

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 Appropriations Subcommittee on Health and Human Services

BILL: CS/SB's 1318 & 1454

INTRODUCER: Children, Families, and Elder Affairs Committee and Senators Garcia and Broxson

SUBJECT: Child Protection

DATE: April 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Fav/CS Combined
2.	<u>Sneed</u>	<u>Williams</u>	<u>AHS</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1318 and 1454 makes a number of changes to provisions relating to Child Protection Teams (CPT) in the Department of Health (DOH). The bill:

- Changes the limitation on physicians who can be CPT medical directors to allow a board-certified physician in family medicine (rather than pediatrics) to be hired as a medical director. Physicians employed as CPT medical directors must, within two years after their date of employment, obtain either a subspecialty certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics pursuant to s. 39.303(2)(d), F.S.
- Requires the State Surgeon General and Deputy Secretary for Children's Medical Services to consult with the Statewide Medical Director for Child Protection on decisions regarding screening, employment, and termination of child protection team medical directors at headquarters and within all circuits statewide.
- Revises the group of persons who are authorized to complete the required review of all suspected abuse and neglect reports submitted to the Department of Children and Families (DCF) Florida Abuse Hotline, to determine if a face-to-face medical evaluation by a child protection team is necessary.
- Changes CPT districts to circuits to align the CPT and the DCF service areas.
- Codifies the requirements for Sexual Abuse Treatment Programs (SATP) that provide children alleged to have been sexually abused, their siblings, and their non-offending caretakers with specialized therapeutic treatment to assist in recovery from sexual abuse.

- Requires the Children's Medical Services (CMS) Division in the DOH to convene a task force to develop a standardized protocol for forensic interviewing for children suspected of having been abused and provide staff to support the task force, as needed. The task force must include various representatives from the disciplines of law enforcement, child welfare, and mental health treatment. The bill requires the DOH to provide the protocol to the Legislature by January 1, 2018.
- Expands the cases in which an expert witness certificate may be used, to include cases involving abandonment, dependency, and sexual abuse.

The bill has no impact on state revenues or expenditures.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that works with local Sheriff's offices and the DOH in cases of child abuse and neglect to supplement investigation activities.¹ Current law governs CPTs, and requires the Children's Medical Services Program (CMS) in the DOH to develop, maintain, and coordinate the services of the CPTs in each of the service districts of the DCF. Child protection team medical directors are responsible for oversight of the teams.²

Specifically, CPTs help assess risk and protective factors, and provide recommendations for interventions that protect children.³ Child abuse, abandonment, and neglect reports to the DCF Florida Abuse Hotline that must be referred to child protection teams include cases involving:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises anywhere on a child 5 years of age or younger.
- Any report alleging sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.⁴

¹ Children's Medical Services, Child Protection Teams, (Aug. 30, 2012) available at: http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html. (last visited March 20, 2017).

² Section 39.303, F.S.

³ Children's Medical Services, Child Protection Team Brochure, available at http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/documents/child_protection_brochure.pdf. (last visited March 20, 2017).

⁴ Section 39.303, F.S..

Qualifications for Child Protection Team Medical Directors

Currently, district medical directors are required to be a physician licensed under ch. 458 or ch. 459, F.S., who is a board-certified pediatrician and, within 4 years after the date of his or her employment as a district medical director, either obtain a subspecialty certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics pursuant to s. 39.303(2)(d), F.S.

While child protection teams are required to be medically directed by at least one board-certified pediatrician, despite active recruitment efforts, three of the 22 child protection team medical director positions have been vacant for more than a year. Child Protection Team medical directors are state employees and currently, three are employed by state universities and the remaining 19 are employed by the DOH.⁵

Specialty Certification for Child Abuse Pediatrics

The American Board of Medical Specialties approved the child abuse pediatrics specialty in 2006 and administered the first certification exams in late 2009.⁶ Eligibility for the Child Abuse Pediatric certification exam requires a person to have completed both a 3-year residency in pediatrics and a 3-year fellowship in child abuse pediatrics at an accredited program.⁷ Fellowship training includes medical evaluations of children with manifestations of acute and chronic child maltreatment, as well as children with a broad range of other diagnoses. The trainee develops expertise in determining non-accidental trauma and other forms of maltreatment by developing excellent diagnostic expertise and knowledge of various disorders which may mimic child maltreatment. Training will include mandatory reporting laws, legal proceedings, child abuse and family violence prevention, teaching opportunities, and clinical research.⁸

As of December 31, 2015, Florida has 12 physicians certified in Child Abuse Pediatrics through the American Board of Pediatrics.⁹

Third-Party Credentialing Entity

The Florida Certification Board offers the Child Protection Team Medical Provider (CPTMP) credential to eligible members of the Florida Department of Health's Child Protection Teams. This program was developed in response to the requirement that each DOH district medical director obtain a subspecialist certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity. The DOH has expanded eligibility for this credential to specified members of Florida's Child Protection

⁵ Department of Health, 2017 Agency Legislative Bill Analysis, SB 1318, March 1, 2017.

⁶ HealthLeaders Media, New Specialty Certification for Child Abuse Pediatrics, Nov. 6, 2009, *available at*: <http://www.healthleadersmedia.com/content/PHY-241751/New-Specialty-Certification-for-Child-Abuse-Pediatrics.html>. (last visited Mar. 20, 2017).

⁷ Council of Pediatric Subspecialties, Pediatric Child Abuse, Nov. 5, 2013. *available at*: <http://pedsubs.org/SubDes/ChildAbuse.cfm>. (last visited Mar. 20, 2017).

⁸ *Id.*

⁹ American Board of Pediatrics Inc., 2015-2016 Workforce Data, *available at*: <https://www.abp.org/sites/abp/files/pdf/workforcebook.pdf>. (last visited March 20, 2017)

Teams. To be eligible to take the exam, applicants must either be a board certified pediatrician, a board certified advanced registered nurse practitioner, or another board certified medical professional.¹⁰

Sexual Abuse Treatment Programs (SATP)

In 1986, the legislature required the department to develop a model plan for community intervention and treatment of intrafamily sexual abuse in conjunction with the Department of Law Enforcement, the DOH, the Department of Education, the Office of Attorney General (OAG), the state Guardian Ad Litem Program, the Department of Corrections, representatives of the judiciary, and professionals and advocates from the mental health and child welfare community.¹¹ As a result, children alleged to have been sexually abused, their siblings, and their non-offending caretakers are currently served by 14 sexual abuse treatment programs statewide. The programs are a partnership between the DOH, the OAG, and the DCF. The DOH contracts with local programs to provide administrative and clinical oversight, OAG pays for therapeutic services, and the DOH and the DCF have an interagency agreement for the operation of the program. This program provided therapeutic counseling services to 3,400 child victims of sexual abuse and their non-offending family members during Fiscal Year 2015-2016.¹²

Forensic Interviewing of Child Victims

Forensic interviewing began after several high-profile cases in the 1980s involving allegations of daycare providers sexually abusing multiple children in their care became the subject of analysis based on the interview techniques that were used.¹³ Law enforcement had relied on mental health practitioners because of their ability to establish and build rapport with children. However, these mental health practitioners used therapeutic techniques that were later deemed inappropriate for forensic purposes due to concerns of suggestibility and the encouragement of make-believe and pretend. Three specific criticisms of these methods were that:

- Investigation activities and decision-making were not coordinated across the multiple agencies involved;
- Children were interviewed too many times by too many interviewers and had to tell their story over and over again; and
- Children were interviewed in stressful or compromising locations that disturbed them further and made it difficult to talk.¹⁴

¹⁰ Florida Certification Board, Child Protection Team Medical Provider Certification, *available at*: <http://flcertificationboard.org/certification/childprotectionteam-credential/> (last visited March 22, 2017).

¹¹ Chapter 85-54, Laws of Florida. The provision was created as s. 415.5095, it was transferred and renumbered as s.39.305 in 1998 (Chapter 98-403, Laws of Florida) and subsequently repealed in 2011 (Chapter 2011-213, Laws of Florida).

¹² Department of Health, 2017 Agency Legislative Bill Analysis, SB 1318, March 1, 2017.

¹³ Walker, N., *Forensic Interviews of Children: The Components of Scientific Validity and Legal Admissibility*, 2002, *available at*: <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1241&context=lcp&sei-redir=1&referer=http%3A%2F%2Fwww.bing.com%2Fsearch%3Fq%3Dforensic%2Binterviewing%2Bchildren%26src%3DI-E-SearchBox%26FORM%3DIENSR#search=%22forensic%20interviewing%20children%22>. (last visited March 23, 2017).

¹⁴ Cross, T., Jones, L., et al, *Child forensic interviewing in Children's Advocacy Centers: Empirical data on a practice model*, *Child Abuse & Neglect* 31 (2007), *available from*: <http://www.unh.edu/ccrc/pdf/cv108.pdf>. (last visited March 23, 2017).

A forensic interview, however, is a structured conversation with a child intended to elicit detailed information about a possible event that the child may have experienced or witnessed. The purposes of a forensic interview are:

- To obtain information from a child that may be helpful in a criminal investigation;
- To assess the safety of the child's living arrangements;
- To obtain information that will either corroborate or refute allegations or suspicions of abuse and neglect; and
- To assess the need for medical treatment and psychological care.¹⁵

People from multiple disciplines attend, or later review, the forensic interview including child protective investigators, police officers and other law enforcement officials, child protection attorneys, victim advocates, and medical and mental health care practitioners. The interview provides facts and direction for those involved with the investigation and provision of services.¹⁶

Child Advocacy Centers have taken the lead in the development of forensic interviewing protocols for children and one of their primary functions is to conduct forensic interviews in a non-threatening, child-friendly environment. Florida law provided standards for child advocacy centers in 1998¹⁷ and Florida currently has 27 Child Advocacy Centers that serve an estimated 85 percent of children in need of services statewide.¹⁸

The DOH reports that a variety of forensic interview protocols exist and vary from being very structured (scripted), less structured (semi-scripted) to flexible (not scripted but includes guidelines for interviewing). Agencies and entities providing forensic interviews can choose from a variety of well-known and established protocols, most of which provide structured training for forensic interviewers.¹⁹ One of these existing protocols is the internationally recognized National Children's Advocacy Center Child Forensic Interview Structure that is flexible, can be adapted to children of all ages and cultural backgrounds, and is appropriate for interviewing children who may have experienced sexual or physical abuse or who may be a witness to violence.²⁰

Expert Witness Certificates and Expert Testimony in Child Abuse Cases

Current law authorizes the DOH to issue a certificate authorizing a physician who holds an active and valid license to practice medicine or osteopathic medicine in another state or a province of Canada to provide expert testimony in this state, if the physician applies and pays for the certificate.²¹ An expert witness certificate authorizes the physician to whom the certificate is issued to do only the following:

¹⁵ *Id.*

¹⁶ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin, *Child Forensic Interviewing: Best Practices*, September 2015, available at: <https://www.ojjdp.gov/pubs/248749.pdf>. (last visited March 22, 2017).

¹⁷ Chapter 98-403, F.S.

¹⁸ Florida Network of Child Advocacy Centers, available at: <http://www.fncac.org/about-us>. (last visited March 23, 2017).

¹⁹ Florida Department of Health, 2017 Agency Legislative Bill Analysis, SB 1454, March 6, 2017.

²⁰ National Child Advocacy Center, Forensic Interviewing of Children, available at: <http://www.nationalcac.org/forensic-interviewing-of-children-training/>. (last visited March 23, 2017).

²¹ Sections 458.3175 and 459.0066, F.S.

- Provide a verified written medical expert opinion as provided in s. 766.203, F.S.;
- Provide expert testimony about the prevailing professional standard of care in connection with medical negligence litigation pending in this state against a physician licensed under chapter 458 or this chapter; and
- Provide expert testimony in criminal child abuse and neglect cases in this state.²²

Currently, expert testimony requirements in chapter 827, relating to abuse of children that rises to the level of criminal abuse, are restricted only to criminal child abuse cases and not family or dependency court.²³

III. Effect of Proposed Changes:

Section 1 amends s. 39.303, F.S., relating to child protection teams, to change the limitation on physicians who can be CPT medical directors to allow a board-certified physician in family medicine (rather than pediatrics) to be hired as a medical director. Physicians employed as CPT medical directors would, within two years after their date of employment, obtain either a subspecialty certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics pursuant to s. 39.303(2)(d), F.S.

This section includes the CPT medical director in the list of persons who can complete the required review of all suspected abuse and neglect reports called to the DCF Florida Abuse Hotline to determine if a face-to-face medical evaluation by a child protection team is necessary.

This section changes references to CPT districts to “circuits”, to align the CPT and the DCF service areas.

This section requires the Children’s Medical Services (CMS) within the DOH to convene a task force to develop a standardized protocol for forensic interviewing for children suspected of having been abused and provide staff to support the task force, as needed. The task force must include various representatives from the disciplines of law enforcement, child welfare, and mental health treatment. The bill requires the DOH to provide the protocol to the legislature by January 1, 2018.

This section also codifies the requirements for Sexual Abuse Treatment Programs (SATP) that provide children alleged to have been sexually abused, their siblings, and their non-offending caretakers with specialized therapeutic treatment to assist in recovery from sexual abuse.

Section 2 amends s. 39.3031, F.S., relating to rules for the implementation of s. 39.303, F.S., to conform provisions to changes made by the bill.

Section 3 amends s. 458.3175, F.S., relating to expert witness certificates, to allow a physician who holds an active and valid license to practice medicine in another state or a province of

²² *Id.*

²³ Section 827.03, F.S.

Canada and holds an expert witness certificate to provide expert testimony in neglect, abandonment, dependency and sexual abuse cases.

Section 4 amends s. 459.0066, F.S., relating to expert witness certificates, to allow a physician who holds an active and valid license to practice osteopathic medicine in another state or a province of Canada and holds an expert witness certificate to provide expert testimony in neglect, abandonment, dependency and sexual abuse cases.

Section 5 amends s. 827.03, F.S., relating to abuse, aggravated abuse, and neglect of a child, to expand the expert testimony requirements of subsection (3) to include neglect, abandonment, dependency and sexual abuse cases.

Section 6 provides an effective date of July 1, 2017.

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:

None.

C. Government Sector Impact:

The bill does not impact state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends ss. 39.303, 39.3031, 458.3175, 459.0066, and 827.03 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Committee on Children, Families, and Elder Affairs on March 27, 2017:

- No longer limits physicians who could be CPT medical directors to only those board certified in pediatrics, but would allow a board-certified physician in family medicine to be hired as a medical director. Physicians employed as CPT medical directors must, within two years after their date of employment, obtain either a subspecialty certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics pursuant to s. 39.303(2)(d), F.S.
- Requires the Children's Medical Services (CMS) within the DOH to convene a task force to develop a standardized protocol for forensic interviewing for children suspected of having been abused and provide staff to support the task force, as needed. The task force must include various representatives from the disciplines of law enforcement, child welfare, and mental health treatment. The bill requires the DOH to provide the protocol to the legislature by January 1, 2018.
- Expands the cases in which an expert witness certificate may be used, to include cases involving abandonment, dependency, and sexual abuse.

B. Amendments:

None.