
- Name and license number of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the HHA in excess of $25,000 during the quarter.

The Agency is required to impose a fine of $5,000 if the report is not submitted within the first 15 days following the close of the quarter. From January 1, 2009 through December 31, 2012, there have been a total of 1,407 fines imposed.[5] For the most recent state fiscal year, July 1, 2011 to June 30, 2012, fines of $932,750 were imposed by final order. Also, the number of HHAs that fail to submit the reports each quarter has decreased. For the quarter ending December 31, 2012, 42 of the 2,250 licensed HHAs failed to submit their reports.[6]

The data from each quarter's reports is shared with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' (CMS), MPI, Miami Satellite Division, the Medicare Fraud Investigations Manager at SafeGuard Services, LLC, the CMS contractor, and the Agency's Medicaid Program Integrity office. Their investigators use multiple sources of information to identify fraudulent activities.[7]

The Agency also uses the data on the number of patients on the last day of the quarter as an indicator of the number of patients when a home health agency is closing. In addition, the data on number of patients is used as an indicator that the home health agency may not be operational, along with other information. Failing to provide at least one service directly for a period of 60 days is grounds to deny or revoke a license in s. 400.474(1)(2)(e), F.S. The Agency already

[3]Staff analysis of SB 1374 (2008), dated Mar. 7, 2008, on file with the Senate Health Policy Committee.
[4]Id.
[5]Agency for Health Care Administration, HQA_ENFORCEMENT\GenCounsel\DASHBOARD REPORTS\FinesFees_Recommend_vs_Actual_NotSurveys.imr
[6] AHCA analysis of HB 4031 (SB 1094), dated Mar. 14, 2013, on file with the Senate Health Policy Committee.
[7]Id.

collects the number of patients admitted over a 12-month period, from each home health agency on the biennial license renewal application as required by s. 400.471(2)(c), F.S.[8]

III. Effect of Proposed Changes:

CS/SB 1094 amends s. 400.474, F.S., to:

- Move language requiring HHAs to submit a quarterly written report to the AHCA[9] to a new subsection (7);
- Reduce the fine amount levied against HHAs that fail to file a quarterly report within 15 days after the end of each calendar quarter to the AHCA from the current fine of $5,000 to a fine of $200 per day up to a maximum of $5,000 per quarter; and
- Exempt HHAs that do not bill Medicare or Medicaid, and are not owned by a health care entity which bills Medicare or Medicaid, from the fine for failing to file the quarterly report.

The bill provides an effective 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:

CS/SB 1094 reduces the fine amount for failing to submit the quarterly report which may have a positive fiscal impact on HHAs due to reduced administrative costs and avoidance of the $5,000 fine for failing to file the required report.

---

[8] Id.

[9] The report must include data as it existed at the end of the quarter on the number of insulin-dependent diabetic patients receiving insulin injection services, the number of patients receiving both home health services from the HHA and a hospice services, the number of patients receiving HHA services, and the name and license number of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the HHA in excess of $25,000 during the quarter.

C. Government Sector Impact:

The AHCA generated $932,750 in revenue in fiscal year 2011-2012, from imposing the required $5,000 fines on HHAs that did not file the required reports. The AHCA may see a negative fiscal impact from a reduction in that revenue from the reduction in the fine amount.

VI. Technical Deficiencies:

Lines 141 and 142 of the bill refer to entities licensed, registered, or certified under ch. 408, part II, F.S. Though ch. 408, part II, F.S., provides the general licensing provisions for the AHCA, each individual health care entity is licensed, registered, or certified under its own separate chapter or part of the Florida Statues. A more accurate reference would be "licensees as defined in s. 408.803, F.S."

VII. Related Issues:

The bill exempts certain HHAs from the fine imposed for failing to file the required quarterly report, but does not exempt them from the requirement to file the report. It is unclear what, if any, action the AHCA may take against those exempt HHAs that do not file the report.

Also, it is unclear whether the AHCA still has authority to take licensure actions against any HHAs that fail to file the required quarterly reports.

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 April 2, 2013:
The CS substantially amends SB 1094 to:

- Reinstate the requirement for HHAs to submit a quarterly report to the AHCA under a new subsection (7);
- Reduce the fine amount levied against HHAs that fail to file the quarterly report; and
- Exempt HHAs that do not bill Medicare or Medicaid, and are not owned by a health care entity which bills Medicare or Medicaid, from the fine for failing to file the quarterly report.

B. Amendments:

None.

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

772746

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with directory and title amendments)**
2
3 Between lines 111 and 112
4 insert:
5 (7) A home health agency shall submit to the agency, within
6 15 days after the end of each calendar quarter, a written report
7 that includes the following data as they existed on the last day
8 of the quarter:
9 (a) The number of insulin-dependent diabetic patients who
10 receive insulin-injection services from the home health agency.
11 (b) The number of patients who receive both home health
12 services from the home health agency and hospice services.

772746

13 (c) The number of patients who receive home health services
14 from the home health agency.
15 (d) The name and license number of each nurse whose primary
16 job responsibility is to provide home health services to
17 patients and who received remuneration from the home health
18 agency in excess of $25,000 during the calendar quarter.
19
20 If the home health agency fails to submit the written quarterly
21 report within 15 days after the end of each calendar quarter,
22 the Agency for Health Care Administration shall impose a fine
23 against the home health agency in the amount of $200 per day
24 until the Agency for Health Care Administration receives the
25 report, except that the total fine imposed pursuant to this
26 subsection may not exceed $5,000 per quarter. A home health
27 agency is exempt from the imposition of the fine if it is not a
28 Medicaid or Medicare provider or if it does not share a
29 controlling interest with an entity licensed, registered, or
30 certified under part II of chapter 408 which bills the Florida
31 Medicaid program or the Medicare program.
32
33 ====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
34 And the directory clause is amended as follows:
35 Delete lines 10 - 11
36 and insert:
37 Section 1. Present subsection (7) of section 400.474,
38 Florida Statutes, is renumbered as subsection (8), a new
39 subsection (7) is added to that section, and subsection (6) of
40 that section is amended, to read:
41

772746

42 ========== T I T L E A M E N D M E N T ==========
43 And the title is amended as follows:
44 Delete lines 3 - 6
45 and insert:
46 400.474, F.S.; revising the requirements for the
47 quarterly reporting by a home health agency of certain
48 data submitted to the Agency for Health Care
49 Administration; imposing a fine for failure to timely
50 submit the quarterly report; providing an exemption to
51 the imposition of the fine; providing an effective
52 date.

By Senator Flores

37-00921A-13 20131094__

A bill to be entitled

An act relating to home health agencies; amending s. 400.474, F.S.; deleting requirements for the quarterly reporting by a home health agency of certain data submitted to the Agency for Health Care Administration; providing an effective date.

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

Section 1. Subsection (6) of section 400.474, Florida Statutes, is amended to read:

400.474 Administrative penalties.—

(6) The agency may deny, revoke, or suspend the license of a home health agency and shall impose a fine of $5,000 against a home health agency that:

(a) Gives remuneration for staffing services to:

1. Another home health agency with which it has formal or informal patient-referral transactions or arrangements; or

2. A health services pool with which it has formal or informal patient-referral transactions or arrangements,

unless the home health agency has activated its comprehensive emergency management plan in accordance with s. 400.492. This paragraph does not apply to a Medicare-certified home health agency that provides fair market value remuneration for staffing services to a non-Medicare-certified home health agency that is part of a continuing care facility licensed under chapter 651 for providing services to its own residents if each resident receiving home health services pursuant to this arrangement

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

30 attests in writing that he or she made a decision without
31 influence from staff of the facility to select, from a list of
32 Medicare-certified home health agencies provided by the
33 facility, that Medicare-certified home health agency to provide
34 the services.
35 (b) Provides services to residents in an assisted living
36 facility for which the home health agency does not receive fair
37 market value remuneration.
38 (c) Provides staffing to an assisted living facility for
39 which the home health agency does not receive fair market value
40 remuneration.
41 (d) Fails to provide the agency, upon request, with copies
42 of all contracts with assisted living facilities which were
43 executed within 5 years before the request.
44 (e) Gives remuneration to a case manager, discharge
45 planner, facility-based staff member, or third-party vendor who
46 is involved in the discharge planning process of a facility
47 licensed under chapter 395, chapter 429, or this chapter from
48 whom the home health agency receives referrals.
49 ~~(f) Fails to submit to the agency, within 15 days after the~~
50 ~~end of each calendar quarter, a written report that includes the~~
51 ~~following data based on data as it existed on the last day of~~
52 ~~the quarter:~~
53 ~~1. The number of insulin-dependent diabetic patients~~
54 ~~receiving insulin-injection services from the home health~~
55 ~~agency;~~
56 ~~2. The number of patients receiving both home health~~
57 ~~services from the home health agency and hospice services;~~
58 ~~3. The number of patients receiving home health services~~

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

59 ~~from that home health agency; and~~
60 ~~4. The names and license numbers of nurses whose primary~~
61 ~~job responsibility is to provide home health services to~~
62 ~~patients and who received remuneration from the home health~~
63 ~~agency in excess of $25,000 during the calendar quarter.~~
64 (f) ~~(g)~~ Gives cash, or its equivalent, to a Medicare or
65 Medicaid beneficiary.
66 (g) ~~(h)~~ Has more than one medical director contract in
67 effect at one time or more than one medical director contract
68 and one contract with a physician-specialist whose services are
69 mandated for the home health agency in order to qualify to
70 participate in a federal or state health care program at one
71 time.
72 (h) ~~(i)~~ Gives remuneration to a physician without a medical
73 director contract being in effect. The contract must:
74 1. Be in writing and signed by both parties;
75 2. Provide for remuneration that is at fair market value
76 for an hourly rate, which must be supported by invoices
77 submitted by the medical director describing the work performed,
78 the dates on which that work was performed, and the duration of
79 that work; and
80 3. Be for a term of at least 1 year.
81
82 The hourly rate specified in the contract may not be increased
83 during the term of the contract. The home health agency may not
84 execute a subsequent contract with that physician which has an
85 increased hourly rate and covers any portion of the term that
86 was in the original contract.
87 (i) ~~(j)~~ Gives remuneration to:

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

88 1. A physician, and the home health agency is in violation
89 of paragraph (g) ~~(h)~~ or paragraph (h) ~~(i)~~;
90 2. A member of the physician's office staff; or
91 3. An immediate family member of the physician,
92
93 if the home health agency has received a patient referral in the
94 preceding 12 months from that physician or physician's office
95 staff.
96 (j) ~~(k)~~ Fails to provide to the agency, upon request, copies
97 of all contracts with a medical director which were executed
98 within 5 years before the request.
99 (k) ~~(l)~~ Demonstrates a pattern of billing the Medicaid
100 program for services to Medicaid recipients which are medically
101 unnecessary as determined by a final order. A pattern may be
102 demonstrated by a showing of at least two such medically
103 unnecessary services within one Medicaid program integrity audit
104 period.
105
106 Nothing in paragraph (e) or paragraph (i) ~~(j)~~ shall be
107 interpreted as applying to or precluding any discount,
108 compensation, waiver of payment, or payment practice permitted
109 by 42 U.S.C. s. 1320a-7(b) or regulations adopted thereunder,
110 including 42 C.F.R. s. 1001.952 or s. 1395nn or regulations
111 adopted thereunder.
112 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: February 28, 2013

I respectfully request that **Senate Bill #1094**, relating to Home Health Agencies, 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
FEB 28, '13
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)

4/2/13
Meeting Date

Topic: Home Health

Bill Number: S 1094 *(if applicable)*

Name: Kyle Simon

Amendment Barcode: *(if applicable)*

Job Title: Government Affairs Director

Address: 1363 E Lafayette St
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 813 391 1841

E-mail:

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

Representing: Home Care Association 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)

4 / 2 /2013
Meeting Date

Topic _____

Bill Number 1094 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
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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: CS/SB 1368

INTRODUCER: Health Policy Committee and Senator Ring

SUBJECT: Clinical, Counseling, and Psychotherapy Services

DATE: April 9, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Fav/CS**
2.			CJ	
3.			CF	
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 1368 updates and revises ch. 491, F.S., 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 5 years, without renewal. Licenses for interns registered before July 1, 2016, 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. It also ensures that interns could not continually re-register without completing all requirements.
- 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 3 of the last 5 years immediately preceding application.
- Corrects disciplinary jurisdiction of the Department of Health (DOH) 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 s. 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 & Family Therapy, and Mental Health Counseling

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

[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.

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), 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

[3] *See* s. 491.003(8), F.S.
[4] *See* s. 491.003(9), F.S.
[5] S. 491.0045, F.S.

interns. Of this total, 697 interns have been renewing their registered intern license for over 10 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]

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 2 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 2 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

[6] DOH Bill Analysis for SB 1368, dated March 4, 2013, on file with the Senate Health Policy Committee.
[7] *Id.*
[8] Section 491.0046, F.S.

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 2 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]

Dual Licensure

The Board is authorized[10] to issue a dual license as a marriage and family therapist if the 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 3 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 DOH 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.

[9] Section 491.005, F.S.
[10] Section 491.0057, F.S.
[11] Section 491.0149, F.S.

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.:

- 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 5 years. Licenses for interns registered before July 1, 2016, 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. It also ensures that interns may not continually re-register without completing all requirements.

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 1,000 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 non-CACREP 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

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

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.

Section 8 amends s. 491.009, F.S., to correctly identify disciplinary jurisdiction of the DOH 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 bill removes 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.

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 CS/SB 1368 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 5 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.)

CS by Health Policy on April 9, 2013:
The CS makes the following changes:

- Adds the Council for Accreditation of Counseling and Related Educational Program as an entity that may accredit a supplemental training program for marriage and family therapy licensure.
- Clarifies that intern registrations will expire after 5 years and cannot be renewed without approval by the Board.

[14] *Id.*

- Extends the date from July 1, 2013, to July 1, 2016, for implementation of the 5-year intern license expiration provision.
- Adds the word reissued to ensure that interns could not continually re-register without completing all requirements.
- Deletes duplicative material regarding clinical social work minimum graduate level course requirements.
- Makes other technical and conforming 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: WD	.	
04/09/2013	.	
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	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsections (3) through (7) of section 491.004,
6 Florida Statutes, are amended to read:
7 491.004 Board of Clinical Social Work, Marriage and Family
8 Therapy, and Mental Health Counseling.—
9 ~~(3) No later than January 1, 1988, the Governor shall~~
10 ~~appoint nine members of the board as follows:~~
11 ~~(a) Three members for terms of 2 years each.~~
12 ~~(b) Three members for terms of 3 years each.~~

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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.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Subsections (3) through (7) of section 491.004,
6 Florida Statutes, are amended to read:
7 491.004 Board of Clinical Social Work, Marriage and Family
8 Therapy, and Mental Health Counseling.—
9 ~~(3) No later than January 1, 1988, the Governor shall~~
10 ~~appoint nine members of the board as follows:~~
11 ~~(a) Three members for terms of 2 years each.~~
12 ~~(b) Three members for terms of 3 years each.~~

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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 shall be as a result of applying
76 for and meeting all requirements imposed on an applicant for
77 initial registration.
78 (6) A registered intern license issued before July 1, 2016,
79 shall expire 60 months after the date it was issued and may not
80 be renewed or reissued. Any subsequent intern registration shall
81 be issued at the discretion of the board.
82 (7) A person who has held a provisional license issued by
83 the board may not apply for an intern registration in the same
84 profession.
85 Section 3. Paragraph (c) of subsection (2) of section
86 491.0046, Florida Statutes, is amended, and subsection (5) is
87 added to that section, to read:
88 491.0046 Provisional license; requirements.—
89 (2) The department shall issue a provisional clinical
90 social worker license, provisional marriage and family therapist
91 license, or provisional mental health counselor license to each
92 applicant who the board certifies has:
93 (c) Has met the following minimum coursework requirements:
94 1. For clinical social work, a minimum of 15 semester hours
95 or 22 quarter hours of the coursework required by s.
96 491.005(1)(b)2.b.
97 2. For marriage and family therapy, 10 of the courses
98 required by s. 491.005(3)(b)1.a. ~~491.005(3)(b)1.a.-c.~~, as
99 determined by the board, and at least 6 semester hours or 9

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

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

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

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

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

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

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274 which required a minimum of 400 ~~180~~ direct client contact hours
275 of marriage and family therapy services currently offered within
276 an academic program of a college or university accredited by an
277 accrediting agency approved by the United States Department of
278 Education, or an institution which is publicly recognized as a
279 member in good standing with the Association of Universities and
280 Colleges of Canada or a training institution accredited by the
281 Commission on Accreditation for Marriage and Family Therapy
282 Education ~~recognized by the United States Department of~~
283 ~~Education~~. Certification shall be required from an official of
284 such college, university, or training institution.
285 2. If the course title which appears on the applicant's
286 transcript does not clearly identify the content of the
287 coursework, the applicant shall be required to provide
288 additional documentation, including, but not limited to, a
289 syllabus or catalog description published for the course.
290
291 The required master's degree must have been received in an
292 institution of higher education which at the time the applicant
293 graduated was: fully accredited by a regional accrediting body
294 recognized by the Commission on Recognition of Postsecondary
295 Accreditation; publicly recognized as a member in good standing
296 with the Association of Universities and Colleges of Canada; or
297 an institution of higher education located outside the United
298 States and Canada, which at the time the applicant was enrolled
299 and at the time the applicant graduated maintained a standard of
300 training substantially equivalent to the standards of training
301 of those institutions in the United States which are accredited
302 by a regional accrediting body recognized by the Commission on

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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825 violations; amending s. 491.0112, F.S.; revising a
826 provision providing that a psychotherapist who commits
827 sexual misconduct with a client or former client
828 commits a felony of the third degree; amending s.
829 491.012, F.S.; prohibiting a person from using the
830 title “mental health counselor coach” without a valid
831 mental health counselor license; deleting an obsolete
832 provision; amending s. 491.0145, F.S.; providing
833 certified master social workers a limited exemption
834 from continuing education requirements; amending s.
835 491.0149, F.S.; requiring the use of applicable
836 professional titles by licensees, provisional
837 licensees, and registrants on social media and other
838 specified materials; creating s. 491.017, F.S.;
839 providing a presumption of good faith for the actions
840 of a court-appointed mental health professional who
841 develops a parenting plan recommendation; prohibiting
842 anonymous complaints; providing prerequisites for a
843 parent to bring a suit against a mental health
844 professional; providing for the awarding of attorney
845 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

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

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.

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

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

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

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

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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

APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic: Clinical Counseling

Bill Number: 1368 *(if applicable)*

Name: Corinne Mixon

Amendment Barcode: *(if applicable)*

Job Title: Government Consultant

Address: 119 E. Park Ave
Street

Tallahassee, FL 32301
City, State, Zip

Phone: (850) 766-5795

E-mail: Corinnemixon@gmail.com

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

Representing: Florida Mental Health Counselors 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)

4/2/2013
Meeting Date

Topic _____

Bill Number 1368 *(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)

4-2-13
Meeting Date

Topic

Bill Number SB 1368 (if applicable)

Name JIM AKIN

Amendment Barcode (if applicable)

Job Title EXECUTIVE DIRECTOR

Address 1931 DELLWOOD DRIVE
Street

TALLAHASSEE FL 32303
City State Zip

Phone 850-224-2400

E-mail JIM@NASWFL.ORG

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

Representing NATIONAL ASSOCIATION OF SOCIAL WORKERS - FLORIDA CHAPTER

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 (10/10)

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 360

INTRODUCER: Health Policy Committee and Senator Garcia

SUBJECT: Surgical Assistants and Surgical Technologists

DATE: April 2, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HP	**Fav/CS**
2.			BI	
3.			AHP	
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 360 amends s. 395.0191, F.S., to add a new subsection concerning surgical technologists and surgical assistants. The bill provides various definitions. The bill prohibits a health care facility from employing or contracting with any person to perform the duties of a surgical assistant or surgical technologist unless that person is a certified surgical assistant or surgical technologist and also provides exceptions to these prohibitions.

The bill amends s. 395.0191, F.S.

II. Present Situation:

Role of Surgical Technologists

Surgical technologists, also called scrubs or operating room technicians,[1] work under the supervision of surgeons to ensure that the operating room environment is safe, that equipment functions properly, and that the operative procedure is conducted under conditions that maximize

[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).

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 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.

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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 March 18, 2013).
[4] *Supra* fn. 2.

- Check the patient's chart, identify the patient, verify the surgery to be performed with consent forms, and bring the patient to the assigned operating room.
- Transfer the patient to the operating table.
- Assess the patient's comfort and safety and provide verbal and tactile reassurance.
- Assist anesthesia personnel.
- 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.

The 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.

The 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

[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.

certification in 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 amends s. 395.0191, F.S., to add a new subsection concerning surgical technologists and surgical assistants. The bill provides definitions for "certified surgical assistant," "certified surgical technologist," "surgeon," "surgical assistant," and "surgical technologist."

The bill states that a facility may not employ or contract with any person to perform the duties of a surgical assistant or surgical technologist unless that person is a certified surgical assistant or certified surgical technologist. These employment prohibitions do not apply to:

- A person employed or contracted to perform the duties of a surgical technologist or surgical assistant at any time between January 1, 2013, and July 1, 2013;
- Any health care practitioner as defined in ch. 456, F.S., or any student, if the duties performed fall within the scope of the practitioner's or the student's training and practice; or
- Any person enrolled in a surgical technology or surgical assisting training program accredited by CAAHEP, the Accrediting Bureau of Health Education Schools (ABHES), or another accrediting body recognized by the United States Department of Education. Such a person may practice for one year after completion of a training program before he or she is required to be certified.

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.

[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).

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, unless they fall under one of the bill's exceptions.

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 Department of Health reports no fiscal impact.[31]

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 April 2, 2013:
The CS redesignates section 1 of the bill as an amendment to ch. 395, F.S., instead of as an undesignated section of law. It also amends the definitions of "surgical assistant" and "surgical technologist" and adds definitions for "certified surgical first assistant," "certified surgical technologist," and "surgeon." The CS amends the employment limitations in the bill to state that health care facilities may not employ or contract with any person *to perform the duties of a surgical assistant or a surgical technologist* unless that person is appropriately certified. The bill also clarifies exceptions to these employment limitations, including for health care practitioners and students for whom surgical technology or surgical assisting services are already within their scope of training and practice and students at surgical technology or surgical assisting training programs accredited by ABHES, CAAHEP, or another accrediting agency recognized by the United States Department of Education.

[31] Department of Health, *2013 Bill Analysis for SB 360*. A copy is on file with the Senate Health Policy Committee.

The CS deletes redundant provisions concerning inspections of health care facilities and rulemaking authority and removes provisions relating to insurance reimbursement of surgical assistant services.

B. Amendments:

None.

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

581170

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/02/2013	.	
	.	
	.	
	.	

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

581170

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

581170

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.

607500

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
	.	
	.	
	.	

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:
7 395.0191 Staff membership and clinical privileges.—
8 (11) SURGICAL ASSISTANTS AND SURGICAL TECHNOLOGISTS.—
9 (a) *Definitions.*—As used in this subsection, the term:
10 1. "Certified surgical assistant" means a surgical
11 assistant who maintains valid and active one of the following
12 certifications:

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13 a. Certified Surgical First Assistant from the National
14 Board of Surgical Technology and Surgical Assisting.
15 b. Certified Surgical Assistant from the National Surgical
16 Assistant Association.
17 c. Surgical Assistant-Certified from the American Board of
18 Surgical Assistants.
19 2. "Certified surgical technologist" means a surgical
20 technologist who maintains valid and active certification as a
21 Certified Surgical Technologist from the National Board of
22 Surgical Technology and Surgical Assisting.
23 3. "Surgeon" means any health care practitioner as defined
24 in chapter 456 whose scope of practice includes performing
25 surgery and who is listed as the primary surgeon in the
26 operative record.
27 4. "Surgical assistant" means a person who provides aid
28 under the supervision of a surgeon in exposure, hemostasis,
29 closures, and other intraoperative technical functions and
30 assists the surgeon in performing a safe operation with optimal
31 results for the patient.
32 5. "Surgical technologist" means a person who assists and
33 practices under the supervision of a surgeon to ensure that the
34 operating room environment is safe, that proper equipment is
35 available, and that the operative procedure is conducted
36 efficiently. Surgical technologist duties include, but are not
37 limited to, maintaining sterility during a surgical procedure,
38 handling and ensuring the availability of necessary equipment
39 and supplies, and maintaining visibility of the operative site.
40 (b) *Employment limitations.*—
41 1. A facility may not employ or contract with any person to

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42 perform the duties of a surgical assistant unless the person is
43 a certified surgical assistant.
44 2. A facility may not employ or contract with any person to
45 perform the duties of a surgical technologist unless the person
46 is a certified surgical technologist.
47 3. Subparagraphs 1. and 2. do not apply to:
48 a. A person who was employed or contracted to perform the
49 duties of a surgical technologist or a surgical assistant at any
50 time between January 1, 2013, and July 1, 2013.
51 b. A health care practitioner as defined in chapter 456 or
52 a student if the duties he or she performs fall within the scope
53 of the practitioner's or the student's training and practice.
54 c. A 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 1 year after completion
61 of such a training program before he or she is required to meet
62 the criteria in subparagraphs 1. or 2.
63 Section 2. This act shall take effect July 1, 2013.
64
65 ========== T I T L E A M E N D M E N T ==========
66 And the title is amended as follows:
67 Delete everything before the enacting clause
68 and insert:
69 A bill to be entitled
70 An act relating to surgical assistants and surgical

607500

71 technologists; amending s. 395.0191, F.S.; providing
72 definitions; providing requirements for health care
73 facilities that employ or contract with surgical
74 assistants and surgical technologists; providing
75 exceptions to these requirements; providing an
76 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

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

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

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

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

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

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

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

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.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities, Vice Chair
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:
Joint Committee on Administrative Procedures

SENATOR RENE GARCIA
40th District

February 4, 2013

The Honorable Aaron Bean
Chair, Health Policy Committee
302 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Bean:

This letter should serve as a request to have my bill *SB 360 Surgical Assistants and Surgical Technologists* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 40

RG:dm

ENTERED

CC: Sandra Stovall, Staff Director

FLORIDA SENATE
FEB 04 2013
Health Policy Committee

REPLY TO:
❒ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
❒ 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

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)

4/2/13
Meeting Date

Topic: Surgical Technologist Certification

Bill Number: SB 360 (if applicable)

Name: Larry Gonzalez

Amendment Barcode: _____ (if applicable)

Job Title: Attorney

Address: 223 S. Gadsden St
Street

Tallahassee
City State Zip

Phone: 222-0465

E-mail: lawgonz@earthlink.net

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

Representing: Myself

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2 / 12 /2013
Meeting Date

Topic _____

Bill Number 360 *(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)

4/2/13
Meeting Date

Topic: Surgical Technologist + Surgical Assist

Bill Number: SB 360 (if applicable)

Name: Shannon E. Smith

Amendment Barcode: (if applicable)

Job Title: Program Chair Tallahassee Comm College Surgical Technology Program

Address: 4294 Four Oaks Blvd
Street

Tallahassee, FL 32311
City, State, Zip

Phone: (706) 540-6779

E-mail: smitshne@tcc.fl.edu

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

Representing: Association of Surgical Assistants

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-27-2013
Meeting Date

Topic: Surgical Technologist + Surg. Asst

Bill Number: SB 360 (if applicable)

Name: (Mary E) "Libby" McNaron

Amendment Barcode: (if applicable)

Job Title: State President

Address: 2004A Firetower Rd
Street

Chipley, Fla 32428
City, State, Zip

Phone: 850-873-3551

E-mail: mcnaron@gulfcoast.edu

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

Representing: Florida State Assembly Surgical Technologists

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)

4-2-13
Meeting Date

Topic: Certifying Surgical Technologists & Surgical First Assistants

Bill Number: 360 *(if applicable)*

Name: Kathy Zorn

Amendment Barcode: _____ *(if applicable)*

Job Title: Certified First Assistant

Address: 700 Eleazar PL
Street

Tallahassee FL 32312
City *State* *Zip*

Phone: 850-510-7256

E-mail: _____

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

Representing: FL Assoc of Surigal Assist

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 1358

INTRODUCER: Senators Flores and Sobel

SUBJECT: Audits of Pharmacy Records

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Favorable**
2.			AHS	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 1358 makes the pharmacy audit requirements contained in s. 465.188, F.S., which currently apply only to audits of Medicaid-related pharmacy records, applicable to third-party payor and third-party administrator audits of pharmacy records. In addition, the bill specifies that a claim is not subject to financial recoupment if the claim, except for typographical, computer, clerical, or recordkeeping errors, is a valid claim. Extrapolation may not be used for calculating recoupment in pharmacy audits and the audit criteria may not subject a claim to financial recoupment except when recoupment is required by law. The audit criteria apply to third-party claims submitted for payment after July 1, 2011.

This bill substantially amends section 465.188 of the Florida Statutes.

II. Present Situation:

Medicaid

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. The Agency for Health Care Administration (AHCA) is responsible for administering the Medicaid program. Medicaid serves approximately 3.3 million people in Florida.[1]

[1] Social Services Estimating Conference Medicaid Caseloads, February 2013 forecast, available at: http://edr.state.fl.us/content/conferences/medicaid/medcases.pdf (Last visited on March 28, 2013).

Medicaid reimburses health care providers that have a provider agreement with the AHCA only for goods and services that are covered by the Medicaid program and only for individuals who are eligible for medical assistance from Medicaid. Each provider agreement is a voluntary contract between the AHCA and the provider, in which the provider agrees to comply with all laws and rules pertaining to the Medicaid program.[2] A Medicaid provider has a contractual obligation to comply with Medicaid policy which requires that a claim must be true and correct or payments may be recouped.[3]

Section 409.906, F.S., identifies the services for which Florida has, at its option, decided to make payments under the Medicaid program. Prescribed drug services are optional services under the Medicaid program. Under s. 409.906(20), F.S., the AHCA may pay for medications that are prescribed for a recipient by a physician or other licensed practitioner of the healing arts authorized to prescribe medication and that are dispensed to the recipient by a licensed pharmacist or physician in accordance with applicable state and federal law. The estimated Medicaid prescribed drug services for state fiscal year 2012-2013 is $1,890.4 million.[4]

Section 409.908(14), F.S., establishes policies regarding Medicaid reimbursement of providers of prescribed drugs. Section 409.912(37), F.S., requires the AHCA to implement a Medicaid prescribed-drug spending-control program that includes several specified components.

Section 409.913, F.S., provides for the oversight of the integrity of the Medicaid program to ensure that fraudulent and abusive behavior occur to the minimum extent possible, and to recover overpayments and impose sanctions as appropriate. Overpayment is defined to include any amount that is not authorized to be paid by the Medicaid program whether paid as a result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse, or mistake.[5]

Under s. 409.913(2), F.S., the AHCA is required to conduct, or cause to be conducted by contract or otherwise, reviews, investigations, analyses, audits, or any combination of these, to determine possible fraud, abuse, overpayment, or recipient neglect in the Medicaid program and to report the findings of any overpayments in audit reports as appropriate.

Section 409.913(32), F.S., authorizes agents and employees of the AHCA to inspect, during normal business hours, the records of any pharmacy, wholesale establishment or manufacturer, or any other place in which drugs and medical supplies are manufactured, packed, packaged, made, stored, sold or kept for sale, for the purpose of verifying the amount of drugs and medical supplies ordered, delivered, or purchased by a Medicaid provider. The AHCA must provide at least 2 business days' prior notice of an inspection. The notice must identify the provider whose records will be inspected, and the inspection shall include only records specifically related to that provider.

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[2] *See* s. 409.907(2), F.S.
[3] *See* s. 409.913(7), F.S.
[4] Social Services Estimating Conference Medicaid Services Expenditures, February 25, 2013, available at: http://edr.state.fl.us/content/conferences/medicaid/medhistory.pdf (Last visited on March 28, 2013).
[5] *See* s. 409.913(1)(e), F.S.

Medicaid Pharmacy Audits

Section 465.188, F.S., establishes requirements for the conduct of an audit of the Medicaid-related records of a pharmacy licensed under ch. 465, F.S. The audit must meet the following requirements.

- The agency conducting the audit must give the pharmacist at least one week's prior notice of the initial audit for each audit cycle.
- An audit must be conducted by a pharmacist licensed in Florida.
- Any clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error regarding a document or record required under the Medicaid program does not constitute a willful violation and is not subject to criminal penalties without proof of intent to commit fraud.
- A pharmacist may use the physician's record or other order for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug.
- A finding of an overpayment or underpayment must be based on the actual overpayment or underpayment and may not be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs.
- Each pharmacy shall be audited under the same standards and parameters.
- A pharmacist must be allowed at least 10 days in which to produce documentation to address any discrepancy found during an audit.
- The period covered by an audit may not exceed one calendar year.
- An audit may not be scheduled during the first 5 days of any month due to the high volume of prescriptions filled during that time.
- The audit report must be delivered to the pharmacist within 90 days after conclusion of the audit. A final audit report must be delivered to the pharmacist within 6 months after receipt of the preliminary audit report or final appeal, whichever is later.
- The agency conducting the audit may not use the accounting practice of extrapolation in calculating penalties for Medicaid audits.

The law requires the AHCA to establish a process that allows a pharmacist to obtain a preliminary review of an audit report and the ability to appeal an unfavorable audit report without the necessity of obtaining legal counsel. The preliminary review and appeal may be conducted by an ad hoc peer review panel, appointed by the AHCA, which consists of pharmacists who maintain an active practice. If, following the preliminary review, the AHCA or the review panel finds that an unfavorable audit report is unsubstantiated, the AHCA must dismiss the audit report without the necessity of any further proceedings.

These requirements do not apply to investigative audits conducted by the Medicaid Fraud Control Unit of the Department of Legal Affairs or to investigative audits conducted by the AHCA when there is reliable evidence that the claim that is the subject of the audit involves fraud, willful misrepresentation, or abuse under the Medicaid program.

Third-party Payor/Third-party Administrator Pharmacy Audits

Advances in pharmaceuticals have transformed health care over the last several decades. Many health care problems are prevented, cured, or managed effectively for years through the use of prescription drugs. As a result, national expenditures for retail prescription drugs have grown from $120.9 billion in 2000 to 263 billion in 2011.[6] This has brought about increased scrutiny of pharmaceutical dispensing and reimbursement processes.

Health insurers, including Medicare and Medicaid, and other third party payers spent $214.3 billion on prescription drugs in 2011 and consumers paid $45 billion out of pocket for prescription drugs that year.[7] As expenditures for drugs have increased, insurers have looked for ways to control that spending. Among other things, they have turned to pharmacy benefit managers, which are third party administrators of prescription drug programs. Pharmacy benefit managers process prescriptions for the groups that pay for drugs, usually insurance companies or corporations, and use their size to negotiate with drug makers and pharmacies. They are primarily responsible for processing and paying prescription drug claims. They are also responsible for maintaining the formulary of covered drugs, contracting with pharmacies, and negotiating discounts and rebates with drug manufacturers.

Pharmacy benefit managers build networks of retail pharmacies to provide consumers convenient access to prescriptions at discounted rates. The audit process is one means used by pharmacy benefit managers and third-party payors to review pharmacy programs. The audits ensure that procedures and reimbursement mechanisms are consistent with contractual and regulatory requirements.

Pharmacies have increasingly complained about the onerous and burdensome nature of these audits. Organizations such as the National Community Pharmacists Association[8] and the Independent Pharmacy Cooperative,[9] which both represent independent pharmacies, have been advocating for legislation at the federal and state levels to address what they perceive as predatory practices by pharmacy benefit managers.

A 2011 survey conducted among members of the National Community Pharmacists Association. found that pharmacy audits were focusing on trivial errors (misspelling patient names or incorrect data) rather than intentional, fraudulent acts.[10]

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[6] Centers for Medicare and Medicaid Services, *National Health Expenditures Web Tables, Table 16, Retail Prescription Drugs Aggregate, Percent Change, and Percent Distribution, by Source of Funds: Selected Calendar Years 1970-2011*. Found at: <https://www.cms.gov/NationalHealthExpendData/downloads/tables.pdf> (Last visited on March 22, 2013).
[7] *Id.*
[8] National Community Pharmacists Association, NCPA to Medicare: Rein in Egregious Pharmacy Audits; Reform Preferred Networks; and Curb Mail Order Waste in 2014 Prescription Drug Plans. Found at: <http://www.ncpanet.org/index.php/news-releases/1593-ncpa-to-medicare-rein-in-egregious-pharmacy-audits-reform-preferred-networks-and-curb-mail-order-waste-in-2014-prescription-drug-plans> (Last visited on March 29, 2013).
[9] Independent Pharmacy Cooperative, *IPC Introduces Pharmacy Audit Legislation in Florida*. Found at: <https://www.ipcrx.com/Public/Govt%20Affairs/GA_December_22_2011.aspx>(Last visited on March 22, 2013).
[10] National Community Pharmacists Association, *New Survey Reveals Pharmacists are Increasingly Struggling to Care for Patients Amid Predatory Audits, Unfair Reimbursement Practices*. Found at: < http://www.ncpanet.org/index.php/news-releases/1062-new-survey-reveals-pharmacists-are-increasingly-struggling-to-care-for-patients-amid-predatory-audits-unfair-reimbursement-practices> (Last visited on March 22, 2013).

III. Effect of Proposed Changes:

Section 1 amends s. 465.188, F.S., relating to Medicaid audits of pharmacies, to make the provisions of the section applicable to an audit of Medicaid-related, third-party payor, or third-party administrator records of a pharmacy permittee.

Similar to Medicaid audits, audits by third-party payors or third-party administrators must provide a pharmacist with at least one week's notice prior to the audit. The bill provides that a claim is not subject to financial recoupment if the claim is a valid claim other than typographical, scrivener's, computer, clerical, or recordkeeping errors. Extrapolation, which is an accounting practice, may not be used for calculating recoupment and audit criteria may not subject a claim for financial recoupment unless recoupment is required by law. The audit criteria apply to third-party claims submitted for payment after July 1, 2011.

The bill does not modify the existing provision that the audit criteria in this section of law apply to Medicaid claims submitted for payment after July 11, 2003. Therefore, the new audit criteria affecting Medicaid claims will have a retroactive application to Medicaid claims submitted for payment after July 11, 2003. These new audit criteria for Medicaid claims include:

- A claim is not subject to financial recoupment if, except for typographical, scrivener's, computer, or other clerical or recordkeeping error, the claim is an otherwise valid claim.
- The agency or other entity conducting an audit may not use extrapolation in calculating recoupment for Medicaid.
- The audit criteria may not subject a claim to recoupment except when recoupment is required by law.

The process for appealing audit reports is amended to conform to the addition of third-party payors and third-party administrators to the provisions of s. 465.188, F.S. Members of the ad hoc peer review panel for preliminary review and appeal of third-party payor or third-party administrator audit reports are appointed by the third-party payor or third-party administrator contracting with the pharmacy.

Section 2 provides that the bill will take effect upon becoming a 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:

The bill may raise concerns due to impairment of contracts.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1358 will have an indeterminate fiscal impact on the private insurance sector through potential modifications in pharmacy auditing methodologies and limitations on recoupment of claims.

Due to the prior notification requirement before third-party payor or third-party administrator audits may get underway, pharmacies may be better able to manage workload responsibilities. Pharmacies may also benefit due to less frequent recoupment of claims.

C. Government Sector Impact:

The AHCA reports that it could nullify the effect of compliance audits on providers who may not be committing fraud, but are committing abuse and being overpaid by the Medicaid program through computer and recordkeeping errors. In addition, this bill could affect capitation rates for Medicaid managed care by restricting the managed care organization's ability to recoup for erroneous payments. The fiscal impact to the AHCA is indeterminate.[11]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The provision of the bill that states that a claim is not subject to financial recoupment if, except for typographical, scrivener's, computer, clerical, or recordkeeping error, the claim is an otherwise valid claim will have a negative impact on the AHCA's ability to combat fraud and abuse in the Florida Medicaid program. Although providers may not be committing fraud, they may be committing abuse and may be collecting overpayments from the Medicaid program through computer and recordkeeping errors. This provision will also affect managed care organizations that currently provide services to Medicaid enrollees.

[11] AHCA Bill Analysis for SB 1358 and HB 791 (2013) on file with the Senate Health Policy Committee.

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.

By Senator Flores

37-01148A-13 20131358__

A bill to be entitled

An act relating to audits of pharmacy records; amending s. 465.188, F.S.; revising requirements for the audit of Medicaid-related pharmacy records; requiring that audits of third-party payor and third-party administrator records of pharmacy permittees be conducted in specified manners; providing that claims containing certain clerical or recordkeeping errors are not subject to financial recoupment under certain circumstances; specifying that certain audit criteria apply to third-party claims submitted after a specified date; prohibiting certain accounting practices used for calculating the recoupment of claims; prohibiting the audit criteria from requiring the recoupment of claims except under certain circumstances; providing procedures for review and appeal of third-party payor and third-party administrator audits; providing an effective date.

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

Section 1. Section 465.188, Florida Statutes, is amended to read:

465.188 Financial ~~Medicaid~~ audits of pharmacies.—

(1) Notwithstanding any provision of ~~other~~ law, when an audit of ~~the~~ Medicaid-related, third-party payor, or third-party administrator records of a pharmacy permittee ~~licensed~~ under this chapter ~~465~~ is conducted, such audit must be conducted as provided in this section.

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

30 (a) The agency or other entity conducting the audit must
31 give the pharmacist at least 1 week's prior notice of the
32 initial audit for each audit cycle.
33 (b) An audit must be conducted by a pharmacist licensed in
34 this state.
35 (c) Any clerical or recordkeeping error, such as a
36 typographical error, scrivener's error, or computer error
37 regarding a document or record required under the third-party
38 payor, third-party administrator, or Medicaid program does not
39 constitute a willful violation and, without proof of intent to
40 commit fraud, is not subject to criminal penalties ~~without proof~~
41 ~~of intent to commit fraud~~. A claim is not subject to financial
42 recoupment if, except for such typographical, scrivener's,
43 computer, or other clerical or recordkeeping error, the claim is
44 an otherwise valid claim.
45 (d) A pharmacist may use the physician's record or other
46 order for drugs or medicinal supplies written or transmitted by
47 any means of communication for purposes of validating the
48 pharmacy record with respect to orders or refills of a legend or
49 narcotic drug.
50 (e) A finding of an overpayment or underpayment must be
51 based on the actual overpayment or underpayment and may not be a
52 projection based on the number of patients served having a
53 similar diagnosis or on the number of similar orders or refills
54 for similar drugs.
55 (f) Each pharmacy shall be audited under the same standards
56 and parameters.
57 (g) A pharmacist must be allowed at least 10 days in which
58 to produce documentation to address any discrepancy found during

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

59 an audit.
60 (h) The period covered by an audit may not exceed 1
61 calendar year.
62 (i) An audit may not be scheduled during the first 5 days
63 of any month due to the high volume of prescriptions filled
64 during that time.
65 (j) The audit report must be delivered to the pharmacist
66 within 90 days after conclusion of the audit. A final audit
67 report shall be delivered to the pharmacist within 6 months
68 after receipt of the preliminary audit report or final appeal,
69 as provided for in subsection (2), whichever is later.
70 (k) The audit criteria set forth in this section apply
71 ~~applies~~ only to audits of Medicaid claims submitted for payment
72 after ~~subsequent to~~ July 11, 2003, and to third-party claims
73 submitted for payment after July 1, 2011. Notwithstanding any
74 ~~other~~ provision of ~~in~~ this section, the agency or other entity
75 conducting the audit may ~~shall~~ not use the accounting practice
76 of extrapolation in calculating penalties or recoupment for
77 Medicaid, third-party payor, or third-party administrator
78 audits.
79 (l) The audit criteria may not subject a claim to financial
80 recoupment except in those circumstances when recoupment is
81 required by law.
82 (2) The Agency for Health Care Administration, in the case
83 of a Medicaid-related audit, or the third-party payor or third-
84 party administrator contracting with the pharmacy, in the case
85 of a third-party payor or third-party administrator audit, shall
86 establish a process under which a pharmacist may obtain a
87 preliminary review of an audit report and may appeal an

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

88 unfavorable audit report without the necessity of obtaining
89 legal counsel. The preliminary review and appeal may be
90 conducted by an ad hoc peer review panel, appointed by the
91 agency in the case of a Medicaid-related audit, or appointed by
92 the third-party payor or third-party administrator contracting
93 with the pharmacy in the case of a third-party payor or third-
94 party administrator audit, which consists of pharmacists who
95 maintain an active practice. If, following the preliminary
96 review, the ~~agency or~~ review panel finds that an unfavorable
97 audit report is unsubstantiated, the agency, in the case of a
98 Medicaid-related audit, or the third-party payor or third-party
99 administrator contracting with the pharmacy, in the case of a
100 third-party payor or third-party administrator audit, shall
101 dismiss the audit report without the necessity of any further
102 proceedings.
103 (3) This section does not apply to investigative audits
104 conducted by the Medicaid Fraud Control Unit of the Department
105 of Legal Affairs.
106 (4) This section does not apply to any investigative audit
107 conducted by the Agency for Health Care Administration when the
108 agency has reliable evidence that the claim that is the subject
109 of the audit involves fraud, willful misrepresentation, or abuse
110 under the Medicaid program.
111 Section 2. This act shall take effect upon becoming a law.

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)

4/2/13
Meeting Date

Topic: AUDITS OF PHARMACY RECORDS

Bill Number: SB 1358 *(if applicable)*

Name: JIM POWERS

Amendment Barcode: *(if applicable)*

Job Title: PHARMACY CONSULTANT FIPN

Address: 1349 OLD VILLAGE RD
Street

TALLAHASSEE, FL 32312
City *State* *Zip*

Phone: 850-422-0079

E-mail: THEPOWERS@NETTALY.COM

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

Representing: FLORIDA INDEPENDENT PHARMACY

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)

4/2/13
Meeting Date

Topic: Audits of Pharmacy Records

Bill Number: S 1358 *(if applicable)*

Name: Bill Mincy

Amendment Barcode: *(if applicable)*

Job Title: VP & Clinical Pharmacist, PPSC

Address: 3375-I Capital Circle NE
Street

Tallahassee, FL 32308
City, State, Zip

Phone: 850-656-0100 x240

E-mail: bill.mincy@ppsconline.com

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

Representing: Independent Pharmacy Owners

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 1358

Bill Number: SB1358 (if applicable)

Name: AUDITS OF PHARMACY RECORDS

Amendment Barcode: (if applicable)

Job Title: PHARMACIST

JIM KOIVISTO

Address: 4133 UNIV. BLVD S.
Street

JAX, FLA 32216
City, State, Zip

Phone: 904-737-2216

E-mail: KOIVISTO@JELKSOUD.NET

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

Representing: HOLLIDAYS & KOIVISTO PHARMACY

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4-2-13
Meeting Date

Topic: PBM AUDIT

Bill Number: SB 1350 *(if applicable)*

Name: BRETON McDONALD

Amendment Barcode: *(if applicable)*

Job Title: PHARMACIST

Address: 5740 WESTMONT ROAD
Street

MILTON, FL 32583
City, State, Zip

Phone: 850-982-9087

E-mail: MCPHARM@MCHSI.COM

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

Representing: FPA - PHARMACY

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

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4 / 2 /2013
Meeting Date

Topic _____

Bill Number 1358 *(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

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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)

4-2-13
Meeting Date

Topic: Pharmacy Audit Bill

Bill Number: SB 1358 *(if applicable)*

Name: Michael Potze

Amendment Barcode: *(if applicable)*

Job Title: Pharmacist

Address: 805 Bayshore Drive
Street

Tarpon Springs FL 34689
City *State* *Zip*

Phone: 412-716-3457

E-mail:

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

Representing:

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

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

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APPEARANCE RECORD

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4/2/13
Meeting Date

Topic: Pharmacy Audit Bill

Bill Number: SB1358 *(if applicable)*

Name: George Malone

Amendment Barcode: *(if applicable)*

Job Title: Pharmacy Director

Address: 16017 Bella Woods Dr
Street

Tampa FL 33647
City *State* *Zip*

Phone: 8134940438

E-mail: gdenolam@mac.com

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

Representing: Self / Florida Society of Health System Pharmacist

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

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

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APPEARANCE RECORD

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4/2/2013
Meeting Date

Topic: Pharmacy Audits

Bill Number: SB 1358 (if applicable)

Name: Lori Weems

Amendment Barcode: (if applicable)

Job Title: General Counsel – Florida Pharmacy Ass'n

Address: 216 S. Monroe St.
Street

Tallahassee FL 32301
City State Zip

Phone: 850-668-5379

E-mail: lori@pwlobby.com

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

Representing: FLORIDA PHARMACY ASS'N

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/2/13
Meeting Date

Topic: Pharmacy Audits

Bill Number: SB 1358 (if applicable)

Name: Larry Gonzalez

Amendment Barcode: (if applicable)

Job Title: General Counsel, FSHP

Address: 223 S. Gadsden ST
Street

Tallahassee, FL 01
City, State, Zip

Phone: 222-0465

E-mail: larrygonz@earthlink.net

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

Representing: Florida Society of Health-System Pharmacists

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/2/13
Meeting Date

Topic: Pharmacy records audits.

Bill Number: SB 1358 *(if applicable)*

Name: Gary Alvarez, Pharm.D.

Amendment Barcode: *(if applicable)*

Job Title: Pharmacist

Address: 5871 S.W. 88 Terrace
Street

Cooper city, Fl. 33328
City *State* *Zip*

Phone: 305-608-2456

E-mail: galvarez@nova.edu

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

Representing: Florida Pharmacy Association - President

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)

4/2/13
Meeting Date

Topic: Audit of Pharmacy

Bill Number: 1358 *(if applicable)*

Name: David Dederichs

Amendment Barcode: *(if applicable)*

Job Title: Gov Affairs - Express-Scripts

Address: *Street*

City *State* *Zip*

Phone: 954 239 8653

E-mail:

Speaking: ☐ For ☑ Against ☐ Information

Representing: Express-Scripts

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)

4/2/2013
Meeting Date

Topic: Audit

Bill Number: 1358 *(if applicable)*

Name: Michael Apotte

Amendment Barcode: *(if applicable)*

Job Title: Sr Director of Government Affairs

Address: 7578 West Broad St
Street

Richmond, VA 23112
City, State, Zip

Phone: 804-337-4806

E-mail: Michael.Apotte@cvscaremark.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)

4-2-2013
Meeting Date

Topic: Audit of Pharmacy Records

Bill Number: SB1358 *(if applicable)*

Name: David Root

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 212 Spring Branch Rd
Street

Waverly, VA 23890
City *State* *Zip*

Phone: 804-834-2626

E-mail: droot@primetherapeutics.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: Prime Therapeutics

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)

4-2-2013
Meeting Date

Topic: Pharmacy Audits

Bill Number: 1358 *(if applicable)*

Name: Jorge Chamizo

Amendment Barcode: _____ *(if applicable)*

Job Title: Attorney

Address: 108 S. Monroe St.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: (850) 681-0024

E-mail: jorge@flapartners.com

Speaking: ☐ For ☐ Against ☐ Information

Representing: Independent Pharmacy Cooperative

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)

1st Please

4-2-13
Meeting Date

Topic: Pharmacy Audit Bill

Bill Number: 1358 *(if applicable)*

Name: Steven McCall, R.Ph.

Amendment Barcode: *(if applicable)*

Job Title: Director of Pharmacy Audit

Address: 5990 S Mesquite Grove Way
Street

Chandler, AZ 85249
City *State* *Zip*

Phone: 480-614-7326

E-mail: Steven.mccall@caremark

Speaking: ☐ For ☒ Against ☐ Information

Representing: CVS Caremark

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)

Testimony of Bill Mincy in Support of SB 1358

Thank you Chairman Bean for allowing me the opportunity to speak in support of SB 1358.

My name is Bill Mincy and I am a fourth generation independent pharmacist. I currently work for PPSC, a pharmacy services firm based in Tallahassee that works with the Florida Independent Pharmacy Network on behalf of 1,300 independent pharmacies located across the State of Florida. These pharmacies employ an estimated 13,500 Florida citizens and generate over $5 billion in revenue annually.

One of the largest problems faced by Florida's independent pharmacy owners today is the largely unregulated behavior and abusive auditing practices of entities known as Pharmacy Benefit Managers or PBMs. These PBMs are huge corporate middlemen that design, negotiate and manage prescription drug benefits for health plans, employers, insurance companies and state and federal government payers. Some of these PBMs own and operate large mail order, specialty and retail pharmacy chains which aggressively compete against Florida's independently owned pharmacies.

These PBMs also are in the business of conducting audits of pharmacies enrolled in their pharmacy networks. PBM audits are often overbearing and non-uniform because of the absence of any state oversight or regulatory protections. These audits often focus on inadvertent administrative, clerical or recordkeeping errors or omissions by physicians when writing a prescription rather than the intent to target fraud, waste and abuse issues.

For example, if a physician spells the patient's name incorrectly on a prescription the PBM will cite the original prescription claim and all subsequent refills as unacceptable and seek to recover all payments from the pharmacy owner. When pharmacies attempt to supply supporting documentation from staff, physicians or patients after the audit, the PBMs often reject the information and merely ask for payment for the cited claims.

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The claims audited by PBMs tend to be targeted toward very expensive drugs costing hundreds or even tens of thousands of dollars per prescription. Additional claims targeted for audits are often drugs like inhalers, eye drops, insulin and other injectables with "unit of use" packaging that cannot be broken up or divided to provide the amount the PBM decides is appropriate. In these situations, the PBM's allowable quantity criteria and the physicians instructions are often in conflict leaving the pharmacy in an untenable position when attempting to serve patient needs.

In many cases, if a PBM identifies an administrative or clerical error during the audit, the PBM will recoup 100% of the amount paid for the original prescription and all subsequent refills. In other cases some PBMs seek to extrapolate recoveries based on a projection or formula rather than actual claims. In both cases these recoveries represent a severe financial penalty for non-fraudulent claims that is way out of proportion to the pharmacist's actions. Florida pharmacy owners routinely experience audit recoveries ranging from a few thousand dollars to more than $100,000 for valid prescriptions written by well intended physicians for medications dispensed in good faith by small pharmacies to covered health care plan patients.

To make matters even worse, many of the PBMs are paid based on a percentage of recoveries they extract from pharmacies, providing a perverse incentive to identify high dollar clerical errors that increase PBM's profit margins at the expense of Florida's small pharmacy owners.

When the Florida Legislature was told of similar abusive audit practices being conducted in the Florida Medicaid Program in 2003 it passed reasonable, common sense protections that addressed those problems and that statute is still in place today. This bill simply extends the pharmacy audit protections currently in place for Florida Medicaid into the commercial marketplace.

This issue has become so critical that 11 states have enacted PBM audit reform legislation during the past year along bringing the national total to 24 states. Copies of legislation passed in other states can be provided if requested. I sincerely hope that this subcommittee will favorably move SB 1358 out of committee. Thank you.

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Health Policy Committee **Judge:**

Started: 4/2/2013 12:34:38 PM
Ends: 4/2/2013 3:32:08 PM Length: 02:57:31

12:34:39 PM	Meeting called to order
12:34:59 PM	Opening remarks by chair
12:35:37 PM	Roll call
12:36:03 PM	Chair Bean
12:36:19 PM	SB 1264 by Sen. Flores (resumed from previous meeting)
12:37:23 PM	Public Testimony
12:37:39 PM	Paul Gluck - Senior Medical Consultant - Baptist Health South Florida
12:39:52 PM	Chair Bean
12:39:56 PM	Reverand Robert Jakoby - Baptist Health South Florida
12:41:34 PM	Sen. Joyner
12:42:06 PM	William Daquette - CEO, Homestead Hospital
12:43:53 PM	Chair Bean
12:43:59 PM	Dr. Jefry Blehler - Miami Children's Hospital
12:46:16 PM	Sen. Sobel
12:47:23 PM	Dr. Blehler
12:47:42 PM	Sen. Sobel
12:48:00 PM	Dr. Blehler
12:48:23 PM	April Singh - General Counsel - Miami Children's Hospital
12:50:46 PM	Phillis Oeters - Vice President, Community & Gov. Relations - Baptist Health South Florida
12:52:17 PM	Chair Bean
12:52:27 PM	Ron Book - Jackson Memorial Hospital + South Broward Hospital
12:54:29 PM	Chair Bean
12:54:36 PM	Sen. Joyner in debate
12:56:32 PM	Sen. Flores closes on her bill
12:58:46 PM	Chair Bean
12:59:05 PM	Roll call on SB 1264
12:59:26 PM	Chair Bean
12:59:29 PM	SB 732 by Sen. Grimsley
12:59:40 PM	AM 178606
1:00:22 PM	Sen. Grimsley explains her strike all amendment
1:02:02 PM	AM 834332
1:02:03 PM	Sen. Sobel explains her amendment to the amendment
1:03:26 PM	Amendment 834332 withdrawn
1:03:32 PM	Chair Bean
1:03:52 PM	Public Testimony
1:04:31 PM	Chris Nuland - American College of Physicians
1:04:52 PM	Kimberly Greco - Amgen
1:07:09 PM	Brian O'Connor - Biotechnology Industry Organization
1:07:25 PM	Carlos Sattler - Novartis/ Sandoz
1:10:22 PM	Melissa Joiner - Florida Retail Federation
1:11:05 PM	Linda Ruescher - Lupus Foundation of Florida
1:13:32 PM	Beth Labasky - Informed Families of Florida
1:13:53 PM	Sally West - Walgreens
1:14:56 PM	Rebecca O'Hara - FL Medical Assc
1:15:05 PM	Brian Pitts - Justice 2 Jesus
1:16:46 PM	Mike Ayotte - CVS Caremark
1:20:34 PM	Brian Jogerst - PhRMA
1:20:51 PM	Spencer Lieb - The AIDs Institute
1:23:10 PM	Chair Bean
1:23:24 PM	Preston McDonald - Florida Pharmacy Assc
1:24:48 PM	David Dederichs - Express Scripts
1:28:52 PM	Sen. Braynon

1:29:55 PM	Mr. Dederichs
1:30:56 PM	Sen. Garcia
1:31:17 PM	Mr. Dederichs
1:32:31 PM	Dr. Frank Lavernia
1:34:13 PM	Sen. Brandes
1:34:17 PM	Dr. Lavernia
1:34:53 PM	Chair Bean
1:35:10 PM	Sen. Brandes
1:36:00 PM	Dr. Lavernia
1:36:14 PM	Sen. Joyner
1:36:27 PM	Dr. Lavernia
1:36:56 PM	Stephen Winn - Florida Osteopathic Medical Assc
1:38:20 PM	Chair Bean
1:38:42 PM	Goar Aluang - President, Florida Pharmacy Assc
1:39:57 PM	David Root - Prime Therapeutics
1:42:38 PM	Marc Inglese - Florida Society of Dermatology
1:45:21 PM	Joy Ryan - AHIP
1:46:41 PM	Ron Book - Teva Pharmaceutical
1:46:50 PM	Chair Bean
1:47:04 PM	Sen. Sobel in debate
1:49:24 PM	Sen. Joyner
1:50:50 PM	Sen. Brandes
1:51:39 PM	Chair Bean
1:52:26 PM	Sen. Grimsley closes on her bill
1:53:23 PM	Roll call on SB 732
1:53:56 PM	Chair Bean
1:54:06 PM	SB 360 by Sen. Garcia
1:54:28 PM	AM 607500
1:54:32 PM	Sen. Garcia explains the strike all amendment
1:55:09 PM	Sen. Joyner
1:56:50 PM	Sen. Garcia
1:57:19 PM	Public Testimony
1:57:49 PM	Shannon Smith - Florida Assc of Surgical Assistants
1:58:15 PM	Libby McNaron - Florida State Assembly Surgical Technologists
1:58:21 PM	Kathy Zorn - Florida Assc of Surgical Assistants
1:58:28 PM	Brian Pitts - Justice 2 Jesus
2:00:45 PM	Larry Gonzalez - Attorney
2:00:58 PM	Chair Bean
2:01:01 PM	Sen. Brandes
2:02:16 PM	Chair Bean
2:02:20 PM	Sen. Joyner in debate
2:03:02 PM	Chair Bean
2:03:03 PM	Sen. Garcia closes on his bill
2:03:27 PM	Roll call on SB 360
2:04:42 PM	Chair Bean
2:04:47 PM	SB 1094 by Sen. Flores
2:04:54 PM	Sen. Flores presents her bill
2:05:11 PM	AM 772746
2:05:19 PM	Sen. Flores explains the amendment
2:05:43 PM	Chair Bean
2:06:37 PM	Public Testimony
2:07:42 PM	Kyle Simon - Home Care Assc of Florida
2:07:49 PM	Brian Pitts
2:08:05 PM	Sen. Joyner
2:08:20 PM	Sen. Flores
2:08:37 PM	Chair Bean
2:08:55 PM	Roll call on SB 1094
2:09:22 PM	Chair Bean
2:10:06 PM	Presentation: Rose Naff - CEO, Florida Health Choises
2:19:20 PM	Sen. Joyner
2:19:45 PM	Rose Naff
2:20:18 PM	Chair Bean

2:20:38 PM	Sen. Braynon
2:20:53 PM	SPB 7144
2:21:07 PM	Sen. Bean presents the bill
2:25:30 PM	Sen. Joyner
2:25:46 PM	Sen. Bean
2:26:13 PM	Sen. Joyner
2:26:39 PM	Sen. Bean
2:27:19 PM	Sen. Joyner
2:28:42 PM	Sen. Bean
2:30:09 PM	Sen. Joyner
2:30:41 PM	Sen. Bean
2:31:21 PM	Sen. Joyner
2:31:58 PM	Sen. Bean
2:32:51 PM	Chair Sobel
2:33:01 PM	Sen. Bean
2:35:12 PM	Sen. Sobel
2:35:17 PM	Sen. Bean
2:35:36 PM	Sen. Sobel
2:36:02 PM	Sen. Bean
2:36:37 PM	Sen. Sobel
2:37:58 PM	AM 364114
2:39:04 PM	Sen. Bean explains the amendment
2:39:27 PM	Chair Sobel
2:39:39 PM	AM ***852
2:39:55 PM	Sen. Bean explains the amendment
2:40:18 PM	Chair Sobel
2:40:46 PM	Sen. Bean
2:40:51 PM	Sen. Joyner
2:40:56 PM	Public Testimony
2:41:41 PM	Karen Woodall - Florida Center for Fiscal + Economic Policy
2:45:06 PM	Brian Pitts - Justice 2 Jesus
2:47:47 PM	Chair Sobel
2:48:01 PM	Sen. Brandes in debate
2:48:11 PM	Chair Sobel
2:49:03 PM	Sen. Bean closes on the bill
2:49:31 PM	Roll call on SPB 7144
2:50:17 PM	Chair Bean
2:50:35 PM	SB 1482 by Sen. Hays
2:50:41 PM	Sen. Hays presents his bill
2:51:56 PM	Public Testimony
2:52:14 PM	Sharon Gordon-Girvin
2:54:27 PM	Reggie Bouthillier - Attorney, On Top of the World Communities
2:55:35 PM	Nancy Linnan - Attorney, The Villages
2:58:08 PM	Sen. Garcia
2:58:34 PM	Nancy Linnan
2:59:21 PM	Rheb Harbison - The Villages
3:00:33 PM	Tom Groesbeck - Florida Health Care
3:02:07 PM	Tony Marshall - Florida Health Care Assc
3:04:08 PM	Carol Berkowitz - Leading Age Florida
3:04:57 PM	Sen. Joyner in debate
3:08:42 PM	Sen. Garcia
3:09:30 PM	Chair Bean
3:09:39 PM	Sen. Hays closes on his bill
3:11:59 PM	Roll call on SB 1482
3:12:35 PM	SB 898 by Sen. Joyner
3:12:55 PM	AM 692240 - Sen. Joyner presents the strike all
3:13:12 PM	AM 769334 amendment to the amendment
3:13:54 PM	Public Testimony
3:14:20 PM	Chip Mitchell
3:15:35 PM	Rich Rasmussen - Florida Hospital Assc
3:15:40 PM	Judy Griffin - TMH
3:15:47 PM	Layne Smith - Mayo Clinic

3:15:58 PM	Sen. Joyner closes on her bill
3:16:05 PM	Roll call on SB 898
3:16:57 PM	Chair Bean
3:17:20 PM	SB 468 by Sen. Hukill
3:17:29 PM	Sen. Hukill presents the bill
3:18:06 PM	AM 936032 by Sen. Flores
3:18:16 PM	Sen. Flores explains the amendment
3:19:01 PM	Public Testimony
3:19:38 PM	Ed Zebersky - Attorney, FJA
3:20:54 PM	Chair Bean
3:21:10 PM	AM 728820
3:21:36 PM	Sen. Sobel
3:23:00 PM	AM 728820 withdrawn
3:23:11 PM	AM withdrawn
3:23:16 PM	Public Testimony
3:23:22 PM	Ed Zebersky
3:25:31 PM	Adam Giery - Florida Chamber of Commerce
3:25:46 PM	Lori Weems - Florida Pharmacy Assn
3:26:30 PM	Brian Pitts
3:26:35 PM	Chair Bean
3:26:40 PM	Sen. Joyner in debate
3:27:53 PM	Chair Bean
3:28:10 PM	Roll call on SB 468
3:28:38 PM	Chair Bean
3:29:37 PM	Chris Jerry
3:31:15 PM	Meeting Adjourned