

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**HEALTH POLICY**  
**Senator Young, Chair**  
**Senator Passidomo, Vice Chair**

**MEETING DATE:** Tuesday, January 16, 2018  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Young, Chair; Senator Passidomo, Vice Chair; Senators Benacquisto, Book, Hukill, Hutson, Montford, and Powell

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 8</b> Benacquisto (Similar CS/H 21, Compare H 1159, S 458)	Controlled Substances; Authorizing certain boards to require practitioners to complete a specified board-approved continuing education course to obtain authorization to prescribe controlled substances as part of biennial renewal; authorizing disciplinary action against practitioners for violating specified provisions relating to controlled substances; requiring certain pain management clinic owners to register approved exemptions with the department; providing requirements for pharmacists and practitioners for the dispensing of controlled substances to persons not known to them; establishing direct-support organizations for specified purposes; requiring a direct-support organization to operate under written contract with the department, etc.  HP 01/10/2018 Workshop-Discussed HP 01/16/2018 Fav/CS AP RC	Fav/CS Yeas 8 Nays 0
2	<b>SB 138</b> Book (Similar H 937)	Perinatal Mental Health; Citing this act as the "Florida Families First Act"; requiring the Department of Health to create public service announcements to educate the public on perinatal mental health care; revising components that are included in the postpartum evaluation and followup care provided by birth centers to include a mental health screening and the provision of certain information on postpartum depression, etc.  HP 01/16/2018 Favorable AHS AP	Favorable Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Health Policy

Tuesday, January 16, 2018, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>SB 474</b> Brandes (Similar H 1339, Compare H 1341, Linked S 476)	Physician Orders for Life-sustaining Treatment; Establishing the Physician Orders for Life-Sustaining Treatment (POLST) Program within the Department of Health; requiring the Agency for Health Care Administration to establish and maintain a database of compassionate and palliative care plans by a specified date; authorizing specified personnel to withhold or withdraw cardiopulmonary resuscitation if presented with a POLST form that contains an order not to resuscitate the patient; requiring the Department of Elderly Affairs, in consultation with the agency, to adopt by rule procedures for the implementation of POLST forms in hospice care, etc.  HP 01/16/2018 Favorable AHS AP	Favorable Yeas 6 Nays 2
4	<b>SB 476</b> Brandes (Similar H 1341, Compare H 1339, Linked S 474)	Public Records/Compassionate and Palliative Care Plans/Agency for Health Care Administration; Creating an exemption from public records for personal identifying information in compassionate and palliative care plans filed with the Clearinghouse for Compassionate and Palliative Care Plans managed by the Agency for Health Care Administration or its designee; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.  HP 01/16/2018 Fav/CS GO RC	Fav/CS Yeas 8 Nays 0
5	<b>SB 764</b> Bean (Identical H 369)	Dental Student Loan Repayment Program; Establishing the Dental Student Loan Repayment Program to support dentists who practice in public health programs located in certain underserved areas, etc.  HP 01/16/2018 Favorable AHE AP	Favorable Yeas 8 Nays 0
6	<b>SB 800</b> Braynon (Identical H 579)	Infectious Disease Elimination Pilot Programs; Citing this act as the "Florida Infectious Disease Elimination Act (IDEA)"; authorizing the Department of Health to establish sterile needle and syringe exchange pilot programs upon request from eligible entities, rather than a single program established in Miami-Dade County, etc.  HP 01/16/2018 Favorable AHS AP	Favorable Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Health Policy

Tuesday, January 16, 2018, 4:00—6:00 p.m.

---

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 906</b> Young (Similar CS/CS/H 551)	Public Records/Health Care Facilities; Providing an exemption from public records requirements for building plans, blueprints, schematic drawings, and diagrams held by an agency which depict the internal layout or structural elements of certain health care facilities; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  HP 01/16/2018 Fav/CS GO RC	Fav/CS Yeas 8 Nays 0
8	<b>SB 1134</b> Rouson (Identical H 6049)	Medical Marijuana Treatment Center Licensure; Revising a requirement that the Department of Health license one applicant who is a member of a certain class to exclude a requirement that the applicant also be a member of the Black Farmers and Agriculturalist Association-Florida Chapter, etc.  HP 01/16/2018 Fav/CS AP RC	Fav/CS Yeas 8 Nays 0

---

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 8

INTRODUCER: Health Policy Committee; Senator Benacquisto and others

SUBJECT: Controlled Substances

DATE: January 17, 2018

REVISED: \_\_\_\_\_

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

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 8 amends various sections of law to increase the regulation, training, and reporting required when prescribing and dispensing controlled substances. The bill:

- Restricts Medicaid managed care plans and health insurers from requiring prior authorization or step therapy or imposing any other conditions as a prerequisite to receiving medication-assisted treatment (MAT) services.
- Requires all prescribing practitioners to complete a two-hour training course on the proper manner to prescribe controlled substances.
- Requires applicable health care regulatory boards to create guidelines for prescribing controlled substances for the treatment of acute pain.
- Limits to no more than three days of opioids listed in Schedule II to treat acute pain as defined. This limit is increased to seven days if determined to be medically necessary by the prescribing practitioner and with proper documentation.
- Requires clinics that are exempt from the requirement to register as a pain management clinic to obtain a certificate of exemption from the DOH.
- Requires pharmacists and dispensing practitioners to verify a patient's identity prior to dispensing controlled substances.
- Conforms an exemption allowing health care practitioners to dispense controlled substances in connection with a surgical procedure to the limits on prescribing established for Schedule II opioid medications.

- Creates an exemption to allow a physician to dispense Schedule II and III controlled substances approved by the United States Food and Drug Administration (FDA) for the MAT of his or her own patients.
- Adds and reschedules substances to the various schedules of controlled substances.
- Substantially rewords the Prescription Drug Monitoring Program (PDMP) with changes including, but not limited to:
  - Including Schedule V controlled substances in the list of drugs that must be reported to the PDMP and eliminating an exemption for reporting controlled substances dispensed to minors under the age of 16;
  - Requiring prescribing practitioners to consult the PDMP before prescribing controlled substances; and
  - Allowing the DOH to coordinate and share Florida's PDMP data with other state's PDMPs.

## II. Present Situation:

### Opioid Abuse in Florida

Both nationally and in Florida, opioid addiction and abuse has become an epidemic. By nearly every measure, the opioid crisis has become worse in recent years. The Florida Department of Law Enforcement (FDLE) reported that, when compared to 2015, 2016 saw:

- 5,725 (35 percent more) opioid-related deaths;
- 6,658 (24 percent more) individuals died with one or more prescription drugs in their system;<sup>1</sup>
- 3,550 (40 percent more) individuals died with at least one prescription drug in their system that was identified as the cause of death;
- Occurrences of heroin increased by 31 percent and deaths caused by heroin increased by 30 percent;
- Occurrences of fentanyl increased by 80 percent and deaths caused by fentanyl increased by 97 percent;
- Occurrences of methadone (10 percent) and hydrocodone (2 percent) increased. Deaths caused by methadone (40 more) and hydrocodone (9 more) also increased;
- Occurrences of morphine increased by 38 percent and deaths caused by morphine increased by 49 percent;
- Occurrences of oxycodone increased by 28 percent and deaths caused by oxycodone also increased by 28 percent; and
- Occurrences of buprenorphine increased by 90 percent and deaths caused by buprenorphine (14 more) increased.<sup>2</sup>

Additionally, collateral impacts of controlled substance and opioid misuse have increased. For example, between 2007 and 2015 the instance of neonatal abstinence syndrome, an infant

---

<sup>1</sup> The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.

<sup>2</sup> FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2016 Annual Report* (Nov. 2017) <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2016-Annual-Drug-Report.aspx> (last visited on Jan. 6, 2018).

disorder that occurs when babies are exposed to drugs in the womb before birth, increased by nearly 500 percent from 536 cases to 2,487 cases and overall hospital costs that can be attributed to the opioid crisis have more than doubled between 2010 and 2015 from \$460 million to \$1.1 billion.<sup>3</sup>

### History of the Opioid Crisis

In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and healthcare providers began to prescribe them at greater rates. This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.<sup>4</sup> Between the early 2000s and the early 2010s, Florida was infamous as the “pill mill capital” of the country. During that time, 93 of the top 100 oxycodone dispensing doctors in the United States were in Florida<sup>5</sup> and, at one point, doctors in Florida bought 89 percent of all the Oxycodone sold in the county.<sup>6</sup>

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the PDMP; and stricter regulation on selling, distributing, and dispensing controlled substances.<sup>7</sup> Between 2010 and 2014, deaths from prescription drugs dropped but deaths from illegal opioids, such as heroin, began to rise.<sup>8</sup> As can be seen in the data above, however, more recently deaths from prescription controlled substances are once again on the rise. Early in 2017, the United States Centers for Disease Control and Prevention (CDC) declared the opioid crisis an epidemic and shortly thereafter, on May 3, 2017, Governor Rick Scott signed executive order 17-146 declaring the opioid epidemic a public health emergency in Florida.

The Federal government and many states have mobilized to combat the opioid epidemic. The United States Department of Health and Human Services (HHS) has focused its efforts on five major priorities:

- Improving access to treatment and recovery services;
- Promoting use of overdose-reversing drugs;
- Strengthening our understanding of the epidemic through better public health surveillance;
- Providing support for cutting-edge research on pain and addiction; and
- Advancing better practices for pain management.<sup>9</sup>

Individual states have taken actions to combat the opioid crisis such as increasing the availability of Naloxone and other related medications to prevent overdose deaths, increasing the availability

---

<sup>3</sup> Florida Behavioral Health Association, *Florida's Opioid Crisis* (Jan. 2017) [http://www.fadaa.org/links/Opioid%20Media%20Kit\\_FINAL.pdf](http://www.fadaa.org/links/Opioid%20Media%20Kit_FINAL.pdf), (last visited on Jan. 6, 2018).

<sup>4</sup> National Institute on Drug Abuse, *Opioid Overdose Crisis*, (Jan. 2018) <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited on Jan. 6, 2018).

<sup>5</sup> Elaine Silvestrini, *Florida heals from pill mill epidemic*, TAMPA BAY TIMES, Aug. 30, 2014, available at <http://www.tbo.com/news/crime/florida-heals-from-pill-mill-epidemic-20140830/> (last visited on Jan. 6, 2018).

<sup>6</sup> Lizette Alvarez, *Florida Shutting 'Pill Mill' Clinics*, THE NEW YORK TIMES, Aug. 31, 2011, available at <http://www.nytimes.com/2011/09/01/us/01drugs.html> (last visited on Jan. 6, 2018).

<sup>7</sup> See chs. 2009-198, 2010-211, and 2011-141, Laws of Fla.

<sup>8</sup> Supra note 3

<sup>9</sup> Supra note 4

and funding of MAT, and establishing stricter guidelines and regulations on the prescribing and dispensing of controlled substances.

### **Medication-Assisted Treatment**

Medication-assisted treatment is the use of medications in combination with counseling and behavioral therapies for the treatment of substance use disorders.<sup>10</sup> Medications including buprenorphine (Suboxone and Subutex), methadone, and extended release naltrexone (Vivitrol) are effective in treating opioid use disorders. Contrary to some beliefs, MAT medications do not substitute one addiction for another since, when properly administered, MAT medications do not cause a high but serve to reduce opioid cravings and withdrawal. Additionally, diversion of buprenorphine is uncommon and when diversion does occur it is primarily used to manage withdrawal symptoms. Patients treated with medications were more likely to remain in therapy compared to patients receiving treatment without medication.<sup>11</sup>

### **State and Federal Prescribing Guidelines**

#### *CDC Prescribing Guidelines*

When prescribing opioids, the CDC has established guidelines to reduce the risk of addiction and dependency. These guidelines are applicable to both chronic and acute pain and include:

- Not using opioids as first-line therapy.
- Establishing realistic goals for pain and function and discontinuing opioid therapy if the benefits do not outweigh the risks.
- Discussing the risks and benefits with patients before and during opioid therapy.
- Using immediate-release opioids at first and use the lowest effective dose.
- Prescribing short durations for acute pain. The CDC states that, generally, three days or less will be sufficient and more than seven days will rarely be needed.
- Evaluating benefits and harms frequently (within one to four weeks of starting and at least every three months).
- Reviewing PDMP data, use urine drug testing, and avoid prescribing opioids and benzodiazepine concurrently.
- Offering treatment for opioid use disorders.<sup>12</sup>

#### *State Opioid Prescription Limits*

Beginning in 2016, more than 30 states have considered at least 130 bills related to opioid prescribing and 24 states have enacted legislation that imposes some type of limit, guideline, or requirement related to opioid prescribing. Most legislation limits first time opioid prescriptions to a certain number of days' supply with seven days being most common. Some states have set limits as low as three days and as high as 14 days. In some cases, states may also set dosage

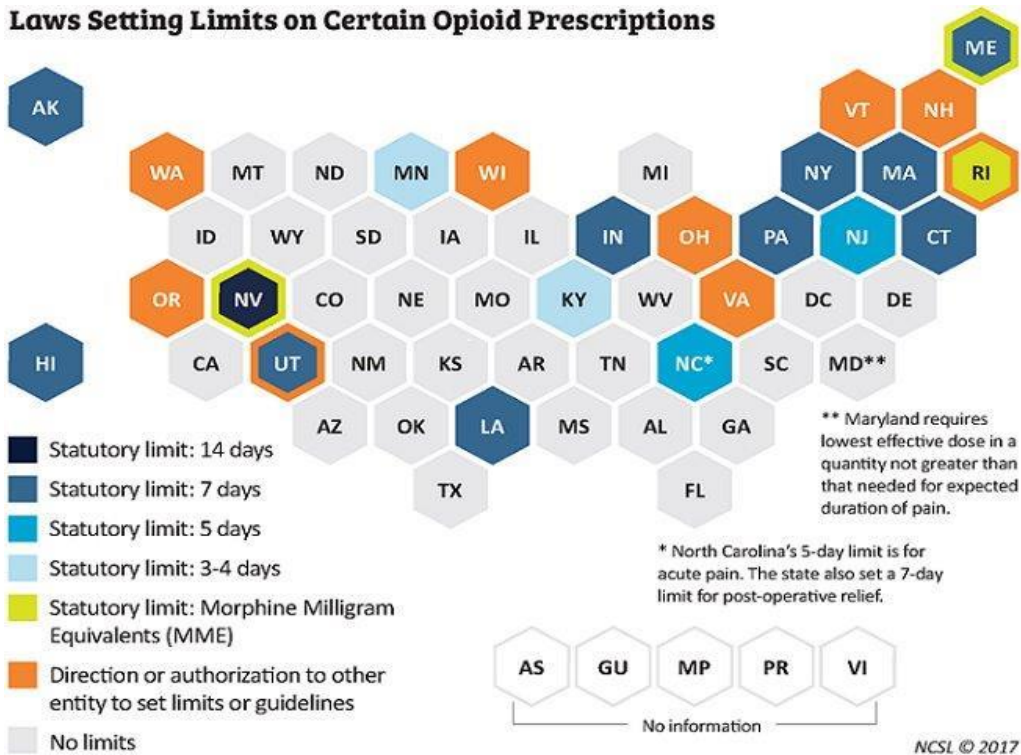
---

<sup>10</sup> MAT overview, Substance Abuse and Mental Health Services Administration, available at <https://www.integration.samhsa.gov/clinical-practice/mat/mat-overview>, (last visited on Jan. 17, 2018).

<sup>11</sup> Effective Treatments of Opioid Addiction, National Institute on Drug Abuse, available at <https://www.drugabuse.gov/publications/effective-treatments-opioid-addiction/effective-treatments-opioid-addiction>, (last visited Jan. 17, 2018).

<sup>12</sup> CDC Guidelines for Prescribing Opioids for Chronic Pain [https://www.cdc.gov/drugoverdose/pdf/guidelines\\_at-a-glance-a.pdf](https://www.cdc.gov/drugoverdose/pdf/guidelines_at-a-glance-a.pdf). (last visited Jan. 10, 2018).

limits using morphine milligram equivalents. Most states also specify that the dosage limits are for acute pain only or exclude chronic pain, palliative care, and cancer treatment.<sup>13</sup> Specific states’ laws can be seen on the map below:



**Florida’s Prescription Drug Monitoring Program**

Chapter 2009-197, Laws of Fla., established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.<sup>14</sup> The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.<sup>15</sup> Dispensers have reported over 232 million controlled substance prescriptions to the PDMP since its inception.<sup>16</sup> Health care practitioners began accessing the PDMP on October 17, 2011.<sup>17</sup> Law enforcement agencies began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.<sup>18</sup>

<sup>13</sup> Prescribing policies: States Confront Opioid Overdose Epidemic, National Conference of State Legislatures, <http://www.ncsl.org/research/health/prescribing-policies-states-confront-opioid-overdose-epidemic.aspx> (last visited Jan. 10, 2018). A table of specific legislation is also available at this site under the tab: “Table: Legislation.”

<sup>14</sup> Section 893.055(2)(a), F.S.

<sup>15</sup> Florida Dep’t of Health, *2012-2013 Prescription Drug Monitoring Program Annual Report* (Dec. 1, 2013), available at <http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/documents/2012-2013pdmp-annual-report.pdf> (last visited on Jan. 7, 2018).

<sup>16</sup> Florida Dep’t of Health, *2016-2017 Prescription Drug Monitoring Program Annual Report* (Dec. 1, 2017), available at <http://www.floridahealth.gov/statistics-and-data/e-forcse/funding/2017PDMPAnnualReport.pdf> (last visited on Jan. 7, 2017).

<sup>17</sup> *Supra* note 13

<sup>18</sup> *Supra* note 13



Dispensers of controlled substances listed in Schedule II, Schedule III, or Schedule IV<sup>19</sup> must report specified information to the PDMP database by the close of the next business day after dispensing, each time the controlled substance is dispensed. The information required to be reported includes:<sup>20</sup>

- Name of the dispensing practitioner and Drug Enforcement Administration registration number, National Provider Identification, or other applicable identifier;
- Date the prescription is dispensed;
- Name, address, and date of birth of the person to whom the controlled substance is dispensed; and
- Name, national drug code, quantity, and strength of the controlled substance dispensed.<sup>21</sup>

Current law exempts certain acts of dispensing or administering from PDMP reporting:

- A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
- A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.
- A practitioner when administering or dispensing a controlled substance in the health care system of the Department of Corrections.
- A practitioner when administering a controlled substance in the emergency room of a licensed hospital.
- A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
- A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.
- A rehabilitative hospital, assisted living facility, or nursing home dispensing a certain dosage of a controlled substance, as needed, to a patient while the patient is present and receiving care as ordered by the patient's treating physician.<sup>22</sup>

### *Accessing the PDMP database*

Section 893.0551, F.S., makes certain identifying information<sup>23</sup> of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records

---

<sup>19</sup> Currently, Florida is one of 16 states that do not require the dispensing of Schedule V controlled substances to be reported to their state's PDMP. For more details please see [http://pdmpassist.org/pdf/PDMP\\_Substances\\_Tracked\\_20171205.pdf](http://pdmpassist.org/pdf/PDMP_Substances_Tracked_20171205.pdf), (last visited on Jan. 8, 2018).

<sup>20</sup> The specific information reported depends upon the whether the reporter is a pharmacy or practitioner.

<sup>21</sup> See s. 893.055(3), F.S.

<sup>22</sup> Section 893.055(5), F.S.

<sup>23</sup> Such information includes name, address, telephone number, insurance plan number, government-issued identification number, provider number, and Drug Enforcement Administration number, or any other unique identifying information or number.

held by the department under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and in article I, section 24(a) of the State Constitution.<sup>24</sup>

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists, and their designees.<sup>25</sup> Currently, prescribers are not required to consult the PDMP database before prescribing a controlled substance for a patient, however physicians and pharmacists queried the database more than 3.7 million times in 2012, over 9.3 million times in 2014, over 18.6 million times in 2015, and over 35.8 million times in 2016.<sup>26</sup> Qualified physicians who are issuing physician certifications for the medical use of marijuana under s. 381.986, F.S., are currently required to review the patient's controlled drug prescription history in the PDMP.<sup>27</sup>

Indirect access to the PDMP database is provided to:

- The DOH or certain health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations<sup>28</sup> involving potential criminal activity, fraud, or theft regarding prescribed controlled substances if the law enforcement agency has entered into a user agreement with the DOH;
- Patients, or the legal guardians or designated health care surrogates of incapacitated patients; and
- Impaired practitioner consultants.<sup>29</sup>

Indirect access means the person must request the information from the PDMP manager. After an extensive process to validate and authenticate the request and the requestor, the PDMP manager or support staff provides the specific information requested.<sup>30</sup>

### Controlled Substances

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The scheduling of substances in Florida law is generally consistent with the Federal scheduling of substances under 21 U.S.C. s. 812:

- A Schedule I substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples: heroin and methaqualone.

---

<sup>24</sup> Section 893.0551(2)(a)-(h), F.S.

<sup>25</sup> Section 893.055(7)(b), F.S.

<sup>26</sup> *Supra* notes 14 and 15.

<sup>27</sup> See s. 381.986(4)(a)5., F.S.

<sup>28</sup> Section 893.055(1)(h), F.S., defines an "active investigation" as an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

<sup>29</sup> Section 893.055(7)(c)1.-5., F.S.

<sup>30</sup> See s. 893.055(7)(c), F.S., and Rule 64k-1.003, F.A.C.

- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples: cocaine and morphine.
- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples: lysergic acid; ketamine; and some anabolic steroids.
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples: alprazolam; diazepam; and phenobarbital.
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples: low dosage levels of codeine; certain stimulants; and certain narcotic compounds.

### **Pain Management Clinics**

A pain management clinic is any facility that either advertises pain management services or a facility where a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.<sup>31</sup> Pain management clinics must register with the DOH and meet provisions concerning staffing, sanitation, recordkeeping, and quality assurance.<sup>32</sup> Certain clinics are exempt from these provisions if they are:

- Licensed as a hospital, ambulatory surgical center, or mobile surgical facility;
- Staffed primarily by surgeons;
- Owned by a publicly-held corporation with total assets exceeding \$50 million;
- Affiliated with an accredited medical school;
- Not involved in prescribing controlled substances for the treatment of pain;
- Owned by a corporate entity exempt from federal taxation as a charitable organization;
- Wholly owned and operated by board-eligible or board-certified anesthesiologists, psychiatrists, rheumatologists, or neurologists; or
- Wholly owned and operated by a physician multispecialty practice with physicians holding credentials in pain medicine and who perform interventional pain procedures routinely billed using surgical codes.

All clinics must be owned by at least one licensed physician or be licensed as a health care clinic under part X of ch. 400, F.S., to be eligible for registration as a pain management clinic. Pain management clinics must also designate a physician who is responsible for complying with all the registration and operation requirements designated in ss. 458.3265 or 459.0137, F.S. A pain management clinic may not be owned by, or have a contractual or employee relationship with, a

---

<sup>31</sup> “Chronic nonmalignant pain” is defined as pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain for more than 90 days after surgery. See ss. 458.3265 and 459.0137, F.S.

<sup>32</sup> Sections 458.3265 and 459.0137, F.S. Chapter 458, F.S., is the Medical Practice Act, and Chapter 459, F.S., is the Osteopathic Medical Practice Act. The two sections regulating pain management clinics are substantively identical.

physician who has had his or her Drug Enforcement Administration (DEA) license number revoked, has had his or her application for a license to practice using controlled substances denied by any jurisdiction, or has had any convictions or pleas for illicit drug felonies within the past 10 years.

The DOH is required to conduct an annual inspection of each pain management clinic. Through the inspection, the DOH ensures the following requirements are met:

- The pain management clinic is registered with the DOH and the DOH has been notified of the designated physician;
- Every physician meets the training requirements to practice at the clinic;
- The clinic, including its grounds, buildings, furniture, appliances and equipment, is structurally sound, in good repair, clean, and free from health and safety hazards;
- Storage and handling of prescription drugs complies with ss. 499.0121 and 893.07, F.S.;
- Physicians maintain control and security of prescription blanks and other methods for prescribing controlled substances and report in writing any theft or loss of prescription blanks to the DOH within 24 hours;
- Physicians are in compliance with the requirements for counterfeit-resistant prescription blanks; and
- The designated physician has reported all adverse incidents to the DOH as set forth in s. 458.351, F.S.<sup>33</sup>

The DOH may suspend or revoke a clinic registration or impose administrative fines of up to \$5,000 per violation for any offenses against state pain management clinic provisions or related federal laws and rules. If the registration for a pain management clinic is revoked for any reason, the clinic must cease to operate immediately, remove all signs or symbols identifying the facility as a pain management clinic, and dispose of any medication on the premises. The DOH may impose an administrative fine of up to \$5,000 per day for a clinic that operates without a registration, unless exempt. No owner or operator of a pain management clinic that had its registration revoked may own or operate another pain clinic for five years after such revocation.<sup>34</sup>

Currently, if a pain clinic meets one of the statutorily approved exemptions from registering with the department, they are not required to register or to show proof of a valid exemption from registration nor are they required to meet any of the requirements set forth above. The determination as to whether the pain clinic meets one of the exemptions is made by the owner of the pain clinic and the department is unaware of which approved exemption the unregistered clinic meets and, without a formal complaint being filed, does not have the authority to inquire. If a clinic no longer qualifies for an exemption they are required to register, however because the department is not aware of clinics that qualify for an exemption from registration and inspection, it is also not aware when the clinic no longer meets the criteria for an exemption from registration.<sup>35</sup>

---

<sup>33</sup> Department of Health, *Senate Bill 450 Analysis* (2016) (on file with the Senate Committee on Health Policy).

<sup>34</sup> Section 458.3265, F.S. Similar language is found in s. 459.0137, F.S. Related rules are found in Rules 64B8-9 and 64B15-14, F.A.C.

<sup>35</sup> DOH, *Senate Bill 8 Analysis* (Oct. 23, 2017) (on file with the Senate Committee on Health Policy).

In 2010 when pain management clinic registration was first required by law there were 921 registered pain management clinics. At the end of 2016-2017 fiscal year, there were 259. It is indeterminate how many clinics closed voluntarily because they could not meet the more stringent requirements established by law and how many were no longer registered because they self-determined they operated under one of the exemptions outlined earlier in this section.<sup>36</sup>

### III. Effect of Proposed Changes:

CS/SB 8 amends and creates various sections of law related to controlled substances.

**Sections 1 and 9** amend ss. 409.967 and 627.42392, F.S., respectively, to restrict Medicaid managed care plans and health insurers from requiring prior authorization or step therapy or imposing any other conditions as a prerequisite to receiving MAT services. Section 627.42392, F.S., defines “health insurer” to include health insurers, managed care plans, and health maintenance organizations.

**Section 2** creates s. 456.0301, F.S., to require that, if not already required under a licensee’s individual practice act, each appropriate board must require each practitioner licensed with the DEA and authorized to prescribe controlled substances to complete a board-approved two-hour continuing education course on prescribing controlled substances when renewing his or her license.<sup>37</sup> Each licensee must submit confirmation of completing the course when applying for licensure renewal and the DOH is prohibited from renewing the license of any practitioner who has failed to complete the course. The course may be offered in a distance learning format and be included within the number of continuing education hours required by law. The course must include:

- Information on the current standards regarding prescribing controlled substances, particularly opiates;
- Alternatives to these standards; and
- Information on the risks of opioid addiction following all stages of treatment in the management of acute pain.

Each board may adopt rules to implement the required course.

**Section 3** amends s. 456.072, F.S., to add violations of ss. 893.055 or 893.0551, F.S., relating to the PDMP and the public records exemption for the PDMP, to the list of actions that constitute grounds for disciplinary action against a health care practitioner.

**Section 4** amends s. 456.44, F.S., to establish standards for the treatment of acute pain.

The bill defines the term “acute pain” to mean the normal, predicted, physiological, and time-limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma, or acute illness. The applicable regulatory boards are required to adopt rules establishing guidelines for prescribing controlled substances for acute pain including:

- Evaluating the patient;

---

<sup>36</sup> Id.

<sup>37</sup> Beginning on January 31, 2019.

- Creating and maintaining a treatment plan;
- Obtaining informed consent;
- Periodic review of the treatment plan;
- Consultation;
- Medical record review; and
- Compliance with controlled substances laws and regulations.

The bill specifies that failure to follow the guidelines is a practice act violation.

The bill also restricts a practitioner from prescribing more than a three-day supply of an opioid listed in Schedule II when treating acute pain except that up to a seven-day supply may be prescribed if:

- The practitioner in his or her professional judgement believes that more than a three-day supply is medically necessary;
- The practitioner indicates “medically necessary” on the prescription; and
- The practitioner adequately documents in the patient’s medical record the acute patient’s acute condition and lack of alternative treatment options.

**Sections 5 and 6** amend ss. 458.3265, and 459.0137, F.S., respectively, to require clinics that are exempt from registration as pain management clinics to obtain a certificate of exemption from the DOH. The bill requires the DOH to adopt an application form in rule for a certificate of exemption. The form must include:

- The name or names under which the applicant does business;
- The address where the pain management clinic is located;
- The specific exemption the applicant is claiming, with supporting documentation; and
- Any other information deemed necessary by the DOH.

The DOH must approve or deny a certificate within 30 days and certificates must be renewed biennially.<sup>38</sup> A certificate holder must prominently display the certificate and make it available to the DOH or board upon request. A new certificate is required for a change of address and certificates are only valid for the applicant, owners, licenses, registrations, certifications, and services provided under the specific exemption claimed. A certificate holder must notify the DOH at least 60 days before any anticipated relocation, name change, or change of ownership. If a pain management clinic ceases to qualify for a certificate of exemption, the certificate holder must notify the DOH within three days and register as a pain management clinic or cease operations.

These sections take effect January 1, 2019.

**Sections 7 and 8** amend ss. 465.0155 and 465.0276, F.S., to require pharmacists and dispensing practitioners to confirm a person’s identity before dispensing controlled substances to that person if he or she is not personally known to the pharmacist. If the person does not have proper

---

<sup>38</sup> The DOH may issue initial certificates for three years in order to stagger renewal dates.

identification<sup>39</sup> the dispenser must verify the validity of the prescription and the identity of the patient with the prescriber or his or her agent. This requirement does not apply in an institutional setting or long-term care facility, including, but not limited, to an assisted living facility or a hospital.

**Section 8** also amends several provisions in s. 465.0276, F.S., related to the dispensing of controlled substances by health care practitioners. Current law allows health care practitioners who are authorized to prescribe medicinal drugs to dispense such drugs if they are registered with their professional licensing boards. However, current law also restricts such practitioners from dispensing Schedule II or III controlled substances unless there is a specific exemption that allows them to do so. One such exemption allows practitioners to dispense up to a 14-day supply of Schedule II or III controlled substances in connection with the performance of a surgical procedure. The bill amends this exemption to require that practitioners follow the prescribing limits established in section four of the bill when dispensing Schedule II controlled substances under the exemption. The bill also creates a new exemption for practitioners authorized under 21 U.S.C. 823<sup>40</sup> to dispense Schedule II or III controlled substances that are approved for MAT by the FDA to their own patients for MAT of opiate addiction.

**Section 10** amends s. 893.03, F.S., to add substances to lists of controlled substances as follows:

- Dihydroetorphine, hydrocodone combination products, oripavine, remifentanil, tapentadol, thiafentanil, lisdexamfetamine, and dornabinol (synthetic THC) in oral solution in a drug product approved by the FDA are added to Schedule II.
- Buprenorphine,<sup>41</sup> embutramide, and perampanel are added to Schedule III.
- Alfaxalone, dexfenfluramine, dichloralphenazone, eluxadoline, eszopiclone, fospropofol, lorcaserin, modafinil, petrichloral, sibutramine, suvorexant, tramadol, zaleplon, zolpidem, and zopiclone are added to Schedule IV.
- Not more than .5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dose and any amount of brivaracetum, ezogabine, lacosamide, and pregabalin are added to Schedule V.

These changes conform Florida law with federal law.<sup>42</sup>

**Section 11** substantially rewords s. 893.055, F.S., creating the PDMP. Many of the provisions in existing law are reordered. The section:

- Defines the terms:
  - “Active investigation” to mean an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a

<sup>39</sup> The bill defines “proper identification” as an identification that is issued by a state or federal government containing the person’s photograph, printed name, and signature or a document considered acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B). The verification of health plan eligibility is also considered to be proper identification.

<sup>40</sup> Such practitioners include qualifying physicians (who must be licensed under state law and hold a specialty in addiction treatment or has had specified training) and nurse practitioners and physician assistants who are supervised by, or working in collaboration with, a qualifying physician.

<sup>41</sup> Buprenorphine is rescheduled from Schedule V to Schedule III.

<sup>42</sup> Supra note 33

- reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
- “Administration” to mean the obtaining and giving of a single dose of controlled substance by a legally authorized person to a patient for her or his consumption.
  - “Controlled substance” to mean a controlled substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03 or 21 U.S.C. s. 812. Schedule Vs are added to the reporting requirements. Most states include the dispensing of Schedule V controlled substances in their PDMPS.<sup>43</sup>
  - “Dispense” to mean the transfer of possession of one or more doses of a controlled substance by a dispenser to the ultimate consumer or to his or her agent.
  - “Dispenser” to mean a dispensing health care practitioner, pharmacy or pharmacist licensed to dispense controlled substances in or into this state.
  - “Health care practitioner” or “practitioner” means any practitioner licensed under chapter 458, chapter 459, chapter 461, chapter 463, chapter 464, chapter 465, or chapter 466.
  - “Health care regulatory board” has the same meaning as s. 456.001(1), F.S.
  - “Law enforcement agency” to mean the Department of Law Enforcement, a sheriff’s office in this state, a police department in this state, or a law enforcement agency of the Federal Government which enforces the laws of this state or the United States relating to controlled substances, and which its agents and officers are empowered by law to conduct criminal investigations and make arrests.
  - “Pharmacy” to include a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, or an Internet pharmacy that is licensed by the department under chapter 465 and that dispenses or delivers controlled substances, including controlled substances to an individual or address in this state.
  - “Prescriber” to mean a prescribing physician, prescribing practitioner, or other prescribing health care practitioner authorized by the laws of this state to order controlled substances.
  - “Program manager” to mean an employee of or a person contracted by the department who is designated to ensure the integrity of the prescription drug monitoring program in accordance with the requirements established in this section.
  - Requires the DOH to maintain an electronic system to collect and store controlled substance dispensing information and must release the information as authorized in s. 893.0551, F.S.<sup>44</sup> The system must:
    - Not infringe on legitimate prescribing and dispensing of controlled substances;
    - Be consistent with standards of the American Society for Automation in Pharmacy; and
    - Comply with Health Insurance Portability and Accountability Act (HIPAA) and all other relevant state and federal privacy and security laws and regulations;
  - Allows the DOH to collaborate with health care regulatory boards, appropriate organizations, and other state agencies to identify indicators of controlled substance abuse.
  - When dispensing a controlled substance to a patient, requires the dispenser to report the following information to the PDMP no later than the close of business the day after the controlled substance was dispensed:

---

<sup>43</sup> Supra note 13

<sup>44</sup> Section 893.0551, F.S., establishes the public records exemption for information in the PDMP.



- The name of the prescribing practitioner, his or her DEA registration number, his or her National Provider Identification (NPI), and the date of the prescription.
- The date the prescription was filled and the method of payment.
- The full name, address, telephone number, and date of birth of the person for whom the prescription as written.
- The name, national drug code, quantity, and strength of the controlled substance dispensed.
- The full name, DEA registration number, DOH pharmacy permit number, and address of the pharmacy where the controlled substance was dispensed or, if dispensed by a practitioner other than a pharmacist, the practitioner's name, address, DEA registration number, DOH license number, and NPI.
- Whether the drug was dispensed as an initial prescription or a refill and the number of refills ordered;
- The name of the individual picking up the controlled substance prescription and type of identification provided;
- Other appropriate identifying information as determined by the DOH in rule;
- Exempts all acts of administration from the reporting requirement.
- Eliminates an exemption for reporting the dispensing of controlled substances to minors under the age of 16.
- Grants direct access to the system to:
  - Prescribers and dispensers and their designees;
  - Employees of the United State Department of Veterans Affairs,<sup>45</sup> United States Department of Defense, or the Indian Health Service who provide health care services pursuant to such employment and who have authority to prescribe controlled substances;
  - The program manager and designated support staff to administer the system. The program manager or designated support staff:
    - The program manager and support staff must complete a level II background screening;
    - May have access to de-identified data in order to calculate performance measures;
    - Must provide the DOH de-identified data for public health care and safety initiatives;
  - The program manager:
    - May provide relevant information to the prescriber and dispenser when determining a pattern that indicates controlled substance abuse;
    - May provide relevant information to law enforcement upon determining a pattern of controlled substance abuse and upon having cause to believe that a violation of controlled substance laws has occurred.
- Grants indirect access to the system to:
  - The DOH and its health care regulatory boards for investigations involving licensees authorized to prescribe or dispense controlled substances. The bill removes access for the DOH's regulatory boards;
  - The Attorney General for Medicaid fraud cases involving prescribed controlled substances;
  - A law enforcement agency during an active investigation of potential criminal activity, fraud, or theft regarding prescribed controlled substances;

---

<sup>45</sup> Employees of the US Department of Veterans Affairs were allowed access last year in Ch. 2017-169, Laws of Fla.

- A medical examiner when conducting an authorized investigation to determine the cause of death of an individual;<sup>46</sup>
- An impaired practitioner consultant who is retained by the DOH to review the system information of an impaired practitioner program participant or a referral who has agreed to be evaluated or monitored through the program and has agreed in writing to the consultant's access; and
- A patient, legal guardian, or designated health care surrogate of an incapacitated patient who submits a written and notarized request including the patient's name, address, phone number, date of birth, and a copy of a government issued photo identification.
- Allows the DOH to enter into a reciprocal agreement or contract to share PDMP information with other states, districts, and territories if their PDMPs are compatible with Florida's.<sup>47</sup> To determine compatibility, the DOH must consider for the other state's, district's, or territory's PDMP:
  - Privacy safeguards and the program's success in protecting patient privacy;
  - The persons who are authorized to view the data collected by the program. Persons and entities in other states who are comparable to those granted access to Florida's PDMP may have access to Florida's PDMP upon approval by the DOH;
  - The schedules of controlled substances monitored;
  - Data reported to the program;
  - Any implementing criteria deemed essential; and
  - The costs and benefits to Florida of sharing prescription information.
- Requires the DOH to assess continued compatibility every four years and requires any agreements with other states to contain the same restrictions as Florida's program and s. 893.0551, F.S.
- Allows the DOH to enter into agreements and contracts to establish secure connections between the PDMP and health care provider's electronic health recordkeeping system.
- Requires all prescribers and dispensers, or their designees, to consult the system before prescribing or dispensing a controlled substance. Prescribers and dispensers are exempt from this requirement if the system is not operational or temporarily cannot be accessed. Any prescriber or dispenser who does not consult the system must document the reason why he or she could not consult the system and may not prescribe or dispense more than a three-day supply of a controlled substance. The DOH is required to issue a non-disciplinary citation pursuant to the procedure in s. 456.077, F.S. to any prescriber or dispenser who fails to consult the system. Under s. 456.077, F.S., the first citation is non-disciplinary and the second and further citations are disciplinary.
- Establishes the penalty of a first degree misdemeanor for any person who willfully and knowingly fails to report the dispensing of a controlled substance to the PDMP.
- Restricts information in the system from being released other than as specified in this section and s. 893.0551, F.S.
- Specifies that the content of the system is informational only.
- Restricts information in the system from being introduced as evidence in any civil or administrative action against a prescriber, dispenser, pharmacy, or patient and exempts the program manager and staff from being required to testify to any findings, recommendations,

---

<sup>46</sup> This access is newly added.

<sup>47</sup> This authorization to share data is newly added.

evaluations, opinions, or other actions taken in connection with the management of the system.

- Allows a prescriber or dispenser, or his or her designee, to have access to information in the PDMP which relates to his or her patient as needed for the purpose of reviewing the patient's controlled substance prescription history. A prescriber or dispenser acting in good faith is immune from civil, criminal, or administrative liability that might otherwise be incurred or imposed for receiving or using information in the PDMP. The bill specifies that accessing or failing to access information in the system does not create a private cause of action against a prescriber or dispenser.
- Specifies that the PDMP must be funded through federal grants, private funding, or state funds appropriated in the General Appropriations Act. The DOH may not commit funds for the PDMP without ensuring funding is available and may not use funds provided directly or indirectly by prescription drug manufacturers.
- Allows the DOH to establish a direct support organization to raise funds for the PDMP and incorporates an automatic repeal date of October 1, 2027, that is in existing law unless saved from repeal by the Legislature.
- Requires the DOH to conduct or contract for studies to examine the feasibility of enhancing the PDMP for public health initiatives and statistical reporting. Such studies must respect the privacy of patients and be focused on:
  - Improving the quality of health care services and safety by improving the prescribing and dispensing practices for prescription drugs;
  - Taking advantage of advances in technology;
  - Reducing duplicative prescriptions and the overprescribing of prescription drugs; and
  - Reducing drug abuse.
- Requires the DOH to annually report to the Governor and the Legislature on specified performance measures for the PDMP.
- Requires the DOH to adopt rules necessary to implement the section.

**Section 12** amends s. 893.0551, F.S., to amend the public records exemption for the PDMP to conform to changes made to s. 893.055, F.S., and to conform the section to the requirement in s. 381.986, F.S., that a qualified physician must check the PDMP prior to issuing a physician certification recommending the medical use of marijuana.

Sections 13-19 amends various sections of law to conform cross references to changes made in the bill.

Section 20 establishes appropriations for the 2018-2019 fiscal year as follows:

- \$27,035,360 in nonrecurring funds from the Federal Grants Trust Fund and \$15,520,000 in recurring general revenue are appropriated to the Department of Children and Families (DCF) for outpatient, case management, and after care services; residential treatment; MAT, including the purchase and medical use of methadone, buprenorphine, and naltrexone extended-release injectable; peer recovery support; hospital and first responder outreach; and outreach targeted to pregnant women.
- Of the recurring funds appropriated above, the DCF must use \$4,720,000 to contract with a nonprofit organization for the distribution of drugs for MAT as follows:
  - \$472,000 for methadone;

- \$1,888,000 for buprenorphine; and
- \$2,360,000 for naltrexone extended-release injectable.
- \$6 million in recurring general revenue funds are appropriated to the Office of the State Courts Administrator (OSCA) for treatment of substance abuse disorders in individuals involved in the criminal justice system, individuals who have a high likelihood of criminal justice involvement, or who are in court-ordered, community based drug treatment. The OSCA must contract with a non-profit entity to make available the following drugs:
  - \$600,000 for methadone;
  - \$2.4 million buprenorphine; and
  - \$3 million for naltrexone extended-release injectable.
- \$5 million of recurring general revenue funds are appropriated to the DOH for the purchase of naloxone to be made available to emergency responders.

**Section 21** establishes an effective date of July 1, 2018, unless otherwise specified in the bill.

#### **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 8 may have an indeterminate negative fiscal impact on clinics that are required to obtain a certificate of exemption from the requirement to register as a pain management clinic.

The bill may have an indeterminate negative fiscal impact on health care practitioners who are required to attend the additional training established in the bill.

The bill may have an indeterminate fiscal impact on patients due to the supply limits imposed for prescription of opioid medications listed in Schedule II.

The bill may have a negative fiscal impact on the administrative operations of health care providers who are required to consult the PDMP prior to prescribing controlled substances and do not currently do so.

The bill may have a positive fiscal impact on any non-profit entities that contract with the DCF or the OSCA to provide MAT medications pursuant to the appropriation established in the bill.

**C. Government Sector Impact:**

CS/SB 8 may have an indeterminate negative fiscal impact on the DOH related to increased investigations of unlicensed pain management clinics that may be offset through fees collected for initial issuance and renewal of pain management clinic exemption certificates.<sup>48</sup>

The bill provides appropriations as detailed in the Effects of Proposed Changes section above.

**VI. Technical Deficiencies:**

CS/SB 8 amends the public records exemption for the PDMP and consolidates access to the PDMP for pharmacists with other health care practitioners on lines 1669-1672. This change is a result of pharmacists being added to the definition of “health care practitioner” in s. 893.055, F.S., by the bill. However, the bill leaves out a reference to s. 893.04, F.S., when allowing access to health care practitioners that is currently incorporated into the access allowed to pharmacists by s. 893.0551(e), F.S. The reference to s. 893.04, F.S., should be added to line 1671 of the bill.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 409.967, 456.072, 456.44, 458.3265, 459.0137, 465.0155, 465.0276, 627.42392, 893.03, 893.055, 893.0551, 458.331, 459.015, 463.0055, 782.04, 893.13, 893.135, and 921.0022.

This bill creates section 456.0301 and one unnumbered section of the Florida Statutes.

**IX. 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 January 16, 2018.**

The CS makes several substantive changes along with numerous conforming, clarifying, and technical changes. Substantive changes include:

---

<sup>48</sup> Supra note 28.

- Restricting Medicaid and health insurers from requiring prior authorization for MAT.
- Requiring applicable boards, rather than the DOH, to establish guidelines for prescribing controlled substances to treat acute pain.
- Requiring physicians to maintain treatment plans when prescribing Schedule II opioids for the treatment of acute pain.
- Conforming provisions relating to practitioners dispensing Schedule II and Schedule III controlled substances
- Establishing an exception to allow physicians to dispense MAT drugs to their own patients to treat substance abuse disorders.
- Modifying the definitions of “dispense” and “dispenser” within the PDMP to ensure that out of state dispensers must report controlled substances dispensed into the state.
- Reestablishing indirect access to the PDMP for the DOH’s health care regulatory boards.
- Eliminating language stating that the content of the PDMP creates no obligations or legal duties for prescribers, dispensers, pharmacies, or patients.
- Including appropriations:
  - \$27,035,360 non-recurring and \$15,520,000 recurring to DCF for substance use disorder treatment services. Specifies amounts for specific MAT drugs.
  - \$6 million in recurring to the state courts administrator for substance abuse treatment related to the criminal justice system.
  - \$5 million to the DOH to purchase naloxone for EMS responders.

**B. Amendments:**

None.



194134

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

409.967 Managed care plan accountability.-

(2) The agency shall establish such contract requirements  
as are necessary for the operation of the statewide managed care  
program. In addition to any other provisions the agency may deem



194134

11 necessary, the contract must require:

12 (c) *Access.*—

13 1. The agency shall establish specific standards for the  
14 number, type, and regional distribution of providers in managed  
15 care plan networks to ensure access to care for both adults and  
16 children. Each plan must maintain a regionwide network of  
17 providers in sufficient numbers to meet the access standards for  
18 specific medical services for all recipients enrolled in the  
19 plan. The exclusive use of mail-order pharmacies may not be  
20 sufficient to meet network access standards. Consistent with the  
21 standards established by the agency, provider networks may  
22 include providers located outside the region. A plan may  
23 contract with a new hospital facility before the date the  
24 hospital becomes operational if the hospital has commenced  
25 construction, will be licensed and operational by January 1,  
26 2013, and a final order has issued in any civil or  
27 administrative challenge. Each plan shall establish and maintain  
28 an accurate and complete electronic database of contracted  
29 providers, including information about licensure or  
30 registration, locations and hours of operation, specialty  
31 credentials and other certifications, specific performance  
32 indicators, and such other information as the agency deems  
33 necessary. The database must be available online to both the  
34 agency and the public and have the capability to compare the  
35 availability of providers to network adequacy standards and to  
36 accept and display feedback from each provider's patients. Each  
37 plan shall submit quarterly reports to the agency identifying  
38 the number of enrollees assigned to each primary care provider.

39 2. Each managed care plan must publish any prescribed drug





194134

40 formulary or preferred drug list on the plan's website in a  
41 manner that is accessible to and searchable by enrollees and  
42 providers. The plan must update the list within 24 hours after  
43 making a change. Each plan must ensure that the prior  
44 authorization process for prescribed drugs is readily accessible  
45 to health care providers, including posting appropriate contact  
46 information on its website and providing timely responses to  
47 providers. For Medicaid recipients diagnosed with hemophilia who  
48 have been prescribed anti-hemophilic-factor replacement  
49 products, the agency shall provide for those products and  
50 hemophilia overlay services through the agency's hemophilia  
51 disease management program.

52 3. Managed care plans, and their fiscal agents or  
53 intermediaries, must accept prior authorization requests for any  
54 service electronically.

55 4. Managed care plans, and their fiscal agents and  
56 intermediaries, may not implement, manage, or require a prior  
57 authorization process or step therapy procedures and may not  
58 impose any other conditions on recipients as a prerequisite to  
59 receiving medication-assisted treatment (MAT) services, as  
60 defined in s. 397.311, to treat substance abuse disorders.

61 5. Managed care plans serving children in the care and  
62 custody of the Department of Children and Families must maintain  
63 complete medical, dental, and behavioral health encounter  
64 information and participate in making such information available  
65 to the department or the applicable contracted community-based  
66 care lead agency for use in providing comprehensive and  
67 coordinated case management. The agency and the department shall  
68 establish an interagency agreement to provide guidance for the



194134

69 format, confidentiality, recipient, scope, and method of  
70 information to be made available and the deadlines for  
71 submission of the data. The scope of information available to  
72 the department shall be the data that managed care plans are  
73 required to submit to the agency. The agency shall determine the  
74 plan's compliance with standards for access to medical, dental,  
75 and behavioral health services; the use of medications; and  
76 followup on all medically necessary services recommended as a  
77 result of early and periodic screening, diagnosis, and  
78 treatment.

79 Section 2. Section 456.0301, Florida Statutes, is created  
80 to read:

81 456.0301 Requirement for instruction on controlled  
82 substance prescribing.-

83 (1) (a) If not already required by the licensee's practice  
84 act, the appropriate board shall require each person registered  
85 with the United States Drug Enforcement Administration and  
86 authorized to prescribe controlled substances pursuant to 21  
87 U.S.C. s. 822 to complete a board-approved 2-hour continuing  
88 education course on prescribing controlled substances as part of  
89 biennial license renewal. The course must include information on  
90 the current standards for prescribing controlled substances,  
91 particularly opiates; alternatives to these standards; and  
92 information on the risks of opioid addiction following all  
93 stages of treatment in the management of acute pain. The course  
94 may be offered in a distance learning format and must be  
95 included within the number of continuing education hours  
96 required by law. The department may not renew the license of any  
97 prescriber registered with the United States Drug Enforcement



194134

98 Administration to prescribe controlled substances who has failed  
99 to complete the course. When required by this paragraph, the  
100 course must be completed by January 31, 2019, and at each  
101 subsequent renewal.

102 (b) Each such licensee shall submit confirmation of having  
103 completed such course when applying for biennial license  
104 renewal.

105 (2) Each board may adopt rules to administer this section.

106 Section 3. Paragraph (gg) of subsection (1) of section  
107 456.072, Florida Statutes, is amended to read:

108 456.072 Grounds for discipline; penalties; enforcement.—

109 (1) The following acts shall constitute grounds for which  
110 the disciplinary actions specified in subsection (2) may be  
111 taken:

112 (gg) Engaging in a pattern of practice when prescribing  
113 medicinal drugs or controlled substances which demonstrates a  
114 lack of reasonable skill or safety to patients, a violation of  
115 ~~any provision of this chapter~~ or ss. 893.055 and 893.0551, a  
116 violation of the applicable practice act, or a violation of any  
117 rules adopted under this chapter or the applicable practice act  
118 of the prescribing practitioner. Notwithstanding s. 456.073(13),  
119 the department may initiate an investigation and establish such  
120 a pattern from billing records, data, or any other information  
121 obtained by the department.

122 Section 4. Paragraphs (a) through (g) of subsection (1) of  
123 section 456.44, Florida Statutes, are redesignated as paragraphs  
124 (b) through (h), respectively, a new paragraph (a) is added to  
125 that subsection, subsection (3) is amended, and subsections (4)  
126 and (5) are added to that section, to read:



194134

127 456.44 Controlled substance prescribing.-

128 (1) DEFINITIONS.-As used in this section, the term:

129 (a) "Acute pain" means the normal, predicted,  
130 physiological, and time-limited response to an adverse chemical,  
131 thermal, or mechanical stimulus associated with surgery, trauma,  
132 or acute illness.

133 (3) STANDARDS OF PRACTICE FOR TREATMENT OF CHRONIC  
134 NONMALIGNANT PAIN.-The standards of practice in this section do  
135 not supersede the level of care, skill, and treatment recognized  
136 in general law related to health care licensure.

137 (a) A complete medical history and a physical examination  
138 must be conducted before beginning any treatment and must be  
139 documented in the medical record. The exact components of the  
140 physical examination shall be left to the judgment of the  
141 registrant who is expected to perform a physical examination  
142 proportionate to the diagnosis that justifies a treatment. The  
143 medical record must, at a minimum, document the nature and  
144 intensity of the pain, current and past treatments for pain,  
145 underlying or coexisting diseases or conditions, the effect of  
146 the pain on physical and psychological function, a review of  
147 previous medical records, previous diagnostic studies, and  
148 history of alcohol and substance abuse. The medical record shall  
149 also document the presence of one or more recognized medical  
150 indications for the use of a controlled substance. Each  
151 registrant must develop a written plan for assessing each  
152 patient's risk of aberrant drug-related behavior, which may  
153 include patient drug testing. Registrants must assess each  
154 patient's risk for aberrant drug-related behavior and monitor  
155 that risk on an ongoing basis in accordance with the plan.



194134

156 (b) Each registrant must develop a written individualized  
157 treatment plan for each patient. The treatment plan shall state  
158 objectives that will be used to determine treatment success,  
159 such as pain relief and improved physical and psychosocial  
160 function, and shall indicate if any further diagnostic  
161 evaluations or other treatments are planned. After treatment  
162 begins, the registrant shall adjust drug therapy to the  
163 individual medical needs of each patient. Other treatment  
164 modalities, including a rehabilitation program, shall be  
165 considered depending on the etiology of the pain and the extent  
166 to which the pain is associated with physical and psychosocial  
167 impairment. The interdisciplinary nature of the treatment plan  
168 shall be documented.

169 (c) The registrant shall discuss the risks and benefits of  
170 the use of controlled substances, including the risks of abuse  
171 and addiction, as well as physical dependence and its  
172 consequences, with the patient, persons designated by the  
173 patient, or the patient's surrogate or guardian if the patient  
174 is incompetent. The registrant shall use a written controlled  
175 substance agreement between the registrant and the patient  
176 outlining the patient's responsibilities, including, but not  
177 limited to:

178 1. Number and frequency of controlled substance  
179 prescriptions and refills.

180 2. Patient compliance and reasons for which drug therapy  
181 may be discontinued, such as a violation of the agreement.

182 3. An agreement that controlled substances for the  
183 treatment of chronic nonmalignant pain shall be prescribed by a  
184 single treating registrant unless otherwise authorized by the



194134

185 treating registrant and documented in the medical record.

186 (d) The patient shall be seen by the registrant at regular  
187 intervals, not to exceed 3 months, to assess the efficacy of  
188 treatment, ensure that controlled substance therapy remains  
189 indicated, evaluate the patient's progress toward treatment  
190 objectives, consider adverse drug effects, and review the  
191 etiology of the pain. Continuation or modification of therapy  
192 shall depend on the registrant's evaluation of the patient's  
193 progress. If treatment goals are not being achieved, despite  
194 medication adjustments, the registrant shall reevaluate the  
195 appropriateness of continued treatment. The registrant shall  
196 monitor patient compliance in medication usage, related  
197 treatment plans, controlled substance agreements, and  
198 indications of substance abuse or diversion at a minimum of 3-  
199 month intervals.

200 (e) The registrant shall refer the patient as necessary for  
201 additional evaluation and treatment in order to achieve  
202 treatment objectives. Special attention shall be given to those  
203 patients who are at risk for misusing their medications and  
204 those whose living arrangements pose a risk for medication  
205 misuse or diversion. The management of pain in patients with a  
206 history of substance abuse or with a comorbid psychiatric  
207 disorder requires extra care, monitoring, and documentation and  
208 requires consultation with or referral to an addiction medicine  
209 specialist or a psychiatrist.

210 (f) A registrant must maintain accurate, current, and  
211 complete records that are accessible and readily available for  
212 review and comply with the requirements of this section, the  
213 applicable practice act, and applicable board rules. The medical



194134

214 records must include, but are not limited to:

215 1. The complete medical history and a physical examination,  
216 including history of drug abuse or dependence.

217 2. Diagnostic, therapeutic, and laboratory results.

218 3. Evaluations and consultations.

219 4. Treatment objectives.

220 5. Discussion of risks and benefits.

221 6. Treatments.

222 7. Medications, including date, type, dosage, and quantity  
223 prescribed.

224 8. Instructions and agreements.

225 9. Periodic reviews.

226 10. Results of any drug testing.

227 11. A photocopy of the patient's government-issued photo  
228 identification.

229 12. If a written prescription for a controlled substance is  
230 given to the patient, a duplicate of the prescription.

231 13. The registrant's full name presented in a legible  
232 manner.

233 (g) A registrant shall immediately refer patients with  
234 signs or symptoms of substance abuse to a board-certified pain  
235 management physician, an addiction medicine specialist, or a  
236 mental health addiction facility as it pertains to drug abuse or  
237 addiction unless the registrant is a physician who is board-  
238 certified or board-eligible in pain management. Throughout the  
239 period of time before receiving the consultant's report, a  
240 prescribing registrant shall clearly and completely document  
241 medical justification for continued treatment with controlled  
242 substances and those steps taken to ensure medically appropriate



194134

243 use of controlled substances by the patient. Upon receipt of the  
244 consultant's written report, the prescribing registrant shall  
245 incorporate the consultant's recommendations for continuing,  
246 modifying, or discontinuing controlled substance therapy. The  
247 resulting changes in treatment shall be specifically documented  
248 in the patient's medical record. Evidence or behavioral  
249 indications of diversion shall be followed by discontinuation of  
250 controlled substance therapy, and the patient shall be  
251 discharged, and all results of testing and actions taken by the  
252 registrant shall be documented in the patient's medical record.

253  
254 This subsection does not apply to a board-eligible or board-  
255 certified anesthesiologist, physiatrist, rheumatologist, or  
256 neurologist, or to a board-certified physician who has surgical  
257 privileges at a hospital or ambulatory surgery center and  
258 primarily provides surgical services. This subsection does not  
259 apply to a board-eligible or board-certified medical specialist  
260 who has also completed a fellowship in pain medicine approved by  
261 the Accreditation Council for Graduate Medical Education or the  
262 American Osteopathic Association, or who is board eligible or  
263 board certified in pain medicine by the American Board of Pain  
264 Medicine, the American Board of Interventional Pain Physicians,  
265 the American Association of Physician Specialists, or a board  
266 approved by the American Board of Medical Specialties or the  
267 American Osteopathic Association and performs interventional  
268 pain procedures of the type routinely billed using surgical  
269 codes. This subsection does not apply to a registrant who  
270 prescribes medically necessary controlled substances for a  
271 patient during an inpatient stay in a hospital licensed under





194134

272 chapter 395.

273 (4) STANDARDS OF PRACTICE FOR TREATMENT OF ACUTE PAIN.—The  
274 applicable boards shall adopt rules establishing guidelines for  
275 prescribing controlled substances for acute pain, including  
276 evaluation of the patient, creation and maintenance of a  
277 treatment plan, obtaining informed consent and agreement for  
278 treatment, periodic review of the treatment plan, consultation,  
279 medical record review, and compliance with controlled substance  
280 laws and regulations. Failure of a prescriber to follow such  
281 guidelines constitutes grounds for disciplinary action pursuant  
282 to s. 456.072(1)(gg), punishable as provided in s. 456.072(2).

283 (5) PRESCRIPTION SUPPLY.—

284 (a) Except as provided in paragraph (b), a prescription for  
285 an opioid drug listed as a Schedule II controlled substance in  
286 s. 893.03 or 21 U.S.C. s. 812, for the treatment of acute pain  
287 may not exceed a 3-day supply.

288 (b) Up to a 7-day supply of an opioid described in  
289 paragraph (a) may be prescribed if:

290 1. The practitioner, in his or her professional judgment,  
291 believes that more than a 3-day supply of such an opioid is  
292 medically necessary to treat the patient's pain as an acute  
293 medical condition.

294 2. The practitioner indicates "MEDICALLY NECESSARY" on the  
295 prescription.

296 3. The prescriber adequately documents in the patient's  
297 medical records the acute medical condition and lack of  
298 alternative treatment options that justify deviation from the 3-  
299 day supply limit established in this subsection.

300 Section 5. Effective January 1, 2019, subsections (2)



194134

301 through (5) of section 458.3265, Florida Statutes, are  
302 renumbered as subsections (3) through (6), respectively,  
303 paragraphs (a) and (g) of subsection (1), paragraph (a) of  
304 present subsection (2), paragraph (a) of present subsection (3)  
305 and paragraph (a) of present subsection (4) of that section, are  
306 amended, and a new subsection (2) is added to that section, to  
307 read:

308 458.3265 Pain-management clinics.—

309 (1) REGISTRATION.—

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

311 a. "Board eligible" means successful completion of an  
312 anesthesia, physical medicine and rehabilitation, rheumatology,  
313 or neurology residency program approved by the Accreditation  
314 Council for Graduate Medical Education or the American  
315 Osteopathic Association for a period of 6 years from successful  
316 completion of such residency program.

317 b. "Chronic nonmalignant pain" means pain unrelated to  
318 cancer which persists beyond the usual course of disease or the  
319 injury that is the cause of the pain or more than 90 days after  
320 surgery.

321 c. "Pain-management clinic" or "clinic" means any publicly  
322 or privately owned facility:

323 (I) That advertises in any medium for any type of pain-  
324 management services; or

325 (II) Where in any month a majority of patients are  
326 prescribed opioids, benzodiazepines, barbiturates, or  
327 carisoprodol for the treatment of chronic nonmalignant pain.

328 2. Each pain-management clinic must register with the  
329 department or hold a valid certificate of exemption pursuant to



194134

330 subsection (2). ~~unless:~~

331 3. The following clinics are exempt from the registration  
332 requirement of paragraphs (c)-(m), and must apply to the  
333 department for a certificate of exemption:

334 a. A ~~The~~ clinic ~~is~~ licensed as a facility pursuant to  
335 chapter 395;

336 b. A clinic in which the majority of the physicians who  
337 provide services in the clinic primarily provide surgical  
338 services;

339 c. A ~~The~~ clinic ~~is~~ owned by a publicly held corporation  
340 whose shares are traded on a national exchange or on the over-  
341 the-counter market and whose total assets at the end of the  
342 corporation's most recent fiscal quarter exceeded \$50 million;

343 d. A ~~The~~ clinic ~~is~~ affiliated with an accredited medical  
344 school at which training is provided for medical students,  
345 residents, or fellows;

346 e. A ~~The~~ clinic that does not prescribe controlled  
347 substances for the treatment of pain;

348 f. A ~~The~~ clinic ~~is~~ owned by a corporate entity exempt from  
349 federal taxation under 26 U.S.C. s. 501(c)(3);

350 g. A ~~The~~ clinic ~~is~~ wholly owned and operated by one or more  
351 board-eligible or board-certified anesthesiologists,  
352 physiatrists, rheumatologists, or neurologists; or

353 h. A ~~The~~ clinic ~~is~~ wholly owned and operated by a physician  
354 multispecialty practice where one or more board-eligible or  
355 board-certified medical specialists, who have also completed  
356 fellowships in pain medicine approved by the Accreditation  
357 Council for Graduate Medical Education or who are also board-  
358 certified in pain medicine by the American Board of Pain



194134

359 Medicine or a board approved by the American Board of Medical  
360 Specialties, the American Association of Physician Specialists,  
361 or the American Osteopathic Association, perform interventional  
362 pain procedures of the type routinely billed using surgical  
363 codes.

364 (g) The department may revoke the clinic's certificate of  
365 registration and prohibit all physicians associated with that  
366 pain-management clinic from practicing at that clinic location  
367 based upon an annual inspection and evaluation of the factors  
368 described in subsection (4)~~(3)~~.

369 (2) CERTIFICATE OF EXEMPTION.-

370 (a) A pain management clinic claiming an exemption from the  
371 registration requirements of subsection (1) must apply for a  
372 certificate of exemption on a form adopted in rule by the  
373 department. The form must require the applicant to provide:

374 1. The name or names under which the applicant does  
375 business.

376 2. The address at which the pain management clinic is  
377 located.

378 3. The specific exemption the applicant is claiming with  
379 supporting documentation.

380 4. Any other information deemed necessary by the  
381 department.

382 (b) The department must approve or deny the application  
383 within 30 days after the receipt of a complete application.

384 (c) The certificate of exemption must be renewed  
385 biennially, except that the department may issue the initial  
386 certificates of exemption for up to 3 years in order to stagger  
387 renewal dates.



194134

388       (d) A certificateholder must prominently display the  
389 certificate of exemption and make it available to the department  
390 or the board upon request.

391       (e) A new certificate of exemption is required for a change  
392 of address and is not transferable. A certificate of exemption  
393 is valid only for the applicant, qualifying owners, licenses,  
394 registrations, certifications, and services provided under a  
395 specific statutory exemption and is valid only to the specific  
396 exemption claimed and granted.

397       (f) A certificateholder must notify the department at least  
398 60 days before any anticipated relocation or name change of the  
399 pain management clinic or a change of ownership.

400       (g) If a pain management clinic no longer qualifies for a  
401 certificate of exemption, the certificateholder must notify the  
402 department within 3 days after becoming aware that the clinic no  
403 longer qualifies for a certificate of exemption and register as  
404 a pain management clinic under subsection (1) or cease  
405 operations.

406       (3)-(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities  
407 apply to any physician who provides professional services in a  
408 pain-management clinic that is required to be registered in  
409 subsection (1).

410       (a) A physician may not practice medicine in a pain-  
411 management clinic, as described in subsection (5)-(4), if the  
412 pain-management clinic is not registered with the department as  
413 required by this section. Any physician who qualifies to  
414 practice medicine in a pain-management clinic pursuant to rules  
415 adopted by the Board of Medicine as of July 1, 2012, may  
416 continue to practice medicine in a pain-management clinic as



194134

417 long as the physician continues to meet the qualifications set  
418 forth in the board rules. A physician who violates this  
419 paragraph is subject to disciplinary action by his or her  
420 appropriate medical regulatory board.

421 ~~(4)~~ ~~(3)~~ INSPECTION.—

422 (a) The department shall inspect the pain-management clinic  
423 annually, including a review of the patient records, to ensure  
424 that it complies with this section and the rules of the Board of  
425 Medicine adopted pursuant to subsection ~~(5)~~ ~~(4)~~ unless the clinic  
426 is accredited by a nationally recognized accrediting agency  
427 approved by the Board of Medicine.

428 ~~(5)~~ ~~(4)~~ RULEMAKING.—

429 (a) The department shall adopt rules necessary to  
430 administer the registration, exemption, and inspection of pain-  
431 management clinics which establish the specific requirements,  
432 procedures, forms, and fees.

433 Section 6. Effective January 1, 2019, subsections (2)  
434 through (5) of section 459.0137, Florida Statutes, are  
435 renumbered as subsections (3) through (6), respectively,  
436 paragraphs (a) and (g) of subsection (1), paragraph (a) of  
437 present subsection (2), paragraph (a) of present subsection (3)  
438 and paragraph (a) of present subsection (4) of that section, are  
439 amended, and a new subsection (2) is added to that section, to  
440 read:

441 459.0137 Pain-management clinics.—

442 (1) REGISTRATION.—

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

444 a. "Board eligible" means successful completion of an  
445 anesthesia, physical medicine and rehabilitation, rheumatology,



194134

446 or neurology residency program approved by the Accreditation  
447 Council for Graduate Medical Education or the American  
448 Osteopathic Association for a period of 6 years from successful  
449 completion of such residency program.

450 b. "Chronic nonmalignant pain" means pain unrelated to  
451 cancer which persists beyond the usual course of disease or the  
452 injury that is the cause of the pain or more than 90 days after  
453 surgery.

454 c. "Pain-management clinic" or "clinic" means any publicly  
455 or privately owned facility:

456 (I) That advertises in any medium for any type of pain-  
457 management services; or

458 (II) Where in any month a majority of patients are  
459 prescribed opioids, benzodiazepines, barbiturates, or  
460 carisoprodol for the treatment of chronic nonmalignant pain.

461 2. Each pain-management clinic must register with the  
462 department or hold a valid certificate of exemption pursuant to  
463 subsection (2). ~~unless:~~

464 3. The following clinics are exempt from the registration  
465 requirement of paragraphs (c)-(m), and must apply to the  
466 department for a certificate of exemption:

467 a. A ~~That~~ clinic ~~is~~ licensed as a facility pursuant to  
468 chapter 395;

469 b. A clinic in which the majority of the physicians who  
470 provide services in the clinic primarily provide surgical  
471 services;

472 c. A ~~The~~ clinic ~~is~~ owned by a publicly held corporation  
473 whose shares are traded on a national exchange or on the over-  
474 the-counter market and whose total assets at the end of the



194134

475 corporation's most recent fiscal quarter exceeded \$50 million;

476 d. A ~~The clinic is~~ affiliated with an accredited medical  
477 school at which training is provided for medical students,  
478 residents, or fellows;

479 e. A ~~The clinic that~~ does not prescribe controlled  
480 substances for the treatment of pain;

481 f. A ~~The clinic is~~ owned by a corporate entity exempt from  
482 federal taxation under 26 U.S.C. s. 501(c)(3);

483 g. A ~~The clinic is~~ wholly owned and operated by one or more  
484 board-eligible or board-certified anesthesiologists,  
485 physiatrists, rheumatologists, or neurologists; or

486 h. A ~~The clinic is~~ wholly owned and operated by a physician  
487 multispecialty practice where one or more board-eligible or  
488 board-certified medical specialists, who have also completed  
489 fellowships in pain medicine approved by the Accreditation  
490 Council for Graduate Medical Education or the American  
491 Osteopathic Association or who are also board-certified in pain  
492 medicine by the American Board of Pain Medicine or a board  
493 approved by the American Board of Medical Specialties, the  
494 American Association of Physician Specialists, or the American  
495 Osteopathic Association, perform interventional pain procedures  
496 of the type routinely billed using surgical codes.

497 (g) The department may revoke the clinic's certificate of  
498 registration and prohibit all physicians associated with that  
499 pain-management clinic from practicing at that clinic location  
500 based upon an annual inspection and evaluation of the factors  
501 described in subsection (4)(3).

502 (2) CERTIFICATE OF EXEMPTION.-

503 (a) A pain management clinic claiming an exemption from the





194134

504 registration requirements of subsection (1) must apply for a  
505 certificate of exemption on a form adopted in rule by the  
506 department. The form shall require the applicant to provide:

507 1. The name or names under which the applicant does  
508 business.

509 2. The address at which the pain management clinic is  
510 located.

511 3. The specific exemption the applicant is claiming with  
512 supporting documentation.

513 4. Any other information deemed necessary by the  
514 department.

515 (b) Within 30 days after the receipt of a complete  
516 application, the department must approve or deny the  
517 application.

518 (c) The certificate of exemption must be renewed  
519 biennially, except that the department may issue the initial  
520 certificates of exemption for up to 3 years in order to stagger  
521 renewal dates.

522 (d) A certificateholder must prominently display the  
523 certificate of exemption and make it available to the department  
524 or the board upon request.

525 (e) A new certificate of exemption is required for a change  
526 of address and is not transferable. A certificate of exemption  
527 is valid only for the applicant, qualifying owners, licenses,  
528 registrations, certifications, and services provided under a  
529 specific statutory exemption and is valid only to the specific  
530 exemption claimed and granted.

531 (f) A certificateholder must notify the department at least  
532 60 days before any anticipated relocation or name change of the



194134

533 pain management clinic or a change of ownership.

534 (g) If a pain management clinic no longer qualifies for a  
535 certificate of exemption, the certificateholder must notify the  
536 department within 3 days after becoming aware that the clinic no  
537 longer qualifies for a certificate of exemption and register as  
538 a pain management clinic under subsection (1) or cease  
539 operations.

540 (3)-(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities  
541 apply to any osteopathic physician who provides professional  
542 services in a pain-management clinic that is required to be  
543 registered in subsection (1).

544 (a) An osteopathic physician may not practice medicine in a  
545 pain-management clinic, as described in subsection (5)-(4), if  
546 the pain-management clinic is not registered with the department  
547 as required by this section. Any physician who qualifies to  
548 practice medicine in a pain-management clinic pursuant to rules  
549 adopted by the Board of Osteopathic Medicine as of July 1, 2012,  
550 may continue to practice medicine in a pain-management clinic as  
551 long as the physician continues to meet the qualifications set  
552 forth in the board rules. An osteopathic physician who violates  
553 this paragraph is subject to disciplinary action by his or her  
554 appropriate medical regulatory board.

555 (4)-(3) INSPECTION.—

556 (a) The department shall inspect the pain-management clinic  
557 annually, including a review of the patient records, to ensure  
558 that it complies with this section and the rules of the Board of  
559 Osteopathic Medicine adopted pursuant to subsection (5)-(4)  
560 unless the clinic is accredited by a nationally recognized  
561 accrediting agency approved by the Board of Osteopathic



194134

562 Medicine.

563 (5)~~(4)~~ RULEMAKING.—

564 (a) The department shall adopt rules necessary to  
565 administer the registration, exemption, and inspection of pain-  
566 management clinics which establish the specific requirements,  
567 procedures, forms, and fees.

568 Section 7. Section 465.0155, Florida Statutes, is amended  
569 to read:

570 465.0155 Standards of practice.—

571 (1) Consistent with the provisions of this act, the board  
572 shall adopt by rule standards of practice relating to the  
573 practice of pharmacy which shall be binding on every state  
574 agency and shall be applied by such agencies when enforcing or  
575 implementing any authority granted by any applicable statute,  
576 rule, or regulation, whether federal or state.

577 (2) (a) Before dispensing a controlled substance to a person  
578 not known to the pharmacist, the pharmacist must require the  
579 person purchasing, receiving, or otherwise acquiring the  
580 controlled substance to present valid photographic  
581 identification or other verification of his or her identity. If  
582 the person does not have proper identification, the pharmacist  
583 may verify the validity of the prescription and the identity of  
584 the patient with the prescriber or his or her authorized agent.  
585 Verification of health plan eligibility through a real-time  
586 inquiry or adjudication system is considered to be proper  
587 identification.

588 (b) This subsection does not apply in an institutional  
589 setting or to a long-term care facility, including, but not  
590 limited to, an assisted living facility or a hospital to which



194134

591 patients are admitted.

592 (c) As used in this subsection, the term "proper  
593 identification" means an identification that is issued by a  
594 state or the Federal Government containing the person's  
595 photograph, printed name, and signature or a document considered  
596 acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

597 Section 8. Paragraph (b) of subsection (1) of section  
598 465.0276, Florida Statutes, is amended, and paragraph (d) is  
599 added to subsection (2) of that section, to read:

600 465.0276 Dispensing practitioner.-

601 (1)

602 (b) A practitioner registered under this section may not  
603 dispense a controlled substance listed in Schedule II or  
604 Schedule III as provided in s. 893.03. This paragraph does not  
605 apply to:

606 1. The dispensing of complimentary packages of medicinal  
607 drugs which are labeled as a drug sample or complimentary drug  
608 as defined in s. 499.028 to the practitioner's own patients in  
609 the regular course of her or his practice without the payment of  
610 a fee or remuneration of any kind, whether direct or indirect,  
611 as provided in subsection (4).

612 2. The dispensing of controlled substances in the health  
613 care system of the Department of Corrections.

614 3. The dispensing of a controlled substance listed in  
615 Schedule II or Schedule III in connection with the performance  
616 of a surgical procedure.

617 a. For a controlled substance listed in Schedule II, the  
618 amount dispensed pursuant to this subparagraph may not exceed a  
619 3-day supply unless the criteria in s. 456.44(5)(b) are met, in



194134

620 which case the amount dispensed may not exceed a 7-day supply.

621 b. For a controlled substance listed in Schedule III, the  
622 amount dispensed pursuant to this ~~the~~ subparagraph may not  
623 exceed a 14-day supply.

624 c. The exception in this subparagraph ~~exception~~ does not  
625 allow for the dispensing of a controlled substance listed in  
626 Schedule II or Schedule III more than 14 days after the  
627 performance of the surgical procedure.

628 d. For purposes of this subparagraph, the term "surgical  
629 procedure" means any procedure in any setting which involves, or  
630 reasonably should involve:

631 (I) ~~a.~~ Perioperative medication and sedation that allows the  
632 patient to tolerate unpleasant procedures while maintaining  
633 adequate cardiorespiratory function and the ability to respond  
634 purposefully to verbal or tactile stimulation and makes intra-  
635 and postoperative monitoring necessary; or

636 (II) ~~b.~~ The use of general anesthesia or major conduction  
637 anesthesia and preoperative sedation.

638 4. The dispensing of a controlled substance listed in  
639 Schedule II or Schedule III pursuant to an approved clinical  
640 trial. For purposes of this subparagraph, the term "approved  
641 clinical trial" means a clinical research study or clinical  
642 investigation that, in whole or in part, is state or federally  
643 funded or is conducted under an investigational new drug  
644 application that is reviewed by the United States Food and Drug  
645 Administration.

646 5. The dispensing of methadone in a facility licensed under  
647 s. 397.427 where medication-assisted treatment for opiate  
648 addiction is provided.



194134

649           6. The dispensing of a controlled substance listed in  
650 Schedule II or Schedule III to a patient of a facility licensed  
651 under part IV of chapter 400.

652           7. The dispensing of controlled substances listed in  
653 Schedule II or Schedule III which have been approved by the  
654 United States Food and Drug Administration for the purpose of  
655 treating opiate addiction including, but not limited to,  
656 buprenorphine and buprenorphine combination products, by a  
657 practitioner authorized under 21 U.S.C. 823, as amended, to the  
658 practitioner's own patients for the medication-assisted  
659 treatment of opiate addiction.

660           (2) A practitioner who dispenses medicinal drugs for human  
661 consumption for fee or remuneration of any kind, whether direct  
662 or indirect, must:

663           (d)1. Before dispensing a controlled substance to a person  
664 not known to the dispenser, require the person purchasing,  
665 receiving, or otherwise acquiring the controlled substance to  
666 present valid photographic identification or other verification  
667 of his or her identity. If the person does not have proper  
668 identification, the dispenser may verify the validity of the  
669 prescription and the identity of the patient with the prescriber  
670 or his or her authorized agent. Verification of health plan  
671 eligibility through a real-time inquiry or adjudication system  
672 is considered to be proper identification.

673           2. This paragraph does not apply in an institutional  
674 setting or to a long-term care facility, including, but not  
675 limited to, an assisted living facility or a hospital to which  
676 patients are admitted.

677           3. As used in this paragraph, the term "proper



194134

678 identification" means an identification that is issued by a  
679 state or the Federal Government containing the person's  
680 photograph, printed name, and signature or a document considered  
681 acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

682 Section 9. Subsection (5) is added to section 627.42392,  
683 Florida Statutes, to read:

684 627.42392 Prior authorization.—

685 (5) A health insurer may not require a prior authorization  
686 process or step therapy procedure or impose any other conditions  
687 on insureds as a prerequisite to receiving medication-assisted  
688 treatment (MAT) services, as defined in s. 397.311, to treat  
689 substance abuse disorders.

690 Section 10. Subsections (2), (3), (4), and (5) of section  
691 893.03, Florida Statutes, are amended to read:

692 893.03 Standards and schedules.—The substances enumerated  
693 in this section are controlled by this chapter. The controlled  
694 substances listed or to be listed in Schedules I, II, III, IV,  
695 and V are included by whatever official, common, usual,  
696 chemical, trade name, or class designated. The provisions of  
697 this section shall not be construed to include within any of the  
698 schedules contained in this section any excluded drugs listed  
699 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
700 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
701 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
702 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
703 Anabolic Steroid Products."

704 (2) SCHEDULE II.—A substance in Schedule II has a high  
705 potential for abuse and has a currently accepted but severely  
706 restricted medical use in treatment in the United States, and



194134

707 abuse of the substance may lead to severe psychological or  
708 physical dependence. The following substances are controlled in  
709 Schedule II:

710 (a) Unless specifically excepted or unless listed in  
711 another schedule, any of the following substances, whether  
712 produced directly or indirectly by extraction from substances of  
713 vegetable origin or independently by means of chemical  
714 synthesis:

715 1. Opium and any salt, compound, derivative, or preparation  
716 of opium, except nalmefene or isoquinoline alkaloids of opium,  
717 including, but not limited to the following:

- 718 a. Raw opium.
- 719 b. Opium extracts.
- 720 c. Opium fluid extracts.
- 721 d. Powdered opium.
- 722 e. Granulated opium.
- 723 f. Tincture of opium.
- 724 g. Codeine.
- 725 h. Dihydroetorphine.
- 726 ~~i. h.~~ Ethylmorphine.
- 727 ~~j. i.~~ Etorphine hydrochloride.
- 728 ~~k. j.~~ Hydrocodone and hydrocodone combination products.
- 729 ~~l. k.~~ Hydromorphone.
- 730 ~~m. l.~~ Levo-alphaacetylmethadol (also known as levo-alpha-  
731 acetylmethadol, levomethadyl acetate, or LAAM).
- 732 ~~n. m.~~ Metopon (methyldihydromorphinone).
- 733 ~~o. n.~~ Morphine.
- 734 ~~p.~~ Oripavine.
- 735 ~~q. o.~~ Oxycodone.





194134

736 ~~r.p.~~ Oxymorphone.

737 ~~s.e.~~ Thebaine.

738 2. Any salt, compound, derivative, or preparation of a  
739 substance which is chemically equivalent to or identical with  
740 any of the substances referred to in subparagraph 1., except  
741 that these substances shall not include the isoquinoline  
742 alkaloids of opium.

743 3. Any part of the plant of the species *Papaver somniferum*,  
744 *L.*

745 4. Cocaine or ecgonine, including any of their  
746 stereoisomers, and any salt, compound, derivative, or  
747 preparation of cocaine or ecgonine, except that these substances  
748 shall not include ioflupane I 123.

749 (b) Unless specifically excepted or unless listed in  
750 another schedule, any of the following substances, including  
751 their isomers, esters, ethers, salts, and salts of isomers,  
752 esters, and ethers, whenever the existence of such isomers,  
753 esters, ethers, and salts is possible within the specific  
754 chemical designation:

755 1. Alfentanil.

756 2. Alphaprodine.

757 3. Anileridine.

758 4. Bezitramide.

759 5. Bulk propoxyphene (nondosage forms).

760 6. Carfentanil.

761 7. Dihydrocodeine.

762 8. Diphenoxylate.

763 9. Fentanyl.

764 10. Isomethadone.



194134

- 765 11. Levomethorphan.
- 766 12. Levorphanol.
- 767 13. Metazocine.
- 768 14. Methadone.
- 769 15. Methadone-Intermediate,4-cyano-2-
- 770 dimethylamino-4,4-diphenylbutane.
- 771 16. Moramide-Intermediate,2-methyl-
- 772 3-morpholino-1,1-diphenylpropane-carboxylic acid.
- 773 17. Nabilone.
- 774 18. Pethidine (meperidine).
- 775 19. Pethidine-Intermediate-A,4-cyano-1-
- 776 methyl-4-phenylpiperidine.
- 777 20. Pethidine-Intermediate-B,ethyl-4-
- 778 phenylpiperidine-4-carboxylate.
- 779 21. Pethidine-Intermediate-C,1-methyl-4- phenylpiperidine-
- 780 4-carboxylic acid.
- 781 22. Phenazocine.
- 782 23. Phencyclidine.
- 783 24. 1-Phenylcyclohexylamine.
- 784 25. Piminodine.
- 785 26. 1-Piperidinocyclohexanecarbonitrile.
- 786 27. Racemethorphan.
- 787 28. Racemorphan.
- 788 29. Remifentanil.
- 789 30.29. Sufentanil.
- 790 31. Tapentadol.
- 791 32. Thiafentanil.

792 (c) Unless specifically excepted or unless listed in  
793 another schedule, any material, compound, mixture, or



194134

794 preparation which contains any quantity of the following  
795 substances, including their salts, isomers, optical isomers,  
796 salts of their isomers, and salts of their optical isomers:

- 797 1. Amobarbital.
- 798 2. Amphetamine.
- 799 3. Glutethimide.
- 800 4. Lisdexamfetamine.
- 801 ~~5.4. Methamphetamine.~~
- 802 ~~6.5. Methylphenidate.~~
- 803 ~~7.6. Pentobarbital.~~
- 804 ~~8.7. Phenmetrazine.~~
- 805 ~~9.8. Phenylacetone.~~
- 806 ~~10.9. Secobarbital.~~

807 (d) Dronabinol (synthetic THC) in oral solution in a drug  
808 product approved by the United States Food and Drug  
809 Administration.

810 (3) SCHEDULE III.—A substance in Schedule III has a  
811 potential for abuse less than the substances contained in  
812 Schedules I and II and has a currently accepted medical use in  
813 treatment in the United States, and abuse of the substance may  
814 lead to moderate or low physical dependence or high  
815 psychological dependence or, in the case of anabolic steroids,  
816 may lead to physical damage. The following substances are  
817 controlled in Schedule III:

818 (a) Unless specifically excepted or unless listed in  
819 another schedule, any material, compound, mixture, or  
820 preparation which contains any quantity of the following  
821 substances having a depressant or stimulant effect on the  
822 nervous system:



194134

823 1. Any substance which contains any quantity of a  
824 derivative of barbituric acid, including thiobarbituric acid, or  
825 any salt of a derivative of barbituric acid or thiobarbituric  
826 acid, including, but not limited to, butabarbital and  
827 butalbital.

828 2. Benzphetamine.

829 3. Buprenorphine.

830 ~~4.3. Chlorhexadol.~~

831 ~~5.4. Chlorphentermine.~~

832 ~~6.5. Clortermine.~~

833 7. Embutramide.

834 ~~8.6. Lysergic acid.~~

835 ~~9.7. Lysergic acid amide.~~

836 ~~10.8. Methyprylon.~~

837 11. Perampanel.

838 ~~12.9. Phendimetrazine.~~

839 ~~13.10. Sulfondiethylmethane.~~

840 ~~14.11. Sulfonethylmethane.~~

841 ~~15.12. Sulfonmethane.~~

842 ~~16.13. Tiletamine and zolazepam or any salt thereof.~~

843 (b) Nalorphine.

844 (c) Unless specifically excepted or unless listed in  
845 another schedule, any material, compound, mixture, or  
846 preparation containing limited quantities of any of the  
847 following controlled substances or any salts thereof:

848 1. Not more than 1.8 grams of codeine per 100 milliliters  
849 or not more than 90 milligrams per dosage unit, with an equal or  
850 greater quantity of an isoquinoline alkaloid of opium.

851 2. Not more than 1.8 grams of codeine per 100 milliliters



194134

852 or not more than 90 milligrams per dosage unit, with recognized  
853 therapeutic amounts of one or more active ingredients which are  
854 not controlled substances.

855 3. Not more than 300 milligrams of hydrocodone per 100  
856 milliliters or not more than 15 milligrams per dosage unit, with  
857 a fourfold or greater quantity of an isoquinoline alkaloid of  
858 opium.

859 4. Not more than 300 milligrams of hydrocodone per 100  
860 milliliters or not more than 15 milligrams per dosage unit, with  
861 recognized therapeutic amounts of one or more active ingredients  
862 that are not controlled substances.

863 5. Not more than 1.8 grams of dihydrocodeine per 100  
864 milliliters or not more than 90 milligrams per dosage unit, with  
865 recognized therapeutic amounts of one or more active ingredients  
866 which are not controlled substances.

867 6. Not more than 300 milligrams of ethylmorphine per 100  
868 milliliters or not more than 15 milligrams per dosage unit, with  
869 one or more active, nonnarcotic ingredients in recognized  
870 therapeutic amounts.

871 7. Not more than 50 milligrams of morphine per 100  
872 milliliters or per 100 grams, with recognized therapeutic  
873 amounts of one or more active ingredients which are not  
874 controlled substances.

875  
876 For purposes of charging a person with a violation of s. 893.135  
877 involving any controlled substance described in subparagraph 3.  
878 or subparagraph 4., the controlled substance is a Schedule III  
879 controlled substance pursuant to this paragraph but the weight  
880 of the controlled substance per milliliters or per dosage unit



194134

881 is not relevant to the charging of a violation of s. 893.135.  
882 The weight of the controlled substance shall be determined  
883 pursuant to s. 893.135(6).

884 (d) Anabolic steroids.

885 1. The term "anabolic steroid" means any drug or hormonal  
886 substance, chemically and pharmacologically related to  
887 testosterone, other than estrogens, progestins, and  
888 corticosteroids, that promotes muscle growth and includes:

- 889 a. Androsterone.
- 890 b. Androsterone acetate.
- 891 c. Boldenone.
- 892 d. Boldenone acetate.
- 893 e. Boldenone benzoate.
- 894 f. Boldenone undecylenate.
- 895 g. Chlorotestosterone (Clostebol).
- 896 h. Dehydrochlormethyltestosterone.
- 897 i. Dihydrotestosterone (Stanolone).
- 898 j. Drostanolone.
- 899 k. Ethylestrenol.
- 900 l. Fluoxymesterone.
- 901 m. Formebolone (Formebolone).
- 902 n. Mesterolone.
- 903 o. Methandrostenolone (Methandienone).
- 904 p. Methandranone.
- 905 q. Methandriol.
- 906 r. Methenolone.
- 907 s. Methyltestosterone.
- 908 t. Mibolerone.
- 909 u. Nortestosterone (Nandrolone).



194134

- 910 v. Norethandrolone.
- 911 w. Nortestosterone decanoate.
- 912 x. Nortestosterone phenylpropionate.
- 913 y. Nortestosterone propionate.
- 914 z. Oxandrolone.
- 915 aa. Oxymesterone.
- 916 bb. Oxymetholone.
- 917 cc. Stanozolol.
- 918 dd. Testolactone.
- 919 ee. Testosterone.
- 920 ff. Testosterone acetate.
- 921 gg. Testosterone benzoate.
- 922 hh. Testosterone cypionate.
- 923 ii. Testosterone decanoate.
- 924 jj. Testosterone enanthate.
- 925 kk. Testosterone isocaproate.
- 926 ll. Testosterone oleate.
- 927 mm. Testosterone phenylpropionate.
- 928 nn. Testosterone propionate.
- 929 oo. Testosterone undecanoate.
- 930 pp. Trenbolone.
- 931 qq. Trenbolone acetate.
- 932 rr. Any salt, ester, or isomer of a drug or substance
- 933 described or listed in this subparagraph if that salt, ester, or
- 934 isomer promotes muscle growth.
- 935 2. The term does not include an anabolic steroid that is
- 936 expressly intended for administration through implants to cattle
- 937 or other nonhuman species and that has been approved by the
- 938 United States Secretary of Health and Human Services for such



194134

939 administration. However, any person who prescribes, dispenses,  
940 or distributes such a steroid for human use is considered to  
941 have prescribed, dispensed, or distributed an anabolic steroid  
942 within the meaning of this paragraph.

943 (e) Ketamine, including any isomers, esters, ethers, salts,  
944 and salts of isomers, esters, and ethers, whenever the existence  
945 of such isomers, esters, ethers, and salts is possible within  
946 the specific chemical designation.

947 (f) Dronabinol (synthetic THC) in sesame oil and  
948 encapsulated in a soft gelatin capsule in a drug product  
949 approved by the United States Food and Drug Administration.

950 (g) Any drug product containing gamma-hydroxybutyric acid,  
951 including its salts, isomers, and salts of isomers, for which an  
952 application is approved under s. 505 of the Federal Food, Drug,  
953 and Cosmetic Act.

954 (4) (a) SCHEDULE IV.—A substance in Schedule IV has a low  
955 potential for abuse relative to the substances in Schedule III  
956 and has a currently accepted medical use in treatment in the  
957 United States, and abuse of the substance may lead to limited  
958 physical or psychological dependence relative to the substances  
959 in Schedule III.

960 (b) Unless specifically excepted or unless listed in  
961 another schedule, any material, compound, mixture, or  
962 preparation which contains any quantity of the following  
963 substances, including its salts, isomers, and salts of isomers  
964 whenever the existence of such salts, isomers, and salts of  
965 isomers is possible within the specific chemical designation,  
966 are controlled in Schedule IV:

967 1. Alfaxalone.





194134

- 968        2.~~(a)~~ Alprazolam.
- 969        3.~~(b)~~ Barbital.
- 970        4.~~(c)~~ Bromazepam.
- 971        5.~~(iii)~~ Butorphanol tartrate.
- 972        6.~~(d)~~ Camazepam.
- 973        7.~~(jjj)~~ Carisoprodol.
- 974        8.~~(e)~~ Cathine.
- 975        9.~~(f)~~ Chloral betaine.
- 976        10.~~(g)~~ Chloral hydrate.
- 977        11.~~(h)~~ Chlordiazepoxide.
- 978        12.~~(i)~~ Clobazam.
- 979        13.~~(j)~~ Clonazepam.
- 980        14.~~(k)~~ Clorazepate.
- 981        15.~~(l)~~ Clotiazepam.
- 982        16.~~(m)~~ Cloxazolam.
- 983        17. Dexfenfluramine.
- 984        18.~~(n)~~ Delorazepam.
- 985        19. Dichloralphenazone.
- 986        20.~~(p)~~ Diazepam.
- 987        21.~~(q)~~ Diethylpropion.
- 988        22. Eluxadoline.
- 989        23.~~(r)~~ Estazolam.
- 990        24. Eszopiclone.
- 991        25.~~(s)~~ Ethchlorvynol.
- 992        26.~~(t)~~ Ethinamate.
- 993        27.~~(u)~~ Ethyl loflazepate.
- 994        28.~~(v)~~ Fencamfamin.
- 995        29.~~(w)~~ Fenfluramine.
- 996        30.~~(x)~~ Fenproporex.



194134

- 997        31.~~(y)~~ Fludiazepam.
- 998        32.~~(z)~~ Flurazepam.
- 999        33. Fospropofol.
- 1000       34.~~(aa)~~ Halazepam.
- 1001       35.~~(bb)~~ Haloxazolam.
- 1002       36.~~(cc)~~ Ketazolam.
- 1003       37.~~(dd)~~ Loprazolam.
- 1004       38.~~(ee)~~ Lorazepam.
- 1005       39. Lorcaserin.
- 1006       40.~~(ff)~~ Lormetazepam.
- 1007       41.~~(gg)~~ Mazindol.
- 1008       42.~~(hh)~~ Mebutamate.
- 1009       43.~~(ii)~~ Medazepam.
- 1010       44.~~(jj)~~ Mefenorex.
- 1011       45.~~(kk)~~ Meprobamate.
- 1012       46.~~(ll)~~ Methohexital.
- 1013       47.~~(mm)~~ Methylphenobarbital.
- 1014       48.~~(nn)~~ Midazolam.
- 1015       49. Modafinil.
- 1016       50.~~(oo)~~ Nimetazepam.
- 1017       51.~~(pp)~~ Nitrazepam.
- 1018       52.~~(qq)~~ Nordiazepam.
- 1019       53.~~(rr)~~ Oxazepam.
- 1020       54.~~(ss)~~ Oxazolam.
- 1021       55.~~(tt)~~ Paraldehyde.
- 1022       56.~~(uu)~~ Pemoline.
- 1023       57.~~(vv)~~ Pentazocine.
- 1024       58. Petrichloral.
- 1025       59.~~(ww)~~ Phenobarbital.



194134

- 1026        60.~~(xx)~~ Phentermine.
- 1027        61.~~(yy)~~ Pinazepam.
- 1028        62.~~(zz)~~ Pipradrol.
- 1029        63.~~(aaa)~~ Prazepam.
- 1030        64.~~(e)~~ Propoxyphene (dosage forms).
- 1031        65.~~(bbb)~~ Propylhexedrine, excluding any patent or  
1032 proprietary preparation containing propylhexedrine, unless  
1033 otherwise provided by federal law.
- 1034        66.~~(eee)~~ Quazepam.
- 1035        67. Sibutramine.
- 1036        68.~~(eee)~~ SPA[(-)-1 dimethylamino-1, 2  
1037 diphenylethane].
- 1038        69. Suvorexant.
- 1039        70.~~(fff)~~ Temazepam.
- 1040        71.~~(ddd)~~ Tetrazepam.
- 1041        72. Tramadol.
- 1042        73.~~(ggg)~~ Triazolam.
- 1043        74. Zaleplon.
- 1044        75. Zolpidem.
- 1045        76. Zopiclone.
- 1046        77.~~(hhh)~~ Not more than 1 milligram of difenoxin and not  
1047 less than 25 micrograms of atropine sulfate per dosage unit.
- 1048        (5) SCHEDULE V.—A substance, compound, mixture, or  
1049 preparation of a substance in Schedule V has a low potential for  
1050 abuse relative to the substances in Schedule IV and has a  
1051 currently accepted medical use in treatment in the United  
1052 States, and abuse of such compound, mixture, or preparation may  
1053 lead to limited physical or psychological dependence relative to  
1054 the substances in Schedule IV.



194134

1055 (a) Substances controlled in Schedule V include any  
1056 compound, mixture, or preparation containing any of the  
1057 following limited quantities of controlled substances, which  
1058 ~~must shall~~ include one or more active medicinal ingredients that  
1059 ~~which~~ are not controlled substances in sufficient proportion to  
1060 confer upon the compound, mixture, or preparation valuable  
1061 medicinal qualities other than those possessed by the controlled  
1062 substance alone:

1063 1. Not more than 200 milligrams of codeine per 100  
1064 milliliters or per 100 grams.

1065 2. Not more than 100 milligrams of dihydrocodeine per 100  
1066 milliliters or per 100 grams.

1067 3. Not more than 100 milligrams of ethylmorphine per 100  
1068 milliliters or per 100 grams.

1069 4. Not more than 2.5 milligrams of diphenoxylate and not  
1070 less than 25 micrograms of atropine sulfate per dosage unit.

1071 5. Not more than 100 milligrams of opium per 100  
1072 milliliters or per 100 grams.

1073 6. Not more than 0.5 milligrams of difenoxin and not less  
1074 than 25 micrograms of atropine sulfate per dosage unit.

1075 (b) Unless a specific exception exists or unless listed in  
1076 another schedule, any material, compound, mixture, or  
1077 preparation that contains any quantity of the following  
1078 substances is controlled in Schedule V:

1079 1. Brivaracetam.

1080 2. Ezogabine.

1081 3. Lacosamide.

1082 4. Pregabalin ~~Narcotic drugs. Unless specifically excepted~~  
1083 ~~or unless listed in another schedule, any material, compound,~~



194134

1084 ~~mixture, or preparation containing any of the following narcotic~~  
1085 ~~drugs and their salts: Buprenorphine.~~

1086 (c) Stimulants. Unless specifically excepted or unless  
1087 listed in another schedule, any material, compound, mixture, or  
1088 preparation which contains any quantity of the following  
1089 substances having a stimulant effect on the central nervous  
1090 system, including its salts, isomers, and salts of isomers:  
1091 Pyrovalerone.

1092 Section 11. Section 893.055, Florida Statutes, is amended  
1093 to read:

1094 (Substantial rewording of section. See  
1095 s. 893.055, F.S., for present text.)

1096 893.055 Prescription drug monitoring program.—

1097 (1) As used in this section, the term:

1098 (a) "Active investigation" means an investigation that is  
1099 being conducted with a reasonable, good faith belief that it  
1100 could lead to the filing of administrative, civil, or criminal  
1101 proceedings, or that is ongoing and continuing and for which  
1102 there is a reasonable, good faith anticipation of securing an  
1103 arrest or prosecution in the foreseeable future.

1104 (b) "Administration" means the obtaining and giving of a  
1105 single dose of a controlled substance by a legally authorized  
1106 person to a patient for her or his consumption.

1107 (c) "Controlled substance" means a controlled substance  
1108 listed in Schedule II, Schedule III, Schedule IV, or Schedule V  
1109 of s. 893.03 or 21 U.S.C. s. 812.

1110 (d) "Dispense" means the transfer of possession of one or  
1111 more doses of a controlled substance by a dispenser to the  
1112 ultimate consumer or to his or her agent.



194134

1113 (e) "Dispenser" means a dispensing health care  
1114 practitioner, pharmacy, or pharmacist licensed to dispense  
1115 controlled substances in or into this state.

1116 (f) "Health care practitioner" or "practitioner" means any  
1117 practitioner licensed under chapter 458, chapter 459, chapter  
1118 461, chapter 463, chapter 464, chapter 465, or chapter 466.

1119 (g) "Health care regulatory board" has the same meaning as  
1120 s. 456.001(1).

1121 (h) "Law enforcement agency" means the Department of Law  
1122 Enforcement, a sheriff's office in this state, a police  
1123 department in this state, or a law enforcement agency of the  
1124 Federal Government which enforces the laws of this state or the  
1125 United States relating to controlled substances and whose agents  
1126 and officers are empowered by law to conduct criminal  
1127 investigations and make arrests.

1128 (i) "Pharmacy" includes a community pharmacy, an  
1129 institutional pharmacy, a nuclear pharmacy, a special pharmacy,  
1130 or an Internet pharmacy that is licensed by the department under  
1131 chapter 465 and that dispenses or delivers controlled substances  
1132 to an individual or address in this state.

1133 (j) "Prescriber" means a prescribing physician, prescribing  
1134 practitioner, or other prescribing health care practitioner  
1135 authorized by the laws of this state to order controlled  
1136 substances.

1137 (k) "Program manager" means an employee of or a person  
1138 contracted by the department who is designated to ensure the  
1139 integrity of the prescription drug monitoring program in  
1140 accordance with the requirements established in this section.

1141 (2) (a) The department shall maintain an electronic system



194134

1142 to collect and store controlled substance dispensing information  
1143 and shall release the information as authorized in this section  
1144 and s. 893.0551. The electronic system must:

1145 1. Not infringe upon the legitimate prescribing or  
1146 dispensing of a controlled substance by a prescriber or  
1147 dispenser acting in good faith and in the course of professional  
1148 practice.

1149 2. Be consistent with standards of the American Society for  
1150 Automation in Pharmacy.

1151 3. Comply with the Health Insurance Portability and  
1152 Accountability Act as it pertains to protected health  
1153 information, electronic protected health information, and all  
1154 other relevant state and federal privacy and security laws and  
1155 regulations.

1156 (b) The department may collaborate with professional health  
1157 care regulatory boards, appropriate organizations, and other  
1158 state agencies to identify indicators of controlled substance  
1159 abuse.

1160 (3) For each controlled substance dispensed to a patient in  
1161 the state, the following information must be reported by the  
1162 dispenser to the system as soon thereafter as possible but no  
1163 later than the close of the next business day after the day the  
1164 controlled substance is dispensed unless an extension or  
1165 exemption is approved by the department:

1166 (a) The name of the prescribing practitioner, the  
1167 practitioner's federal Drug Enforcement Administration  
1168 registration number, the practitioner's National Provider  
1169 Identification (NPI) or other appropriate identifier, and the  
1170 date of the prescription.



194134

1171           (b) The date the prescription was filled and the method of  
1172 payment, such as cash by an individual, insurance coverage  
1173 through a third party, or Medicaid payment. This paragraph does  
1174 not authorize the department to include individual credit card  
1175 numbers or other account numbers in the system.

1176           (c) The full name, address, telephone number, and date of  
1177 birth of the person for whom the prescription was written.

1178           (d) The name, national drug code, quantity, and strength of  
1179 the controlled substance dispensed.

1180           (e) The full name, federal Drug Enforcement Administration  
1181 registration number, State of Florida Department of Health  
1182 issued pharmacy permit number, and address of the pharmacy or  
1183 other location from which the controlled substance was  
1184 dispensed. If the controlled substance was dispensed by a  
1185 practitioner other than a pharmacist, the practitioner's full  
1186 name, address, federal Drug Enforcement Administration  
1187 registration number, State of Florida Department of Health  
1188 issued license number, and National Provider Identification  
1189 (NPI).

1190           (f) Whether the drug was dispensed as an initial  
1191 prescription or a refill, and the number of refills ordered.

1192           (g) The name of the individual picking up the controlled  
1193 substance prescription and type and issuer of the identification  
1194 provided.

1195           (h) Other appropriate identifying information as determined  
1196 by department rule.

1197  
1198 All acts of administration of controlled substances are exempt  
1199 from the reporting requirements of this subsection.





194134

1200           (4) The following must be provided direct access to  
1201 information in the system:

1202           (a) A prescriber or dispenser or his or her designee.

1203           (b) An employee of the United States Department of Veterans  
1204 Affairs, United States Department of Defense, or the Indian  
1205 Health Service who provides health care services pursuant to  
1206 such employment and who has the authority to prescribe  
1207 controlled substances shall have access to the information in  
1208 the program's system upon verification of employment.

1209           (c) The program manager or designated program and support  
1210 staff may have access to administer the system.

1211           1. In order to calculate performance measures pursuant to  
1212 subsection (14), the program manager or program and support  
1213 staff members who have been directed by the program manager to  
1214 calculate performance measures may have direct access to  
1215 information that contains no identifying information of any  
1216 patient, physician, health care practitioner, prescriber, or  
1217 dispenser.

1218           2. The program manager or designated program and support  
1219 staff must provide the department, upon request, data that does  
1220 not contain patient, physician, health care practitioner,  
1221 prescriber, or dispenser identifying information for public  
1222 health care and safety initiatives purposes.

1223           3. The program manager, upon determining a pattern  
1224 consistent with the department's rules established under  
1225 subsection (16), may provide relevant information to the  
1226 prescriber and dispenser.

1227           4. The program manager, upon determining a pattern  
1228 consistent with the rules established under subsection (16) and



194134

1229 having cause to believe a violation of s. 893.13(7)(a)8.,  
1230 (8)(a), or (8)(b) has occurred, may provide relevant information  
1231 to the applicable law enforcement agency.

1232  
1233 The program manager and designated program and support staff  
1234 must complete a level II background screening.

1235 (5) The following entities may not directly access  
1236 information in the system, but may request information from the  
1237 program manager or designated program and support staff:

1238 (a) The department and its health care regulatory boards,  
1239 as appropriate, for investigations involving licensees  
1240 authorized to prescribe or dispense controlled substances.

1241 (b) The Attorney General for Medicaid fraud cases involving  
1242 prescribed controlled substances.

1243 (c) A law enforcement agency during active investigations  
1244 of potential criminal activity, fraud, or theft regarding  
1245 prescribed controlled substances.

1246 (d) A medical examiner when conducting an authorized  
1247 investigation under s. 406.11, to determine the cause of death  
1248 of an individual.

1249 (e) An impaired practitioner consultant who is retained by  
1250 the department under s. 456.076 to review the system information  
1251 of an impaired practitioner program participant or a referral  
1252 who has agreed to be evaluated or monitored through the program  
1253 and who has separately agreed in writing to the consultant's  
1254 access to and review of such information.

1255 (f) A patient or the legal guardian or designated health  
1256 care surrogate of an incapacitated patient who submits a written  
1257 and notarized request that includes the patient's full name,



1258 address, phone number, date of birth, and a copy of a  
1259 government-issued photo identification.

1260 (6) The department may enter into a reciprocal agreement or  
1261 contract to share prescription drug monitoring information with  
1262 another state, district, or territory if the prescription drug  
1263 monitoring programs of other states, districts, or territories  
1264 are compatible with the Florida program.

1265 (a) In determining compatibility, the department shall  
1266 consider:

1267 1. The safeguards for privacy of patient records and the  
1268 success of the program in protecting patient privacy.

1269 2. The persons authorized to view the data collected by the  
1270 program. Comparable entities and licensed health care  
1271 practitioners in other states, districts, or territories of the  
1272 United States, law enforcement agencies, the Attorney General's  
1273 Medicaid Fraud Control Unit, medical regulatory boards, and, as  
1274 needed, management staff that have similar duties as management  
1275 staff who work with the prescription drug monitoring program as  
1276 authorized in s. 893.0551 are authorized access upon approval by  
1277 the department.

1278 3. The schedules of the controlled substances that are  
1279 monitored by the program.

1280 4. The data reported to or included in the program's  
1281 system.

1282 5. Any implementing criteria deemed essential for a  
1283 thorough comparison.

1284 6. The costs and benefits to the state of sharing  
1285 prescription information.

1286 (b) The department shall assess the prescription drug



194134

1287 monitoring program's continued compatibility with the other  
1288 state's, district's, or territory's program every 4 years.

1289 (c) Any agreement or contract for sharing of prescription  
1290 drug monitoring information between the department and another  
1291 state, district, or territory shall contain the same  
1292 restrictions and requirements as this section or s. 893.0551,  
1293 and the information must be provided according to the  
1294 department's determination of compatibility.

1295 (7) The department may enter into agreements or contracts  
1296 to establish secure connections between the system and a  
1297 prescribing or dispensing health care practitioner's electronic  
1298 health recordkeeping system. The electronic health recordkeeping  
1299 system owner or license holder will be responsible for ensuring  
1300 that only authorized individuals have access to prescription  
1301 drug monitoring program information.

1302 (8) A prescriber or dispenser or a designee of a prescriber  
1303 or dispenser must consult the system to review a patient's  
1304 controlled substance dispensing history before prescribing or  
1305 dispensing a controlled substance.

1306 (a) The duty to consult the system does not apply to a  
1307 prescriber or dispenser or designee of a prescriber or dispenser  
1308 if the system is not operational, as determined by the  
1309 department, or when it cannot be accessed by a health care  
1310 practitioner because of a temporary technological or electrical  
1311 failure.

1312 (b) A prescriber or dispenser or designee of a prescriber  
1313 or dispenser who does not consult the system under this  
1314 subsection shall document the reason he or she did not consult  
1315 the system in the patient's medical record or prescription



194134

1316 record, and shall not prescribe or dispense greater than a 3-day  
1317 supply of a controlled substance to the patient.

1318 (c) The department shall issue a citation pursuant to the  
1319 procedure in s. 456.077 to any prescriber or dispenser who fails  
1320 to consult the system as required by this subsection.

1321 (9) A person who willfully and knowingly fails to report  
1322 the dispensing of a controlled substance as required by this  
1323 section commits a misdemeanor of the first degree, punishable as  
1324 provided in s. 775.082 or s. 775.083.

1325 (10) Information in the prescription drug monitoring  
1326 program's system may be released only as provided in this  
1327 section and s. 893.0551. The content of the system is intended  
1328 to be informational only. Information in the system is not  
1329 subject to discovery or introduction into evidence in any civil  
1330 or administrative action against a prescriber, dispenser,  
1331 pharmacy, or patient arising out of matters that are the subject  
1332 of information in the system. The program manager and authorized  
1333 persons who participate in preparing, reviewing, issuing, or any  
1334 other activity related to management of the system may not be  
1335 permitted or required to testify in any such civil or  
1336 administrative action as to any findings, recommendations,  
1337 evaluations, opinions, or other actions taken in connection with  
1338 management of the system.

1339 (11) A prescriber or dispenser, or his or her designee, may  
1340 have access to the information under this section which relates  
1341 to a patient of that prescriber or dispenser as needed for the  
1342 purpose of reviewing the patient's controlled drug prescription  
1343 history. A prescriber or dispenser acting in good faith is  
1344 immune from any civil, criminal, or administrative liability



194134

1345 that might otherwise be incurred or imposed for receiving or  
1346 using information from the prescription drug monitoring program.  
1347 This subsection does not create a private cause of action, and a  
1348 person may not recover damages against a prescriber or dispenser  
1349 authorized to access information under this subsection for  
1350 accessing or failing to access such information.

1351 (12) (a) All costs incurred by the department in  
1352 administering the prescription drug monitoring program shall be  
1353 funded through federal grants, private funding applied for or  
1354 received by the state, or state funds appropriated in the  
1355 General Appropriations Act. The department may not:

1356 1. Commit funds for the monitoring program without ensuring  
1357 funding is available; or

1358 2. Use funds provided, directly or indirectly by  
1359 prescription drug manufacturers to implement the program.

1360 (b) The department shall cooperate with the direct-support  
1361 organization established under subsection (15) in seeking  
1362 federal grant funds, other nonstate grant funds, gifts,  
1363 donations, or other private moneys for the department if the  
1364 costs of doing so are immaterial. Immaterial costs include, but  
1365 are not limited to, the costs of mailing and personnel assigned  
1366 to research or apply for a grant. The department may  
1367 competitively procure and contract pursuant to s. 287.057 for  
1368 any goods and services required by this section.

1369 (13) The department shall conduct or participate in studies  
1370 to examine the feasibility of enhancing the prescription drug  
1371 monitoring program for the purposes of public health initiatives  
1372 and statistical reporting. Such studies shall respect the  
1373 privacy of the patient, the prescriber, and the dispenser. Such



194134

1374 studies may be conducted by the department or a contracted  
1375 vendor in order to:

1376 (a) Improve the quality of health care services and safety  
1377 by improving prescribing and dispensing practices for controlled  
1378 substances;

1379 (b) Take advantage of advances in technology;

1380 (c) Reduce duplicative prescriptions and the  
1381 overprescribing of controlled substances; and

1382 (d) Reduce drug abuse.

1383 (14) The department shall annually report on performance  
1384 measures to the Governor, the President of the Senate, and the  
1385 Speaker of the House of Representatives by December 1.

1386 Performance measures may include, but are not limited to, the  
1387 following outcomes:

1388 (a) Reduction of the rate of inappropriate use of  
1389 controlled substances through department education and safety  
1390 efforts.

1391 (b) Reduction of the quantity of controlled substances  
1392 obtained by individuals attempting to engage in fraud and  
1393 deceit.

1394 (c) Increased coordination among partners participating in  
1395 the prescription drug monitoring program.

1396 (d) Involvement of stakeholders in achieving improved  
1397 patient health care and safety and reduction of controlled  
1398 substance abuse and controlled substance diversion.

1399 (15) The department may establish a direct-support  
1400 organization to provide assistance, funding, and promotional  
1401 support for the activities authorized for the prescription drug  
1402 monitoring program.



194134

1403 (a) As used in this subsection, the term "direct-support  
1404 organization" means an organization that is:

1405 1. A Florida corporation not for profit incorporated under  
1406 chapter 617, exempted from filing fees, and approved by the  
1407 Department of State.

1408 2. Organized and operated to conduct programs and  
1409 activities; raise funds; request and receive grants, gifts, and  
1410 bequests of money; acquire, receive, hold, and invest, in its  
1411 own name, securities, funds, objects of value, or other  
1412 property, either real or personal; and make expenditures or  
1413 provide funding to or for the direct or indirect benefit of the  
1414 department in the furtherance of the prescription drug  
1415 monitoring program.

1416 (b) The State Surgeon General shall appoint a board of  
1417 directors for the direct-support organization.

1418 1. The board of directors shall consist of no fewer than  
1419 five members who shall serve at the pleasure of the State  
1420 Surgeon General.

1421 2. The State Surgeon General shall provide guidance to  
1422 members of the board to ensure that moneys received by the  
1423 direct-support organization are not received from inappropriate  
1424 sources. Inappropriate sources include, but are not limited to,  
1425 donors, grantors, persons, prescription drug manufacturers, or  
1426 organizations that may monetarily or substantively benefit from  
1427 the purchase of goods or services by the department in  
1428 furtherance of the prescription drug monitoring program.

1429 (c) The direct-support organization shall operate under  
1430 written contract with the department. The contract must, at a  
1431 minimum, provide for:





194134

- 1432        1. Approval of the articles of incorporation and bylaws of  
1433 the direct-support organization by the department.
- 1434        2. Submission of an annual budget for the approval of the  
1435 department.
- 1436        3. The reversion, without penalty, to the department's  
1437 grants and donations trust fund for the administration of the  
1438 prescription drug monitoring program of all moneys and property  
1439 held in trust by the direct-support organization for the benefit  
1440 of the prescription drug monitoring program if the direct-  
1441 support organization ceases to exist or if the contract is  
1442 terminated.
- 1443        4. The fiscal year of the direct-support organization,  
1444 which must begin July 1 of each year and end June 30 of the  
1445 following year.
- 1446        5. The disclosure of the material provisions of the  
1447 contract to donors of gifts, contributions, or bequests,  
1448 including such disclosure on all promotional and fundraising  
1449 publications, and an explanation to such donors of the  
1450 distinction between the department and the direct-support  
1451 organization.
- 1452        6. The direct-support organization's collecting, expending,  
1453 and providing of funds to the department for the development,  
1454 implementation, and operation of the prescription drug  
1455 monitoring program as described in this section. The direct-  
1456 support organization may collect and expend funds to be used for  
1457 the functions of the direct-support organization's board of  
1458 directors, as necessary and approved by the department. In  
1459 addition, the direct-support organization may collect and  
1460 provide funding to the department in furtherance of the



194134

1461 prescription drug monitoring program by:  
1462 a. Establishing and administering the prescription drug  
1463 monitoring program's electronic system, including hardware and  
1464 software.  
1465 b. Conducting studies on the efficiency and effectiveness  
1466 of the program to include feasibility studies as described in  
1467 subsection (13).  
1468 c. Providing funds for future enhancements of the program  
1469 within the intent of this section.  
1470 d. Providing user training of the prescription drug  
1471 monitoring program, including distribution of materials to  
1472 promote public awareness and education and conducting workshops  
1473 or other meetings, for health care practitioners, pharmacists,  
1474 and others as appropriate.  
1475 e. Providing funds for travel expenses.  
1476 f. Providing funds for administrative costs, including  
1477 personnel, audits, facilities, and equipment.  
1478 g. Fulfilling all other requirements necessary to implement  
1479 and operate the program as outlined in this section.  
1480 7. Certification by the department that the direct-support  
1481 organization is complying with the terms of the contract in a  
1482 manner consistent with and in furtherance of the goals and  
1483 purposes of the prescription drug monitoring program and in the  
1484 best interests of the state. Such certification must be made  
1485 annually and reported in the official minutes of a meeting of  
1486 the direct-support organization.  
1487 (d) The activities of the direct-support organization must  
1488 be consistent with the goals and mission of the department, as  
1489 determined by the department, and in the best interests of the



194134

1490 state. The direct-support organization must obtain written  
1491 approval from the department for any activities in support of  
1492 the prescription drug monitoring program before undertaking  
1493 those activities.

1494 (e) The direct-support organization shall provide for an  
1495 independent annual financial audit in accordance with s.  
1496 215.981. Copies of the audit shall be provided to the department  
1497 and the Office of Policy and Budget in the Executive Office of  
1498 the Governor.

1499 (f) The direct-support organization may not exercise any  
1500 power under s. 617.0302(12) or (16).

1501 (g) The direct-support organization is not considered a  
1502 lobbying firm within the meaning of s. 11.045.

1503 (h) The department may permit, without charge, appropriate  
1504 use of administrative services, property, and facilities of the  
1505 department by the direct-support organization, subject to this  
1506 section. The use must be directly in keeping with the approved  
1507 purposes of the direct-support organization and may not be made  
1508 at times or places that would unreasonably interfere with  
1509 opportunities for the public to use such facilities for  
1510 established purposes. Any moneys received from rentals of  
1511 facilities and properties managed by the department may be held  
1512 in a separate depository account in the name of the direct-  
1513 support organization and subject to the provisions of the letter  
1514 of agreement with the department. The letter of agreement must  
1515 provide that any funds held in the separate depository account  
1516 in the name of the direct-support organization must revert to  
1517 the department if the direct-support organization is no longer  
1518 approved by the department to operate in the best interests of



194134

1519 the state.

1520 (i) The department may adopt rules under s. 120.54 to  
1521 govern the use of administrative services, property, or  
1522 facilities of the department or office by the direct-support  
1523 organization.

1524 (j) The department may not permit the use of any  
1525 administrative services, property, or facilities of the state by  
1526 a direct-support organization if that organization does not  
1527 provide equal membership and employment opportunities to all  
1528 persons regardless of race, color, religion, gender, age, or  
1529 national origin.

1530 (k) This subsection is repealed October 1, 2027, unless  
1531 reviewed and saved from repeal by the Legislature.

1532 (16) The department shall adopt rules necessary to  
1533 implement this section.

1534 Section 12. Section 893.0551, Florida Statutes, is amended  
1535 to read:

1536 893.0551 Public records exemption for the prescription drug  
1537 monitoring program.—

1538 (1) For purposes of this section, the terms used in this  
1539 section have the same meanings as provided in s. 893.055.

1540 (2) The following information of a patient or patient's  
1541 agent, a health care practitioner, a dispenser, an employee of  
1542 the practitioner who is acting on behalf of and at the direction  
1543 of the practitioner, a pharmacist, or a pharmacy that is  
1544 contained in records held by the department under s. 893.055 is  
1545 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
1546 of the State Constitution:

1547 (a) Name.



194134

- 1548 (b) Address.
- 1549 (c) Telephone number.
- 1550 (d) Insurance plan number.
- 1551 (e) Government-issued identification number.
- 1552 (f) Provider number.
- 1553 (g) Drug Enforcement Administration number.
- 1554 (h) Any other unique identifying information or number.
- 1555 (3) The department shall disclose such ~~confidential and~~  
1556 ~~exempt~~ information to the following persons or entities upon  
1557 request and after using a verification process to ensure the  
1558 legitimacy of the request as provided in s. 893.055:
- 1559 (a) A health care practitioner, or his or her designee, who  
1560 certifies that the information is necessary to provide medical  
1561 treatment to a current patient in accordance with ss. 893.05 and  
1562 893.055.
- 1563 (b) A qualified physician, to review a patient's controlled  
1564 drug prescription history before issuing a physician  
1565 certification pursuant to s. 381.986.
- 1566 (c) An employee of the United States Department of Veterans  
1567 Affairs, United States Department of Defense, or the Indian  
1568 Health Service who provides health care services pursuant to  
1569 such employment and who has the authority to prescribe  
1570 controlled substances shall have access to the information in  
1571 the program's system upon verification of such employment.
- 1572 (d) The program manager and designated support staff for  
1573 administration of the program, and to provide relevant  
1574 information to the prescriber, dispenser, and appropriate law  
1575 enforcement agencies, in accordance with s. 893.055.
- 1576 (e) The department for investigations involving licensees



194134

1577 authorized to prescribe or dispense controlled substances. The  
1578 department may request information from the program but may not  
1579 have direct access to its system. The department may provide to  
1580 a law enforcement agency pursuant to ss. 456.066 and 456.073  
1581 only information that is relevant to the specific controlled  
1582 substances investigation that prompted the request for the  
1583 information.

1584 (f) ~~(a)~~ The Attorney General or his or her designee when  
1585 working on Medicaid fraud cases involving prescribed controlled  
1586 substances ~~prescription drugs~~ or when the Attorney General has  
1587 initiated a review of specific identifiers of Medicaid fraud or  
1588 specific identifiers that warrant a Medicaid investigation  
1589 regarding prescribed controlled substances ~~prescription drugs~~.  
1590 The Attorney General's Medicaid fraud investigators may not have  
1591 direct access to the department's system ~~database~~. The Attorney  
1592 General or his or her designee may disclose to a criminal  
1593 justice agency, as defined in s. 119.011, only the ~~confidential~~  
1594 ~~and exempt~~ information received from the department that is  
1595 relevant to an identified active investigation that prompted the  
1596 request for the information.

1597 (g) ~~(b)~~ The department's relevant health care regulatory  
1598 boards responsible for the licensure, regulation, or discipline  
1599 of a practitioner, pharmacist, or other person who is authorized  
1600 to prescribe, administer, or dispense controlled substances and  
1601 who is involved in a specific controlled substances  
1602 investigation for prescription drugs involving a designated  
1603 person. The health care regulatory boards may request  
1604 information from the department but may not have direct access  
1605 to its database. The health care regulatory boards may provide



194134

1606 to a law enforcement agency pursuant to ss. 456.066 and 456.073  
1607 only information that is relevant to the specific controlled  
1608 substances investigation that prompted the request for the  
1609 information.

1610 (h)~~(e)~~ A law enforcement agency that has initiated an  
1611 active investigation involving a specific violation of law  
1612 regarding prescription drug abuse or diversion of prescribed  
1613 controlled substances and that has entered into a user agreement  
1614 with the department. A law enforcement agency may request  
1615 information from the department but may not have direct access  
1616 to its system database. The law enforcement agency may disclose  
1617 to a criminal justice agency, as defined in s. 119.011, only  
1618 ~~confidential and exempt~~ information received from the department  
1619 that is relevant to an identified active investigation that  
1620 prompted the request for such information.

1621 (i) A district medical examiner or associate medical  
1622 examiner, as described in s. 406.06, pursuant to his or her  
1623 official duties, as required by s. 406.11, to determine the  
1624 cause of death of an individual. Such medical examiners may  
1625 request information from the department but may not have direct  
1626 access to the system.

1627 ~~(f) A patient or the legal guardian or designated health~~  
1628 ~~care surrogate for an incapacitated patient, if applicable,~~  
1629 ~~making a request as provided in s. 893.055(7)(c)4.~~

1630 (j)~~(h)~~ An impaired practitioner consultant who has been  
1631 authorized in writing by a participant in, or by a referral to,  
1632 the impaired practitioner program to access and review  
1633 information as provided in s. 893.055(5)(e) ~~893.055(7)(e)5~~.

1634 (k) A patient or the legal guardian or designated health



194134

1635 care surrogate for an incapacitated patient, if applicable,  
1636 making a request as provided in s. 893.055(5)(f).

1637 (4) If the department determines consistent with its rules  
1638 that a pattern of controlled substance abuse exists, the  
1639 department may disclose such confidential and exempt information  
1640 to the applicable law enforcement agency in accordance with s.  
1641 893.055. The law enforcement agency may disclose to a criminal  
1642 justice agency, as defined in s. 119.011, only ~~confidential and~~  
1643 ~~exempt~~ information received from the department that is relevant  
1644 to an identified active investigation that is specific to a  
1645 violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s.  
1646 893.13(8)(b).

1647 (5) Before disclosing ~~confidential and exempt~~ information  
1648 to a criminal justice agency or a law enforcement agency  
1649 pursuant to this section, the disclosing person or entity must  
1650 take steps to ensure the continued confidentiality of all  
1651 ~~confidential and exempt~~ information. At a minimum, these steps  
1652 must include redacting any nonrelevant information.

1653 (6) An agency or person who obtains any ~~confidential and~~  
1654 ~~exempt~~ information pursuant to this section must maintain the  
1655 confidential and exempt status of that information and may not  
1656 disclose such information unless authorized by law. Information  
1657 shared with a state attorney pursuant to paragraph (3)(f) ~~(3)(a)~~  
1658 or paragraph (3)(h) ~~(3)(e)~~ may be released only in response to a  
1659 discovery demand if such information is directly related to the  
1660 criminal case for which the information was requested. Unrelated  
1661 information may be released only upon an order of a court of  
1662 competent jurisdiction.

1663 (7) A person who willfully and knowingly violates this





194134

1664 section commits a felony of the third degree, punishable as  
1665 provided in s. 775.082, s. 775.083, or s. 775.084.

1666 Section 13. Effective January 1, 2019, paragraphs (pp) and  
1667 (qq) of subsection (1) of section 458.331, Florida Statutes, are  
1668 amended to read:

1669 458.331 Grounds for disciplinary action; action by the  
1670 board and department.-

1671 (1) The following acts constitute grounds for denial of a  
1672 license or disciplinary action, as specified in s. 456.072(2):

1673 (pp) Applicable to a licensee who serves as the designated  
1674 physician of a pain-management clinic as defined in s. 458.3265  
1675 or s. 459.0137:

1676 1. Registering a pain-management clinic through  
1677 misrepresentation or fraud;

1678 2. Procuring, or attempting to procure, the registration of  
1679 a pain-management clinic for any other person by making or  
1680 causing to be made, any false representation;

1681 3. Failing to comply with any requirement of chapter 499,  
1682 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the  
1683 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,  
1684 the Drug Abuse Prevention and Control Act; or chapter 893, the  
1685 Florida Comprehensive Drug Abuse Prevention and Control Act;

1686 4. Being convicted or found guilty of, regardless of  
1687 adjudication to, a felony or any other crime involving moral  
1688 turpitude, fraud, dishonesty, or deceit in any jurisdiction of  
1689 the courts of this state, of any other state, or of the United  
1690 States;

1691 5. Being convicted of, or disciplined by a regulatory  
1692 agency of the Federal Government or a regulatory agency of



194134

1693 another state for, any offense that would constitute a violation  
1694 of this chapter;

1695 6. Being convicted of, or entering a plea of guilty or nolo  
1696 contendere to, regardless of adjudication, a crime in any  
1697 jurisdiction of the courts of this state, of any other state, or  
1698 of the United States which relates to the practice of, or the  
1699 ability to practice, a licensed health care profession;

1700 7. Being convicted of, or entering a plea of guilty or nolo  
1701 contendere to, regardless of adjudication, a crime in any  
1702 jurisdiction of the courts of this state, of any other state, or  
1703 of the United States which relates to health care fraud;

1704 8. Dispensing any medicinal drug based upon a communication  
1705 that purports to be a prescription as defined in s. 465.003(14)  
1706 or s. 893.02 if the dispensing practitioner knows or has reason  
1707 to believe that the purported prescription is not based upon a  
1708 valid practitioner-patient relationship; or

1709 9. Failing to timely notify the board of the date of his or  
1710 her termination from a pain-management clinic as required by s.  
1711 458.3265(3) ~~458.3265(2)~~.

1712 (qq) Failing to timely notify the department of the theft  
1713 of prescription blanks from a pain-management clinic or a breach  
1714 of other methods for prescribing within 24 hours as required by  
1715 s. 458.3265(3) ~~458.3265(2)~~.

1716 Section 14. Effective January 1, 2019, Paragraphs (rr) and  
1717 (ss) of subsection (1) of section 459.015, Florida Statutes, are  
1718 amended to read:

1719 459.015 Grounds for disciplinary action; action by the  
1720 board and department.—

1721 (1) The following acts constitute grounds for denial of a



194134

1722 license or disciplinary action, as specified in s. 456.072(2):  
1723 (rr) Applicable to a licensee who serves as the designated  
1724 physician of a pain-management clinic as defined in s. 458.3265  
1725 or s. 459.0137:  
1726 1. Registering a pain-management clinic through  
1727 misrepresentation or fraud;  
1728 2. Procuring, or attempting to procure, the registration of  
1729 a pain-management clinic for any other person by making or  
1730 causing to be made, any false representation;  
1731 3. Failing to comply with any requirement of chapter 499,  
1732 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the  
1733 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,  
1734 the Drug Abuse Prevention and Control Act; or chapter 893, the  
1735 Florida Comprehensive Drug Abuse Prevention and Control Act;  
1736 4. Being convicted or found guilty of, regardless of  
1737 adjudication to, a felony or any other crime involving moral  
1738 turpitude, fraud, dishonesty, or deceit in any jurisdiction of  
1739 the courts of this state, of any other state, or of the United  
1740 States;  
1741 5. Being convicted of, or disciplined by a regulatory  
1742 agency of the Federal Government or a regulatory agency of  
1743 another state for, any offense that would constitute a violation  
1744 of this chapter;  
1745 6. Being convicted of, or entering a plea of guilty or nolo  
1746 contendere to, regardless of adjudication, a crime in any  
1747 jurisdiction of the courts of this state, of any other state, or  
1748 of the United States which relates to the practice of, or the  
1749 ability to practice, a licensed health care profession;  
1750 7. Being convicted of, or entering a plea of guilty or nolo



194134

1751 contendere to, regardless of adjudication, a crime in any  
1752 jurisdiction of the courts of this state, of any other state, or  
1753 of the United States which relates to health care fraud;

1754 8. Dispensing any medicinal drug based upon a communication  
1755 that purports to be a prescription as defined in s. 465.003(14)  
1756 or s. 893.02 if the dispensing practitioner knows or has reason  
1757 to believe that the purported prescription is not based upon a  
1758 valid practitioner-patient relationship; or

1759 9. Failing to timely notify the board of the date of his or  
1760 her termination from a pain-management clinic as required by s.  
1761 459.0137(3) ~~459.0137(2)~~.

1762 (ss) Failing to timely notify the department of the theft  
1763 of prescription blanks from a pain-management clinic or a breach  
1764 of other methods for prescribing within 24 hours as required by  
1765 s. 459.0137(3) ~~459.0137(2)~~.

1766 Section 15. Paragraph (b) of subsection (4) of section  
1767 463.0055, Florida Statutes, is amended to read:

1768 463.0055 Administration and prescription of ocular  
1769 pharmaceutical agents.—

1770 (4) A certified optometrist shall be issued a prescriber  
1771 number by the board. Any prescription written by a certified  
1772 optometrist for an ocular pharmaceutical agent pursuant to this  
1773 section shall have the prescriber number printed thereon. A  
1774 certified optometrist may not administer or prescribe:

1775 (b) A controlled substance for the treatment of chronic  
1776 nonmalignant pain as defined in s. 456.44(1)(f) ~~456.44(1)(e)~~.

1777 Section 16. Paragraph (a) of subsection (1) of section  
1778 782.04, Florida Statutes, is amended to read:

1779 782.04 Murder.—



194134

1780 (1) (a) The unlawful killing of a human being:  
1781 1. When perpetrated from a premeditated design to effect  
1782 the death of the person killed or any human being;  
1783 2. When committed by a person engaged in the perpetration  
1784 of, or in the attempt to perpetrate, any:  
1785 a. Trafficking offense prohibited by s. 893.135(1),  
1786 b. Arson,  
1787 c. Sexual battery,  
1788 d. Robbery,  
1789 e. Burglary,  
1790 f. Kidnapping,  
1791 g. Escape,  
1792 h. Aggravated child abuse,  
1793 i. Aggravated abuse of an elderly person or disabled adult,  
1794 j. Aircraft piracy,  
1795 k. Unlawful throwing, placing, or discharging of a  
1796 destructive device or bomb,  
1797 l. Carjacking,  
1798 m. Home-invasion robbery,  
1799 n. Aggravated stalking,  
1800 o. Murder of another human being,  
1801 p. Resisting an officer with violence to his or her person,  
1802 q. Aggravated fleeing or eluding with serious bodily injury  
1803 or death,  
1804 r. Felony that is an act of terrorism or is in furtherance  
1805 of an act of terrorism, including a felony under s. 775.30, s.  
1806 775.32, s. 775.33, s. 775.34, or s. 775.35, or  
1807 s. Human trafficking; or  
1808 3. Which resulted from the unlawful distribution by a



194134

1809 person 18 years of age or older of any of the following  
1810 substances, or mixture containing any of the following  
1811 substances, when such substance or mixture is proven to be the  
1812 proximate cause of the death of the user:

1813 a. A substance controlled under s. 893.03(1);

1814 b. Cocaine, as described in s. 893.03(2)(a)4.;

1815 c. Opium or any synthetic or natural salt, compound,  
1816 derivative, or preparation of opium;

1817 d. Methadone;

1818 e. Alfentanil, as described in s. 893.03(2)(b)1.;

1819 f. Carfentanil, as described in s. 893.03(2)(b)6.;

1820 g. Fentanyl, as described in s. 893.03(2)(b)9.;

1821 h. Sufentanil, as described in s. 893.03(2)(b)30.

1822 ~~893.03(2)(b)29.~~; or

1823 i. A controlled substance analog, as described in s.

1824 893.0356, of any substance specified in sub-subparagraphs a.-h.,

1825

1826 is murder in the first degree and constitutes a capital felony,  
1827 punishable as provided in s. 775.082.

1828 Section 17. Paragraphs (a), (c), (d), (e), (f), and (h) of  
1829 subsection (1), subsection (2), paragraphs (a) and (b) of  
1830 subsection (4), and subsection (5) of section 893.13, Florida  
1831 Statutes, are amended to read:

1832 893.13 Prohibited acts; penalties.—

1833 (1)(a) Except as authorized by this chapter and chapter  
1834 499, a person may not sell, manufacture, or deliver, or possess  
1835 with intent to sell, manufacture, or deliver, a controlled  
1836 substance. A person who violates this provision with respect to:

1837 1. A controlled substance named or described in s.



194134

1838 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
1839 ~~(2)(e)4.~~ commits a felony of the second degree, punishable as  
1840 provided in s. 775.082, s. 775.083, or s. 775.084.  
1841 2. A controlled substance named or described in s.  
1842 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~, (2)(c)6.,  
1843 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
1844 felony of the third degree, punishable as provided in s.  
1845 775.082, s. 775.083, or s. 775.084.  
1846 3. A controlled substance named or described in s.  
1847 893.03(5) commits a misdemeanor of the first degree, punishable  
1848 as provided in s. 775.082 or s. 775.083.  
1849 (c) Except as authorized by this chapter, a person may not  
1850 sell, manufacture, or deliver, or possess with intent to sell,  
1851 manufacture, or deliver, a controlled substance in, on, or  
1852 within 1,000 feet of the real property comprising a child care  
1853 facility as defined in s. 402.302 or a public or private  
1854 elementary, middle, or secondary school between the hours of 6  
1855 a.m. and 12 midnight, or at any time in, on, or within 1,000  
1856 feet of real property comprising a state, county, or municipal  
1857 park, a community center, or a publicly owned recreational  
1858 facility. As used in this paragraph, the term "community center"  
1859 means a facility operated by a nonprofit community-based  
1860 organization for the provision of recreational, social, or  
1861 educational services to the public. A person who violates this  
1862 paragraph with respect to:  
1863 1. A controlled substance named or described in s.  
1864 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
1865 ~~(2)(e)4.~~ commits a felony of the first degree, punishable as  
1866 provided in s. 775.082, s. 775.083, or s. 775.084. The defendant



194134

1867 must be sentenced to a minimum term of imprisonment of 3  
1868 calendar years unless the offense was committed within 1,000  
1869 feet of the real property comprising a child care facility as  
1870 defined in s. 402.302.

1871         2. A controlled substance named or described in s.  
1872 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~, (2)(c)6.,  
1873 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
1874 felony of the second degree, punishable as provided in s.  
1875 775.082, s. 775.083, or s. 775.084.

1876         3. Any other controlled substance, except as lawfully sold,  
1877 manufactured, or delivered, must be sentenced to pay a \$500 fine  
1878 and to serve 100 hours of public service in addition to any  
1879 other penalty prescribed by law.

1880  
1881 This paragraph does not apply to a child care facility unless  
1882 the owner or operator of the facility posts a sign that is not  
1883 less than 2 square feet in size with a word legend identifying  
1884 the facility as a licensed child care facility and that is  
1885 posted on the property of the child care facility in a  
1886 conspicuous place where the sign is reasonably visible to the  
1887 public.

1888         (d) Except as authorized by this chapter, a person may not  
1889 sell, manufacture, or deliver, or possess with intent to sell,  
1890 manufacture, or deliver, a controlled substance in, on, or  
1891 within 1,000 feet of the real property comprising a public or  
1892 private college, university, or other postsecondary educational  
1893 institution. A person who violates this paragraph with respect  
1894 to:

1895         1. A controlled substance named or described in s.





194134

1896 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
1897 ~~(2)(c)4.~~ commits a felony of the first degree, punishable as  
1898 provided in s. 775.082, s. 775.083, or s. 775.084.

1899 2. A controlled substance named or described in s.  
1900 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.,~~ (2)(c)6.,  
1901 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
1902 felony of the second degree, punishable as provided in s.  
1903 775.082, s. 775.083, or s. 775.084.

1904 3. Any other controlled substance, except as lawfully sold,  
1905 manufactured, or delivered, must be sentenced to pay a \$500 fine  
1906 and to serve 100 hours of public service in addition to any  
1907 other penalty prescribed by law.

1908 (e) Except as authorized by this chapter, a person may not  
1909 sell, manufacture, or deliver, or possess with intent to sell,  
1910 manufacture, or deliver, a controlled substance not authorized  
1911 by law in, on, or within 1,000 feet of a physical place for  
1912 worship at which a church or religious organization regularly  
1913 conducts religious services or within 1,000 feet of a  
1914 convenience business as defined in s. 812.171. A person who  
1915 violates this paragraph with respect to:

1916 1. A controlled substance named or described in s.  
1917 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
1918 ~~(2)(c)4.~~ commits a felony of the first degree, punishable as  
1919 provided in s. 775.082, s. 775.083, or s. 775.084.

1920 2. A controlled substance named or described in s.  
1921 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.,~~ (2)(c)6.,  
1922 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
1923 felony of the second degree, punishable as provided in s.  
1924 775.082, s. 775.083, or s. 775.084.



194134

1925           3. Any other controlled substance, except as lawfully sold,  
1926 manufactured, or delivered, must be sentenced to pay a \$500 fine  
1927 and to serve 100 hours of public service in addition to any  
1928 other penalty prescribed by law.

1929           (f) Except as authorized by this chapter, a person may not  
1930 sell, manufacture, or deliver, or possess with intent to sell,  
1931 manufacture, or deliver, a controlled substance in, on, or  
1932 within 1,000 feet of the real property comprising a public  
1933 housing facility at any time. As used in this section, the term  
1934 "real property comprising a public housing facility" means real  
1935 property, as defined in s. 421.03(12), of a public corporation  
1936 created as a housing authority pursuant to part I of chapter  
1937 421. A person who violates this paragraph with respect to:

1938           1. A controlled substance named or described in s.  
1939 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
1940 ~~(2)(e)4.~~ commits a felony of the first degree, punishable as  
1941 provided in s. 775.082, s. 775.083, or s. 775.084.

1942           2. A controlled substance named or described in s.  
1943 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.,~~ (2)(c)6.,  
1944 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
1945 felony of the second degree, punishable as provided in s.  
1946 775.082, s. 775.083, or s. 775.084.

1947           3. Any other controlled substance, except as lawfully sold,  
1948 manufactured, or delivered, must be sentenced to pay a \$500 fine  
1949 and to serve 100 hours of public service in addition to any  
1950 other penalty prescribed by law.

1951           (h) Except as authorized by this chapter, a person may not  
1952 sell, manufacture, or deliver, or possess with intent to sell,  
1953 manufacture, or deliver, a controlled substance in, on, or



194134

1954 within 1,000 feet of the real property comprising an assisted  
1955 living facility, as that term is used in chapter 429. A person  
1956 who violates this paragraph with respect to:

1957 1. A controlled substance named or described in s.  
1958 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
1959 ~~(2)(c)4.~~ commits a felony of the first degree, punishable as  
1960 provided in s. 775.082, s. 775.083, or s. 775.084.

1961 2. A controlled substance named or described in s.  
1962 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~, (2)(c)6.,  
1963 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
1964 felony of the second degree, punishable as provided in s.  
1965 775.082, s. 775.083, or s. 775.084.

1966 3. Any other controlled substance, except as lawfully sold,  
1967 manufactured, or delivered, must be sentenced to pay a \$500 fine  
1968 and to serve 100 hours of public service in addition to any  
1969 other penalty prescribed by law.

1970 (2)(a) Except as authorized by this chapter and chapter  
1971 499, a person may not purchase, or possess with intent to  
1972 purchase, a controlled substance. A person who violates this  
1973 provision with respect to:

1974 1. A controlled substance named or described in s.  
1975 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
1976 ~~(2)(c)4.~~ commits a felony of the second degree, punishable as  
1977 provided in s. 775.082, s. 775.083, or s. 775.084.

1978 2. A controlled substance named or described in s.  
1979 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~, (2)(c)6.,  
1980 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
1981 felony of the third degree, punishable as provided in s.  
1982 775.082, s. 775.083, or s. 775.084.



194134

1983 3. A controlled substance named or described in s.  
1984 893.03(5) commits a misdemeanor of the first degree, punishable  
1985 as provided in s. 775.082 or s. 775.083.

1986 (b) Except as provided in this chapter, a person may not  
1987 purchase more than 10 grams of any substance named or described  
1988 in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any  
1989 mixture containing any such substance. A person who violates  
1990 this paragraph commits a felony of the first degree, punishable  
1991 as provided in s. 775.082, s. 775.083, or s. 775.084.

1992 (4) Except as authorized by this chapter, a person 18 years  
1993 of age or older may not deliver any controlled substance to a  
1994 person younger than 18 years of age, use or hire a person  
1995 younger than 18 years of age as an agent or employee in the sale  
1996 or delivery of such a substance, or use such person to assist in  
1997 avoiding detection or apprehension for a violation of this  
1998 chapter. A person who violates this subsection with respect to:

1999 (a) A controlled substance named or described in s.  
2000 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
2001 ~~(2)(e)4.~~ commits a felony of the first degree, punishable as  
2002 provided in s. 775.082, s. 775.083, or s. 775.084.

2003 (b) A controlled substance named or described in s.  
2004 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~ (2)(c)6.,  
2005 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
2006 felony of the second degree, punishable as provided in s.  
2007 775.082, s. 775.083, or s. 775.084.

2008  
2009 Imposition of sentence may not be suspended or deferred, and the  
2010 person so convicted may not be placed on probation.

2011 (5) A person may not bring into this state any controlled



194134

2012 substance unless the possession of such controlled substance is  
2013 authorized by this chapter or unless such person is licensed to  
2014 do so by the appropriate federal agency. A person who violates  
2015 this provision with respect to:

2016 (a) A controlled substance named or described in s.  
2017 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
2018 ~~(2)(e)4.~~ commits a felony of the second degree, punishable as  
2019 provided in s. 775.082, s. 775.083, or s. 775.084.

2020 (b) A controlled substance named or described in s.  
2021 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~, (2)(c)6.,  
2022 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
2023 felony of the third degree, punishable as provided in s.  
2024 775.082, s. 775.083, or s. 775.084.

2025 (c) A controlled substance named or described in s.  
2026 893.03(5) commits a misdemeanor of the first degree, punishable  
2027 as provided in s. 775.082 or s. 775.083.

2028 Section 18. Paragraphs (c) and (f) of subsection (1) of  
2029 section 893.135, Florida Statutes, are amended to read:

2030 893.135 Trafficking; mandatory sentences; suspension or  
2031 reduction of sentences; conspiracy to engage in trafficking.—

2032 (1) Except as authorized in this chapter or in chapter 499  
2033 and notwithstanding the provisions of s. 893.13:

2034 (c)1. A person who knowingly sells, purchases,  
2035 manufactures, delivers, or brings into this state, or who is  
2036 knowingly in actual or constructive possession of, 4 grams or  
2037 more of any morphine, opium, hydromorphone, or any salt,  
2038 derivative, isomer, or salt of an isomer thereof, including  
2039 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or  
2040 (3)(c)4., or 4 grams or more of any mixture containing any such



194134

2041 substance, but less than 30 kilograms of such substance or  
2042 mixture, commits a felony of the first degree, which felony  
2043 shall be known as "trafficking in illegal drugs," punishable as  
2044 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
2045 quantity involved:

2046 a. Is 4 grams or more, but less than 14 grams, such person  
2047 shall be sentenced to a mandatory minimum term of imprisonment  
2048 of 3 years and shall be ordered to pay a fine of \$50,000.

2049 b. Is 14 grams or more, but less than 28 grams, such person  
2050 shall be sentenced to a mandatory minimum term of imprisonment  
2051 of 15 years and shall be ordered to pay a fine of \$100,000.

2052 c. Is 28 grams or more, but less than 30 kilograms, such  
2053 person shall be sentenced to a mandatory minimum term of  
2054 imprisonment of 25 years and shall be ordered to pay a fine of  
2055 \$500,000.

2056 2. A person who knowingly sells, purchases, manufactures,  
2057 delivers, or brings into this state, or who is knowingly in  
2058 actual or constructive possession of, 14 grams or more of  
2059 hydrocodone, as described in s. 893.03(2)(a)1.k.

2060 ~~893.03(2)(a)1.j.~~, codeine, as described in s. 893.03(2)(a)1.g.,  
2061 or any salt thereof, or 14 grams or more of any mixture  
2062 containing any such substance, commits a felony of the first  
2063 degree, which felony shall be known as "trafficking in  
2064 hydrocodone," punishable as provided in s. 775.082, s. 775.083,  
2065 or s. 775.084. If the quantity involved:

2066 a. Is 14 grams or more, but less than 28 grams, such person  
2067 shall be sentenced to a mandatory minimum term of imprisonment  
2068 of 3 years and shall be ordered to pay a fine of \$50,000.

2069 b. Is 28 grams or more, but less than 50 grams, such person



194134

2070 shall be sentenced to a mandatory minimum term of imprisonment  
2071 of 7 years and shall be ordered to pay a fine of \$100,000.

2072 c. Is 50 grams or more, but less than 200 grams, such  
2073 person shall be sentenced to a mandatory minimum term of  
2074 imprisonment of 15 years and shall be ordered to pay a fine of  
2075 \$500,000.

2076 d. Is 200 grams or more, but less than 30 kilograms, such  
2077 person shall be sentenced to a mandatory minimum term of  
2078 imprisonment of 25 years and shall be ordered to pay a fine of  
2079 \$750,000.

2080 3. A person who knowingly sells, purchases, manufactures,  
2081 delivers, or brings into this state, or who is knowingly in  
2082 actual or constructive possession of, 7 grams or more of  
2083 oxycodone, as described in s. 893.03(2)(a)1.q. ~~893.03(2)(a)1.e.~~,  
2084 or any salt thereof, or 7 grams or more of any mixture  
2085 containing any such substance, commits a felony of the first  
2086 degree, which felony shall be known as "trafficking in  
2087 oxycodone," punishable as provided in s. 775.082, s. 775.083, or  
2088 s. 775.084. If the quantity involved:

2089 a. Is 7 grams or more, but less than 14 grams, such person  
2090 shall be sentenced to a mandatory minimum term of imprisonment  
2091 of 3 years and shall be ordered to pay a fine of \$50,000.

2092 b. Is 14 grams or more, but less than 25 grams, such person  
2093 shall be sentenced to a mandatory minimum term of imprisonment  
2094 of 7 years and shall be ordered to pay a fine of \$100,000.

2095 c. Is 25 grams or more, but less than 100 grams, such  
2096 person shall be sentenced to a mandatory minimum term of  
2097 imprisonment of 15 years and shall be ordered to pay a fine of  
2098 \$500,000.



194134

2099 d. Is 100 grams or more, but less than 30 kilograms, such  
2100 person shall be sentenced to a mandatory minimum term of  
2101 imprisonment of 25 years and shall be ordered to pay a fine of  
2102 \$750,000.

2103 4.a. A person who knowingly sells, purchases, manufactures,  
2104 delivers, or brings into this state, or who is knowingly in  
2105 actual or constructive possession of, 4 grams or more of:

2106 (I) Alfentanil, as described in s. 893.03(2)(b)1.;

2107 (II) Carfentanil, as described in s. 893.03(2)(b)6.;

2108 (III) Fentanyl, as described in s. 893.03(2)(b)9.;

2109 (IV) Sufentanil, as described in s. 893.03(2)(b)30.

2110 ~~893.03(2)(b)29.;~~

2111 (V) A fentanyl derivative, as described in s.

2112 893.03(1)(a)62.;

2113 (VI) A controlled substance analog, as described in s.

2114 893.0356, of any substance described in sub-sub-subparagraphs

2115 (I)-(V); or

2116 (VII) A mixture containing any substance described in sub-  
2117 sub-subparagraphs (I)-(VI),

2118  
2119 commits a felony of the first degree, which felony shall be  
2120 known as "trafficking in fentanyl," punishable as provided in s.  
2121 775.082, s. 775.083, or s. 775.084.

2122 b. If the quantity involved under sub-subparagraph a.:

2123 (I) Is 4 grams or more, but less than 14 grams, such person  
2124 shall be sentenced to a mandatory minimum term of imprisonment  
2125 of 3 years, and shall be ordered to pay a fine of \$50,000.

2126 (II) Is 14 grams or more, but less than 28 grams, such  
2127 person shall be sentenced to a mandatory minimum term of





194134

2128 imprisonment of 15 years, and shall be ordered to pay a fine of  
2129 \$100,000.

2130 (III) Is 28 grams or more, such person shall be sentenced  
2131 to a mandatory minimum term of imprisonment of 25 years, and  
2132 shall be ordered to pay a fine of \$500,000.

2133 5. A person who knowingly sells, purchases, manufactures,  
2134 delivers, or brings into this state, or who is knowingly in  
2135 actual or constructive possession of, 30 kilograms or more of  
2136 any morphine, opium, oxycodone, hydrocodone, codeine,  
2137 hydromorphone, or any salt, derivative, isomer, or salt of an  
2138 isomer thereof, including heroin, as described in s.  
2139 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or  
2140 more of any mixture containing any such substance, commits the  
2141 first degree felony of trafficking in illegal drugs. A person  
2142 who has been convicted of the first degree felony of trafficking  
2143 in illegal drugs under this subparagraph shall be punished by  
2144 life imprisonment and is ineligible for any form of  
2145 discretionary early release except pardon or executive clemency  
2146 or conditional medical release under s. 947.149. However, if the  
2147 court determines that, in addition to committing any act  
2148 specified in this paragraph:

2149 a. The person intentionally killed an individual or  
2150 counseled, commanded, induced, procured, or caused the  
2151 intentional killing of an individual and such killing was the  
2152 result; or

2153 b. The person's conduct in committing that act led to a  
2154 natural, though not inevitable, lethal result,  
2155  
2156 such person commits the capital felony of trafficking in illegal



194134

2157 drugs, punishable as provided in ss. 775.082 and 921.142. A  
2158 person sentenced for a capital felony under this paragraph shall  
2159 also be sentenced to pay the maximum fine provided under  
2160 subparagraph 1.

2161         6. A person who knowingly brings into this state 60  
2162 kilograms or more of any morphine, opium, oxycodone,  
2163 hydrocodone, codeine, hydromorphone, or any salt, derivative,  
2164 isomer, or salt of an isomer thereof, including heroin, as  
2165 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or  
2166 60 kilograms or more of any mixture containing any such  
2167 substance, and who knows that the probable result of such  
2168 importation would be the death of a person, commits capital  
2169 importation of illegal drugs, a capital felony punishable as  
2170 provided in ss. 775.082 and 921.142. A person sentenced for a  
2171 capital felony under this paragraph shall also be sentenced to  
2172 pay the maximum fine provided under subparagraph 1.

2173         (f)1. Any person who knowingly sells, purchases,  
2174 manufactures, delivers, or brings into this state, or who is  
2175 knowingly in actual or constructive possession of, 14 grams or  
2176 more of amphetamine, as described in s. 893.03(2)(c)2., or  
2177 methamphetamine, as described in s. 893.03(2)(c)5.  
2178 ~~893.03(2)(c)4.~~, or of any mixture containing amphetamine or  
2179 methamphetamine, or phenylacetone, phenylacetic acid,  
2180 pseudoephedrine, or ephedrine in conjunction with other  
2181 chemicals and equipment utilized in the manufacture of  
2182 amphetamine or methamphetamine, commits a felony of the first  
2183 degree, which felony shall be known as "trafficking in  
2184 amphetamine," punishable as provided in s. 775.082, s. 775.083,  
2185 or s. 775.084. If the quantity involved:



194134

2186           a. Is 14 grams or more, but less than 28 grams, such person  
2187 shall be sentenced to a mandatory minimum term of imprisonment  
2188 of 3 years, and the defendant shall be ordered to pay a fine of  
2189 \$50,000.

2190           b. Is 28 grams or more, but less than 200 grams, such  
2191 person shall be sentenced to a mandatory minimum term of  
2192 imprisonment of 7 years, and the defendant shall be ordered to  
2193 pay a fine of \$100,000.

2194           c. Is 200 grams or more, such person shall be sentenced to  
2195 a mandatory minimum term of imprisonment of 15 calendar years  
2196 and pay a fine of \$250,000.

2197           2. Any person who knowingly manufactures or brings into  
2198 this state 400 grams or more of amphetamine, as described in s.  
2199 893.03(2)(c)2., or methamphetamine, as described in s.  
2200 893.03(2)(c)5. ~~893.03(2)(e)4.~~, or of any mixture containing  
2201 amphetamine or methamphetamine, or phenylacetone, phenylacetic  
2202 acid, pseudoephedrine, or ephedrine in conjunction with other  
2203 chemicals and equipment used in the manufacture of amphetamine  
2204 or methamphetamine, and who knows that the probable result of  
2205 such manufacture or importation would be the death of any person  
2206 commits capital manufacture or importation of amphetamine, a  
2207 capital felony punishable as provided in ss. 775.082 and  
2208 921.142. Any person sentenced for a capital felony under this  
2209 paragraph shall also be sentenced to pay the maximum fine  
2210 provided under subparagraph 1.

2211           Section 19. Paragraphs (b) through (e) and (g) of  
2212 subsection (3) of section 921.0022, Florida Statutes, are  
2213 amended to read:

2214           921.0022 Criminal Punishment Code; offense severity ranking



194134

2215	chart.-		
2216	(3) OFFENSE SEVERITY RANKING CHART		
2217	(b) LEVEL 2		
2218			
2219			
	Florida	Felony	Description
	Statute	Degree	
2220	379.2431 (1) (e) 3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
2221	379.2431 (1) (e) 4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
2222	403.413 (6) (c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
2223	517.07 (2)	3rd	Failure to furnish a prospectus meeting requirements.
2224	590.28 (1)	3rd	Intentional burning of lands.
2225			



194134

- 2226 784.05(3) 3rd Storing or leaving a loaded  
firearm within reach of minor  
who uses it to inflict injury  
or death.
- 2227 787.04(1) 3rd In violation of court order,  
take, entice, etc., minor  
beyond state limits.
- 2228 806.13(1)(b)3. 3rd Criminal mischief; damage  
\$1,000 or more to public  
communication or any other  
public service.
- 2229 810.061(2) 3rd Impairing or impeding telephone  
or power to a dwelling;  
facilitating or furthering  
burglary.
- 2230 810.09(2)(e) 3rd Trespassing on posted  
commercial horticulture  
property.
- 2231 812.014(2)(c)1. 3rd Grand theft, 3rd degree; \$300  
or more but less than \$5,000.
- 812.014(2)(d) 3rd Grand theft, 3rd degree; \$100  
or more but less than \$300,  
taken from unenclosed curtilage



194134

2232			of dwelling.
	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
2233			
	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
2234			
	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
2235			
	817.52(3)	3rd	Failure to redeliver hired vehicle.
2236			
	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
2237			
	817.60(5)	3rd	Dealing in credit cards of another.
2238			
	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
2239			
	817.61	3rd	Fraudulent use of credit cards



194134

2240			over \$100 or more within 6 months.
2241	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
2242	831.01	3rd	Forgery.
2243	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
2244	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
2245	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
2246	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
2247	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
	832.05(3)(a)	3rd	Cashing or depositing item with



194134

2248			intent to defraud.
2249	843.08	3rd	False personation.
2250	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., <del>(2)(e)5.</del> (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., <u>(2)(c)10.</u> , (3), or (4) drugs other than cannabis.
2251	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
2252			
2253	(c) LEVEL 3		
2254			
2255			
2256	Florida Statute	Felony Degree	Description
2257	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
2258	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.





194134

2259	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
2260	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
2261	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
2262	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
2263	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
2264	327.35(2)(b)	3rd	Felony BUI.
2265	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
2266			



194134

2267	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
2268	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
2269	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
2270	379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
	379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.



194134

2271	400.9935 (4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
2272	400.9935 (4) (e)	3rd	Filing a false license application or other required information or failing to report information.
2273	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
2274	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
2275	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
2276	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
2277	626.902 (1) (a) &	3rd	Representing an unauthorized



194134

2278	(b)		insurer.
	697.08	3rd	Equity skimming.
2279			
	790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.
2280			
	806.10 (1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
2281			
	806.10 (2)	3rd	Interferes with or assaults firefighter in performance of duty.
2282			
	810.09 (2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
2283			
	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
2284			
	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
2285			
	815.04 (5) (b)	2nd	Computer offense devised to



194134

2286			defraud or obtain property.
	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
2287			
	817.233	3rd	Burning to defraud insurer.
2288			
	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
2289			
	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
2290			
	817.236	3rd	Filing a false motor vehicle insurance application.
2291			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
2292			
	817.413 (2)	3rd	Sale of used goods as new.
2293			
	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or



194134

			death.
2294	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
2295	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
2296	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
2297	843.19	3rd	Injure, disable, or kill police dog or horse.
2298	860.15 (3)	3rd	Overcharging for repairs and parts.
2299	870.01 (2)	3rd	Riot; inciting or encouraging.
2300	893.13 (1) (a) 2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., <del>(2) (c) 5.</del> , (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., <u>(2) (c) 10.</u> , (3), or (4) drugs).



194134

2301

893.13(1)(d)2.            2nd    Sell, manufacture, or deliver  
s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., ~~(2)(c)5.~~,  
(2)(c)6., (2)(c)7., (2)(c)8.,  
(2)(c)9., (2)(c)10., (3), or  
(4) drugs within 1,000 feet of  
university.

2302

893.13(1)(f)2.            2nd    Sell, manufacture, or deliver  
s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., ~~(2)(c)5.~~,  
(2)(c)6., (2)(c)7., (2)(c)8.,  
(2)(c)9., (2)(c)10., (3), or  
(4) drugs within 1,000 feet of  
public housing facility.

2303

893.13(4)(c)              3rd    Use or hire of minor; deliver  
to minor other controlled  
substances.

2304

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

2305

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







194134

2311			substance.
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
2312			
	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
2313			
	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
2314			
	944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
2315			
	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
2316			
	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
2317			



194134

2318			
2319	(d) LEVEL 4		
2320			
	Florida	Felony	
	Statute	Degree	Description
2321			
	316.1935 (3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
2322			
	499.0051 (1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
2323			
	499.0051 (5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
2324			
	517.07 (1)	3rd	Failure to register securities.



194134

2325	517.12 (1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
2326	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
2327	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
2328	784.075	3rd	Battery on detention or commitment facility staff.
2329	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
2330	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
2331	784.081 (3)	3rd	Battery on specified official or employee.



194134

2332	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
2333	784.083 (3)	3rd	Battery on code inspector.
2334	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
2335	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
2336	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
2337	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at



194134

2338			custody hearing or delivering to designated person.
2339	787.07	3rd	Human smuggling.
2340	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
2341	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
2342	790.115 (2) (c)	3rd	Possessing firearm on school property.
2343	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
2344	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.



194134

2345	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
2346	810.06	3rd	Burglary; possession of tools.
2347	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
2348	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
2349	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
2350	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
2351	817.505 (4) (a)	3rd	Patient brokering.
	817.563 (1)	3rd	Sell or deliver



194134

2352	817.568 (2) (a)	3rd	substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs. Fraudulent use of personal identification information.
2353	817.625 (2) (a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
2354	817.625 (2) (c)	3rd	Possess, sell, or deliver skimming device.
2355	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
2356	837.02 (1)	3rd	Perjury in official proceedings.
2357	837.021 (1)	3rd	Make contradictory statements in official



194134

2358			proceedings.
2359	838.022	3rd	Official misconduct.
2360	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
2361	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Families.
2362	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
2363	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
2364	843.15 (1) (a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).





194134

2365	847.0135 (5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
2366	874.05 (1) (a)	3rd	Encouraging or recruiting another to join a criminal gang.
2367	893.13 (2) (a) 1.	2nd	Purchase of cocaine (or other s. 893.03 (1) (a), (b), or (d), (2) (a), (2) (b), or <u>(2) (c) 5.</u> <del>(2) (e) 4.</del> drugs).
2368	914.14 (2)	3rd	Witnesses accepting bribes.
2369	914.22 (1)	3rd	Force, threaten, etc., witness, victim, or informant.
2370	914.23 (2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
2371	918.12	3rd	Tampering with jurors.





194134

2383

379.365(2)(c)1.           3rd    personal injury; leaving scene.  
Violation of rules relating to:  
willful molestation of stone  
crab traps, lines, or buoys;  
illegal bartering, trading, or  
sale, conspiring or aiding in  
such barter, trade, or sale, or  
supplying, agreeing to supply,  
aiding in supplying, or giving  
away stone crab trap tags or  
certificates; making, altering,  
forging, counterfeiting, or  
reproducing stone crab trap  
tags; possession of forged,  
counterfeit, or imitation stone  
crab trap tags; and engaging in  
the commercial harvest of stone  
crabs while license is  
suspended or revoked.

2384

379.367(4)               3rd    Willful molestation of a  
commercial harvester's spiny  
lobster trap, line, or buoy.

2385

379.407(5)(b)3.       3rd    Possession of 100 or more  
undersized spiny lobsters.

2386

381.0041(11)(b)       3rd    Donate blood, plasma, or organs



194134

2387			knowing HIV positive.
	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
2388			
	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
2389			
	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
2390			
	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
2391			
	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
2392			
	790.01 (2)	3rd	Carrying a concealed firearm.
2393			
	790.162	2nd	Threat to throw or discharge destructive device.
2394			
	790.163 (1)	2nd	False report of bomb,



194134

2395			explosive, weapon of mass destruction, or use of firearms in violent manner.
2396	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
2397	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
2398	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
2399	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
2400	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
2401	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more



194134

2402			but less than \$50,000.
	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
2403			
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
2404			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
2405			
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
2406			
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
2407			
	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
2408			
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
2409			
	817.568(2)(b)	2nd	Fraudulent use of personal



194134

			identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
2410	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
2411	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
2412	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
2413	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
2414	827.071(5)	3rd	Possess, control, or intentionally view any



194134

2415			photographic material, motion picture, etc., which includes sexual conduct by a child.
2416	839.13 (2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
2417	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
2418	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
2419	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
2420	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.





194134

2421

874.05(2)(a) 2nd Encouraging or recruiting  
person under 13 years of age to  
join a criminal gang.

2422

893.13(1)(a)1. 2nd Sell, manufacture, or deliver  
cocaine (or other s.  
893.03(1)(a), (1)(b), (1)(d),  
(2)(a), (2)(b), or (2)(c)5.  
~~(2)(c)4.~~ drugs).

2423

893.13(1)(c)2. 2nd Sell, manufacture, or deliver  
cannabis (or other s.  
893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., ~~(2)(c)5.,~~  
(2)(c)6., (2)(c)7., (2)(c)8.,  
(2)(c)9., (2)(c)10., (3), or  
(4) drugs) within 1,000 feet of  
a child care facility, school,  
or state, county, or municipal  
park or publicly owned  
recreational facility or  
community center.

2424

893.13(1)(d)1. 1st Sell, manufacture, or deliver  
cocaine (or other s.  
893.03(1)(a), (1)(b), (1)(d),  
(2)(a), (2)(b), or (2)(c)5.  
~~(2)(c)4.~~ drugs) within 1,000



194134

2425

893.13(1)(e)2.            2nd    feet of university.  
Sell, manufacture, or deliver  
cannabis or other drug  
prohibited under s.  
893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., ~~(2)(e)5.~~,  
(2)(c)6., (2)(c)7., (2)(c)8.,  
(2)(c)9., (2)(c)10., (3), or  
(4) within 1,000 feet of  
property used for religious  
services or a specified  
business site.

2426

893.13(1)(f)1.            1st    Sell, manufacture, or deliver  
cocaine (or other s.  
893.03(1)(a), (1)(b), (1)(d),  
or (2)(a), (2)(b), or (2)(c)5.  
~~(2)(e)4.~~ drugs) within 1,000  
feet of public housing  
facility.

2427

893.13(4)(b)            2nd    Use or hire of minor; deliver  
to minor other controlled  
substance.

2428

893.1351(1)            3rd    Ownership, lease, or rental for  
trafficking in or manufacturing  
of controlled substance.



194134

2429

2430

2431 (g) LEVEL 7

2432

Florida  
Statute

Felony  
Degree

Description

2433

316.027(2)(c)

1st

Accident involving death,  
failure to stop; leaving  
scene.

2434

316.193(3)(c)2.

3rd

DUI resulting in serious  
bodily injury.

2435

316.1935(3)(b)

1st

Causing serious bodily  
injury or death to another  
person; driving at high  
speed or with wanton  
disregard for safety while  
fleeing or attempting to  
elude law enforcement  
officer who is in a patrol  
vehicle with siren and  
lights activated.

2436

327.35(3)(c)2.

3rd

Vessel BUI resulting in  
serious bodily injury.

2437

402.319(2)

2nd

Misrepresentation and



194134

2438			negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
2439			
	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
2440			
	456.065 (2)	3rd	Practicing a health care profession without a license.
2441			
	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
2442			
	458.327 (1)	3rd	Practicing medicine without a license.
2443			
	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
2444			



194134

2445	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
2446	461.012 (1)	3rd	Practicing podiatric medicine without a license.
2447	462.17	3rd	Practicing naturopathy without a license.
2448	463.015 (1)	3rd	Practicing optometry without a license.
2449	464.016 (1)	3rd	Practicing nursing without a license.
2450	465.015 (2)	3rd	Practicing pharmacy without a license.
2451	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
2452	467.201	3rd	Practicing midwifery without a license.
	468.366	3rd	Delivering respiratory care services without a



194134

2453			license.
	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
2454			
	483.901 (7)	3rd	Practicing medical physics without a license.
2455			
	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
2456			
	484.053	3rd	Dispensing hearing aids without a license.
2457			
	494.0018 (2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
2458			
	560.123 (8) (b) 1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.



194134

2459	560.125 (5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
2460	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
2461	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
2462	775.21 (10) (b)	3rd	Sexual predator working where children regularly congregate.
2463	775.21 (10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
2464			



194134

2465	782.051 (3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
2466	782.07 (1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
2467	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
2468	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
2469	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
	784.045 (1) (a) 2.	2nd	Aggravated battery; using





194134

2470			deadly weapon.
	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
2471			
	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
2472			
	784.048 (7)	3rd	Aggravated stalking; violation of court order.
2473			
	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
2474			
	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
2475			
	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
2476			
	784.081 (1)	1st	Aggravated battery on specified official or employee.
2477			
	784.082 (1)	1st	Aggravated battery by



194134

2478			detained person on visitor or other detainee.
	784.083(1)	1st	Aggravated battery on code inspector.
2479			
	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
2480			
	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
2481			
	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
2482			
	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
2483			
	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.



194134

2484	790.165 (3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
2485	790.166 (3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
2486	790.166 (4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
2487	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
2488	794.08 (4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18



194134

2489			years of age.
	796.05 (1)	1st	Live on earnings of a prostitute; 2nd offense.
2490			
	796.05 (1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
2491			
	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
2492			
	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
2493			
	800.04 (5) (e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.



194134

2494	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
2495	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
2496	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
2497	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
2498	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
2499	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
2500			



194134

2501	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
2502	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
2503	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
2504	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
2505	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
2506	812.131 (2) (a)	2nd	Robbery by sudden snatching.
	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other



194134

2507			weapon.
	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
2508			
	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
2509			
	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
2510			
	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
2511			
	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
2512			
	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.



194134

2513	817.611 (2) (b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
2514	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
2515	825.103 (3) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
2516	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
2517	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
2518	837.05 (2)	3rd	Giving false information





194134

2519			about alleged capital felony to a law enforcement officer.
2520	838.015	2nd	Bribery.
2521	838.016	2nd	Unlawful compensation or reward for official behavior.
2522	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
2523	838.22	2nd	Bid tampering.
2524	843.0855 (2)	3rd	Impersonation of a public officer or employee.
2525	843.0855 (3)	3rd	Unlawful simulation of legal process.
2526	843.0855 (4)	3rd	Intimidation of a public officer or employee.
2527	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.



194134

2528	847.0135 (4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
2529	872.06	2nd	Abuse of a dead human body.
2530	874.05 (2) (b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
2531	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
	893.13 (1) (c) 1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or <u>(2) (c) 5.</u> <del>(2) (c) 4.</del> ) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly



194134

2532	893.13(1)(e)1.	1st	owned recreational facility or community center.
2533	893.13(4)(a)	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or <u>(2)(c)5.</u> <del>(2)(e)4.</del> , within 1,000 feet of property used for religious services or a specified business site.
2534	893.135(1)(a)1.	1st	Use or hire of minor; deliver to minor other controlled substance.
2535	893.135 (1)(b)1.a.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
2536	893.135 (1)(c)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams,



194134

			less than 14 grams.
2537	893.135 (1) (c) 2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
2538	893.135 (1) (c) 2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
2539	893.135 (1) (c) 3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
2540	893.135 (1) (c) 3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
2541	893.135 (1) (c) 4.b. (I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
2542	893.135 (1) (d) 1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.
2543	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5



194134

2544			kilograms.
	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
2545			
	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
2546			
	893.135 (1) (h) 1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
2547			
	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4- Butanediol, 1 kilogram or more, less than 5 kilograms.
2548			
	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
2549			
	893.135 (1) (m) 2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
2550			



194134

2551	893.135 (1) (m) 2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.
2552	893.135 (1) (n) 2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
2553	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
2554	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
2555	896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
	943.0435 (4) (c)	2nd	Sexual offender vacating permanent residence;



194134

2556	943.0435 (8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
2557	943.0435 (9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
2558	943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2559	943.0435 (14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2560	944.607 (9)	3rd	Sexual offender; failure to comply with reporting requirements.



194134

2561	944.607(10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
2562	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2563	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2564	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
2565	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2566	985.4815(13)	3rd	Sexual offender; failure





194134

to report and reregister;  
failure to respond to  
address verification;  
providing false  
registration information.

2567  
2568  
2569  
2570  
2571  
2572  
2573  
2574  
2575  
2576  
2577  
2578  
2579  
2580  
2581  
2582  
2583  
2584  
2585  
2586  
2587  
2588  
2589  
2590

Section 20. For the 2018-2019 fiscal year:

(1) (a) The nonrecurring sum of \$27,035,360 from the Federal Grants Trust Fund, and the recurring sum of \$15,520,000 from the General Revenue Fund are appropriated to the Department of Children and Families. These funds shall be used for the following services to address opioid and other substance abuse disorders: outpatient, case management, and after care services; residential treatment; medication-assisted treatment, including the purchase and medical use of methadone, buprenorphine, and naltrexone extended-release injectable; peer recovery support; hospital and first responder outreach; and outreach targeted to pregnant women.

(b) From a total of \$4,720,000 of the recurring general revenue funds specified in paragraph (a), the Department of Children and Families shall contract with a nonprofit organization for the distribution and associated costs for the following drugs as part of its medication assisted treatment program for substance abuse disorders:

1. \$472,000 for methadone;
2. \$1,888,000 for buprenorphine; and
3. \$2,360,000 for naltrexone extended-release injectable.

(2) The recurring sum of \$6 million from the General



194134

2591 Revenue Fund is appropriated to the Office of the State Courts  
2592 Administrator for treatment of substance abuse disorders in  
2593 individuals involved in the criminal justice system, individuals  
2594 who have a high likelihood of criminal justice involvement, or  
2595 who are in court-ordered, community-based drug treatment. The  
2596 Office of the State Courts Administrator shall use the funds to  
2597 contract with a non-profit entity for the purpose of  
2598 distributing the medication. The Office of the State Courts  
2599 Administrator shall make available the following drugs:

- 2600 (a) \$600,000 for methadone;
- 2601 (b) \$2.4 million for buprenorphine; and
- 2602 (c) \$3 million for naltrexone extended-release injectable.
- 2603 (3) The recurring sum of \$5 million from the General

2604 Revenue Fund is appropriated to the Department of Health for the  
2605 purchase of naloxone to be made available to emergency  
2606 responders.

2607 Section 21. Except as otherwise expressly provided in this  
2608 act, this act shall take effect July 1, 2018.

2609  
2610 ===== T I T L E A M E N D M E N T =====

2611 And the title is amended as follows:

2612 Delete everything before the enacting clause  
2613 and insert:

2614 A bill to be entitled  
2615 An act relating to controlled substances; amending s.  
2616 409.967, F.S.; prohibiting managed care plans and  
2617 their fiscal agents or intermediaries from imposing  
2618 certain requirements or conditions on recipients as a  
2619 prerequisite to receiving medication-assisted



194134

2620 treatment (MAT) services to treat substance abuse  
2621 disorders; creating s. 456.0301, F.S.; authorizing  
2622 certain boards to require practitioners to complete a  
2623 specified board-approved continuing education course  
2624 to obtain authorization to prescribe controlled  
2625 substances as part of biennial license renewal;  
2626 providing exceptions; providing course requirements;  
2627 prohibiting the Department of Health from renewing a  
2628 license of a prescriber under specified circumstances;  
2629 requiring a licensee to submit confirmation of course  
2630 completion; providing for each licensing board  
2631 requiring such continuing education course to include  
2632 hours of completion with the total hours of continuing  
2633 education required in certain circumstances;  
2634 authorizing rulemaking; amending s. 456.072, F.S.;  
2635 authorizing disciplinary action against practitioners  
2636 for violating specified provisions relating to  
2637 controlled substances; amending s. 456.44, F.S.;  
2638 defining the term "acute pain"; requiring the  
2639 applicable boards to adopt rules establishing certain  
2640 guidelines for prescribing controlled substances for  
2641 acute pain; providing that failure of a practitioner  
2642 to follow specified guidelines is grounds for  
2643 disciplinary action; limiting opioid drug  
2644 prescriptions for the treatment of acute pain to a  
2645 specified period under certain circumstances;  
2646 authorizing prescriptions for such opioids for an  
2647 extended period if specified requirements are met;  
2648 amending ss. 458.3265 and 459.0137, F.S.; requiring



194134

2649 certain pain management clinic owners to register  
2650 approved exemptions with the department; requiring  
2651 certain clinics to obtain certificates of exemption;  
2652 providing requirements for such certificates;  
2653 requiring the department to adopt rules necessary to  
2654 administer such exemptions; amending ss. 465.0155 and  
2655 465.0276, F.S.; providing requirements for pharmacists  
2656 and practitioners for the dispensing of controlled  
2657 substances to persons not known to them; defining the  
2658 term "proper identification"; amending s. 627.42392,  
2659 F.S.; prohibiting a health insurer from imposing  
2660 certain requirements or conditions on insureds as a  
2661 prerequisite to receiving medication-assisted  
2662 treatment (MAT) services to treat substance abuse  
2663 disorders; amending s. 893.03, F.S.; conforming the  
2664 state controlled substances schedule to the federal  
2665 controlled substances schedule; amending s. 893.055,  
2666 F.S.; revising and providing definitions; revising  
2667 requirements for the prescription drug monitoring  
2668 program; authorizing rulemaking; requiring the  
2669 department to maintain an electronic system for  
2670 certain purposes which meets specified requirements;  
2671 requiring certain information to be reported to the  
2672 system by a specified time; specifying direct access  
2673 to system information; authorizing the department to  
2674 enter into reciprocal agreements or contracts to share  
2675 prescription drug monitoring information with certain  
2676 entities; providing requirements for such agreements;  
2677 authorizing the department to enter into agreements or



2678 contracts for secure connections with practitioner  
2679 electronic systems; requiring specified persons to  
2680 consult the system for certain purposes within a  
2681 specified time; providing exceptions to the duty of  
2682 specified persons to consult the system under certain  
2683 circumstances; authorizing the department to issue  
2684 citations to specified entities for failing to meet  
2685 certain requirements; prohibiting the failure to  
2686 report the dispensing of a controlled substance when  
2687 required to do so; providing penalties; authorizing  
2688 the department to enter into agreements or contracts  
2689 for specified purposes; providing for the release of  
2690 information obtained by the system; allowing specified  
2691 persons to have direct access to information for the  
2692 purpose of reviewing the controlled drug prescription  
2693 history of a patient; providing prescriber or  
2694 dispenser immunity from liability for review of  
2695 patient history when acting in good faith; providing  
2696 construction; prohibiting the department from  
2697 specified uses of funds; requiring the department to  
2698 conduct or participate in studies for specified  
2699 purposes; requiring an annual report to be submitted  
2700 to the Governor and Legislature by a specified date;  
2701 providing report requirements; authorizing the  
2702 department to establish a certain direct-support  
2703 organization for specified purposes; defining the term  
2704 "direct-support organization"; requiring a direct-  
2705 support organization to operate under written contract  
2706 with the department; providing contract requirements;



194134

2707 requiring the direct-support organization to obtain  
2708 written approval from the department for specified  
2709 purposes; authorizing the department to adopt certain  
2710 rules relating to resources used by the direct-support  
2711 organization; providing for an independent annual  
2712 financial audit by the direct-support organization;  
2713 providing that copies of such audit be provided to  
2714 specified entities; providing for future repeal of  
2715 provisions relating to the direct-support  
2716 organization; requiring the department to adopt rules  
2717 to implement the system; amending s. 893.0551, F.S.;  
2718 revising provisions concerning the release of  
2719 information held by the prescription drug monitoring  
2720 program; amending ss. 458.331, 459.015, 463.0055,  
2721 782.04, 893.13, 893.135, and 921.0022, F.S.;  
2722 correcting cross-references; conforming provisions to  
2723 changes made by the act; providing appropriations;  
2724 providing effective dates.

By Senator Benacquisto

27-00673-18

20188\_\_

1                                   A bill to be entitled  
2       An act relating to controlled substances; creating s.  
3       456.0301, F.S.; authorizing certain boards to require  
4       practitioners to complete a specified board-approved  
5       continuing education course to obtain authorization to  
6       prescribe controlled substances as part of biennial  
7       renewal; providing exceptions; providing course  
8       requirements; prohibiting the department from renewing  
9       a license of a prescriber under specified  
10      circumstances; requiring a licensee to submit  
11      confirmation of course completion; providing for each  
12      licensing board requiring such continuing education  
13      course to include hours of completion with the total  
14      hours of continuing education required in certain  
15      circumstances; authorizing rulemaking; amending s.  
16      456.072, F.S.; authorizing disciplinary action against  
17      practitioners for violating specified provisions  
18      relating to controlled substances; amending s. 456.44,  
19      F.S.; defining the term "acute pain"; providing for  
20      the adoption of standards of practice for the  
21      treatment of acute pain; providing that failure of a  
22      practitioner to follow specified guidelines is grounds  
23      for disciplinary action; limiting opioid prescriptions  
24      for the treatment of acute pain to a specified period  
25      under certain circumstances; authorizing prescriptions  
26      for such opioids for an extended period if specified  
27      requirements are met; amending ss. 458.3265 and  
28      459.0137, F.S.; requiring certain pain management  
29      clinic owners to register approved exemptions with the

27-00673-18

20188\_\_

30 department; requiring certain clinics to obtain  
31 certificates of exemption; providing requirements for  
32 such certificates; authorizing rulemaking relating to  
33 specified exemptions; amending ss. 465.0155 and  
34 465.0276, F.S.; providing requirements for pharmacists  
35 and practitioners for the dispensing of controlled  
36 substances to persons not known to them; defining the  
37 term "proper identification"; amending s. 893.03,  
38 F.S.; conforming the state controlled substances  
39 schedule to the federal controlled substances  
40 schedule; amending s. 893.055, F.S.; revising and  
41 providing definitions; revising requirements for the  
42 prescription drug monitoring program; authorizing  
43 rulemaking; requiring the department to maintain an  
44 electronic system for certain purposes to meet  
45 specified requirements; requiring certain information  
46 to be reported to the system by a specified time;  
47 specifying direct access to system information;  
48 authorizing the department to enter into reciprocal  
49 agreements or contracts to share prescription drug  
50 monitoring information with certain entities;  
51 providing requirements for such agreements;  
52 authorizing the department to enter into agreements or  
53 contracts for secure connections with practitioner  
54 electronic systems; requiring specified persons to  
55 consult the system for certain purposes within a  
56 specified time; providing exceptions to the duty of  
57 specified persons to consult the system under certain  
58 circumstances; authorizing the department to issue



27-00673-18

20188\_\_

59 nondisciplinary citations to specified entities for  
60 failing to meet certain requirements; prohibiting the  
61 failure to report the dispensing of a controlled  
62 substance when required to do so; providing penalties;  
63 authorizing the department to enter into agreements or  
64 contracts for specified purposes; providing for the  
65 release of information obtained by the system;  
66 allowing specified persons to have direct access to  
67 information for the purpose of reviewing the  
68 controlled drug prescription history of a patient;  
69 providing prescriber or dispenser immunity from  
70 liability for review of patient history when acting in  
71 good faith; providing construction; prohibiting the  
72 department from specified uses of funds; authorizing  
73 the department to conduct or participate in studies  
74 for specified purposes; requiring an annual report to  
75 be submitted to the Governor and Legislature by a  
76 specified date; providing report requirements;  
77 providing exemptions; establishing direct-support  
78 organizations for specified purposes; defining the  
79 term "direct-support organization"; requiring a  
80 direct-support organization to operate under written  
81 contract with the department; providing contract  
82 requirements; requiring the direct-support  
83 organization to obtain written approval from the  
84 department for specified purposes; authorizing  
85 rulemaking; providing for an independent annual  
86 financial audit by the direct-support organization;  
87 providing that copies of such audit be provided to

27-00673-18

20188\_\_

88 specified entities; providing for future repeal of  
89 provisions relating to the direct-support  
90 organization; amending s. 893.0551, F.S.; revising  
91 provisions concerning release of information held by  
92 the prescription drug monitoring program; amending ss.  
93 458.331, 459.015, 463.0055, 782.04, 893.13, 893.135,  
94 and 921.0022, F.S.; correcting cross-references;  
95 conforming provisions to changes made by the act;  
96 providing effective dates.

97

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

99

100 Section 1. Section 456.0301, Florida Statutes, is created  
101 to read:

102 456.0301 Requirement for instruction on controlled  
103 substance prescribing.-

104 (1) (a) If not already required by the licensee's practice  
105 act, the appropriate board shall require each person registered  
106 with the United States Drug Enforcement Administration and  
107 authorized to prescribe controlled substances pursuant to 21  
108 U.S.C. s. 822 to complete a board-approved 2-hour continuing  
109 education course on prescribing controlled substances as part of  
110 biennial renewal. The course must include information on the  
111 current standards regarding for prescribing controlled  
112 substances, particularly opiates, alternatives to these  
113 standards, and information on the risks of opioid addiction  
114 following all stages of treatment in the management of acute  
115 pain. The course may be offered in a distance learning format  
116 and must be included within the number of continuing education

27-00673-18

20188\_\_

117 hours required by law. The department may not renew the license  
118 of any prescriber registered with the United States Drug  
119 Enforcement Administration to prescribe controlled substances  
120 that has failed to complete the course. When required by this  
121 paragraph, the course shall be completed by January 31, 2019,  
122 and at each subsequent renewal.

123 (b) Each such licensee shall submit confirmation of having  
124 completed such course when applying for biennial renewal.

125 (c) Each licensing board that requires a licensee to  
126 complete an educational course pursuant to this subsection may  
127 include the hours required for completion of the course in the  
128 total hours of continuing education required by law for such  
129 profession unless the continuing education requirements for such  
130 profession consist of fewer than 30 hours biennially.

131 (2) Each board may adopt rules to administer this section.

132 Section 2. Paragraph (gg) of subsection (1) of section  
133 456.072, Florida Statutes, is amended to read:

134 456.072 Grounds for discipline; penalties; enforcement.—

135 (1) The following acts shall constitute grounds for which  
136 the disciplinary actions specified in subsection (2) may be  
137 taken:

138 (gg) Engaging in a pattern of practice when prescribing  
139 medicinal drugs or controlled substances which demonstrates a  
140 lack of reasonable skill or safety to patients, a violation of  
141 any provision of this chapter or ss. 893.055 and 893.0551, a  
142 violation of the applicable practice act, or a violation of any  
143 rules adopted under this chapter or the applicable practice act  
144 of the prescribing practitioner. Notwithstanding s. 456.073(13),  
145 the department may initiate an investigation and establish such

27-00673-18

20188\_\_

146 a pattern from billing records, data, or any other information  
147 obtained by the department.

148 Section 3. Paragraphs (a) through (g) of subsection (1) of  
149 section 456.44, Florida Statutes, are redesignated as paragraphs  
150 (b) through (h), respectively, a new paragraph (a) is added to  
151 that subsection, subsection (3) is amended, and subsections (4)  
152 and (5) are added to that section, to read:

153 456.44 Controlled substance prescribing.—

154 (1) DEFINITIONS.—As used in this section, the term:

155 (a) "Acute pain" means the normal, predicted,  
156 physiological, and time-limited response to an adverse chemical,  
157 thermal, or mechanical stimulus associated with surgery, trauma,  
158 or acute illness.

159 (3) STANDARDS OF PRACTICE FOR TREATMENT OF CHRONIC  
160 NONMALIGNANT PAIN.—The standards of practice in this section do  
161 not supersede the level of care, skill, and treatment recognized  
162 in general law related to health care licensure.

163 (a) A complete medical history and a physical examination  
164 must be conducted before beginning any treatment and must be  
165 documented in the medical record. The exact components of the  
166 physical examination shall be left to the judgment of the  
167 registrant who is expected to perform a physical examination  
168 proportionate to the diagnosis that justifies a treatment. The  
169 medical record must, at a minimum, document the nature and  
170 intensity of the pain, current and past treatments for pain,  
171 underlying or coexisting diseases or conditions, the effect of  
172 the pain on physical and psychological function, a review of  
173 previous medical records, previous diagnostic studies, and  
174 history of alcohol and substance abuse. The medical record shall

27-00673-18

20188\_\_

175 also document the presence of one or more recognized medical  
176 indications for the use of a controlled substance. Each  
177 registrant must develop a written plan for assessing each  
178 patient's risk of aberrant drug-related behavior, which may  
179 include patient drug testing. Registrants must assess each  
180 patient's risk for aberrant drug-related behavior and monitor  
181 that risk on an ongoing basis in accordance with the plan.

182 (b) Each registrant must develop a written individualized  
183 treatment plan for each patient. The treatment plan shall state  
184 objectives that will be used to determine treatment success,  
185 such as pain relief and improved physical and psychosocial  
186 function, and shall indicate if any further diagnostic  
187 evaluations or other treatments are planned. After treatment  
188 begins, the registrant shall adjust drug therapy to the  
189 individual medical needs of each patient. Other treatment  
190 modalities, including a rehabilitation program, shall be  
191 considered depending on the etiology of the pain and the extent  
192 to which the pain is associated with physical and psychosocial  
193 impairment. The interdisciplinary nature of the treatment plan  
194 shall be documented.

195 (c) The registrant shall discuss the risks and benefits of  
196 the use of controlled substances, including the risks of abuse  
197 and addiction, as well as physical dependence and its  
198 consequences, with the patient, persons designated by the  
199 patient, or the patient's surrogate or guardian if the patient  
200 is incompetent. The registrant shall use a written controlled  
201 substance agreement between the registrant and the patient  
202 outlining the patient's responsibilities, including, but not  
203 limited to:

27-00673-18

20188\_\_

204 1. Number and frequency of controlled substance  
205 prescriptions and refills.

206 2. Patient compliance and reasons for which drug therapy  
207 may be discontinued, such as a violation of the agreement.

208 3. An agreement that controlled substances for the  
209 treatment of chronic nonmalignant pain shall be prescribed by a  
210 single treating registrant unless otherwise authorized by the  
211 treating registrant and documented in the medical record.

212 (d) The patient shall be seen by the registrant at regular  
213 intervals, not to exceed 3 months, to assess the efficacy of  
214 treatment, ensure that controlled substance therapy remains  
215 indicated, evaluate the patient's progress toward treatment  
216 objectives, consider adverse drug effects, and review the  
217 etiology of the pain. Continuation or modification of therapy  
218 shall depend on the registrant's evaluation of the patient's  
219 progress. If treatment goals are not being achieved, despite  
220 medication adjustments, the registrant shall reevaluate the  
221 appropriateness of continued treatment. The registrant shall  
222 monitor patient compliance in medication usage, related  
223 treatment plans, controlled substance agreements, and  
224 indications of substance abuse or diversion at a minimum of 3-  
225 month intervals.

226 (e) The registrant shall refer the patient as necessary for  
227 additional evaluation and treatment in order to achieve  
228 treatment objectives. Special attention shall be given to those  
229 patients who are at risk for misusing their medications and  
230 those whose living arrangements pose a risk for medication  
231 misuse or diversion. The management of pain in patients with a  
232 history of substance abuse or with a comorbid psychiatric

27-00673-18

20188\_\_

233 disorder requires extra care, monitoring, and documentation and  
234 requires consultation with or referral to an addiction medicine  
235 specialist or a psychiatrist.

236 (f) A registrant must maintain accurate, current, and  
237 complete records that are accessible and readily available for  
238 review and comply with the requirements of this section, the  
239 applicable practice act, and applicable board rules. The medical  
240 records must include, but are not limited to:

241 1. The complete medical history and a physical examination,  
242 including history of drug abuse or dependence.

243 2. Diagnostic, therapeutic, and laboratory results.

244 3. Evaluations and consultations.

245 4. Treatment objectives.

246 5. Discussion of risks and benefits.

247 6. Treatments.

248 7. Medications, including date, type, dosage, and quantity  
249 prescribed.

250 8. Instructions and agreements.

251 9. Periodic reviews.

252 10. Results of any drug testing.

253 11. A photocopy of the patient's government-issued photo  
254 identification.

255 12. If a written prescription for a controlled substance is  
256 given to the patient, a duplicate of the prescription.

257 13. The registrant's full name presented in a legible  
258 manner.

259 (g) A registrant shall immediately refer patients with  
260 signs or symptoms of substance abuse to a board-certified pain  
261 management physician, an addiction medicine specialist, or a

27-00673-18

20188\_\_

262 mental health addiction facility as it pertains to drug abuse or  
263 addiction unless the registrant is a physician who is board-  
264 certified or board-eligible in pain management. Throughout the  
265 period of time before receiving the consultant's report, a  
266 prescribing registrant shall clearly and completely document  
267 medical justification for continued treatment with controlled  
268 substances and those steps taken to ensure medically appropriate  
269 use of controlled substances by the patient. Upon receipt of the  
270 consultant's written report, the prescribing registrant shall  
271 incorporate the consultant's recommendations for continuing,  
272 modifying, or discontinuing controlled substance therapy. The  
273 resulting changes in treatment shall be specifically documented  
274 in the patient's medical record. Evidence or behavioral  
275 indications of diversion shall be followed by discontinuation of  
276 controlled substance therapy, and the patient shall be  
277 discharged, and all results of testing and actions taken by the  
278 registrant shall be documented in the patient's medical record.

279  
280 This subsection does not apply to a board-eligible or board-  
281 certified anesthesiologist, physiatrist, rheumatologist, or  
282 neurologist, or to a board-certified physician who has surgical  
283 privileges at a hospital or ambulatory surgery center and  
284 primarily provides surgical services. This subsection does not  
285 apply to a board-eligible or board-certified medical specialist  
286 who has also completed a fellowship in pain medicine approved by  
287 the Accreditation Council for Graduate Medical Education or the  
288 American Osteopathic Association, or who is board eligible or  
289 board certified in pain medicine by the American Board of Pain  
290 Medicine, the American Board of Interventional Pain Physicians,



27-00673-18

20188\_\_

291 the American Association of Physician Specialists, or a board  
292 approved by the American Board of Medical Specialties or the  
293 American Osteopathic Association and performs interventional  
294 pain procedures of the type routinely billed using surgical  
295 codes. This subsection does not apply to a registrant who  
296 prescribes medically necessary controlled substances for a  
297 patient during an inpatient stay in a hospital licensed under  
298 chapter 395.

299 (4) STANDARDS OF PRACTICE FOR TREATMENT OF ACUTE PAIN.—The  
300 department shall adopt rules establishing guidelines for  
301 prescribing controlled substances for acute pain, including  
302 evaluation of the patient, creation of a treatment plan,  
303 obtaining informed consent and agreement for treatment, periodic  
304 review of the treatment plan, consultation, medical record  
305 review, and compliance with controlled substance laws and  
306 regulations. Failure of a prescriber to follow such guidelines  
307 constitutes grounds for disciplinary action pursuant to s.  
308 456.072(1)(gg), punishable as provided in s. 456.072(2).

309 (5) PRESCRIPTION SUPPLY.—

310 (a) Except as provided in paragraph (b), a prescription for  
311 a Schedule II opioid, as defined in s. 893.03 or 21 U.S.C. s.  
312 812, for the treatment of acute pain must not exceed a 3-day  
313 supply.

314 (b) An up to 7-day supply of an opioid described in  
315 paragraph (a) may be prescribed if:

316 1. The practitioner, in his or her professional judgment,  
317 believes that more than a 3-day supply of such an opioid is  
318 medically necessary to treat the patient's pain as an acute  
319 medical condition.

27-00673-18

20188\_\_

320           2. The practitioner indicates "MEDICALLY NECESSARY" on the  
321 prescription.

322           3. The prescriber adequately documents in the patient's  
323 medical records the acute medical condition and lack of  
324 alternative treatment options that justify deviation from the 3-  
325 day supply limit established in this subsection.

326           Section 4. Effective January 1, 2019, subsections (2)  
327 through (5) of section 458.3265, Florida Statutes, are  
328 renumbered as subsections (3) through (6), respectively,  
329 paragraphs (a) and (g) of subsection (1), paragraph (a) of  
330 present subsection (2), paragraph (a) of present subsection (3),  
331 and paragraph (a) of present subsection (4) are amended, and a  
332 new subsection (2) is added to that section, to read:

333           458.3265 Pain-management clinics.—

334           (1) REGISTRATION.—

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

336           a. "Board eligible" means successful completion of an  
337 anesthesia, physical medicine and rehabilitation, rheumatology,  
338 or neurology residency program approved by the Accreditation  
339 Council for Graduate Medical Education or the American  
340 Osteopathic Association for a period of 6 years from successful  
341 completion of such residency program.

342           b. "Chronic nonmalignant pain" means pain unrelated to  
343 cancer which persists beyond the usual course of disease or the  
344 injury that is the cause of the pain or more than 90 days after  
345 surgery.

346           c. "Pain-management clinic" or "clinic" means any publicly  
347 or privately owned facility:

348           (I) That advertises in any medium for any type of pain-

27-00673-18

20188\_\_

349 management services; or

350 (II) Where in any month a majority of patients are  
351 prescribed opioids, benzodiazepines, barbiturates, or  
352 carisoprodol for the treatment of chronic nonmalignant pain.

353 2. Each pain-management clinic must register with the  
354 department or hold a valid certificate of exemption pursuant to  
355 subsection (2). unless:

356 3. The following clinics are exempt from the registration  
357 requirement of paragraphs (c)-(m), and must apply to the  
358 department for a certificate of exemption:

359 a. A ~~The~~ clinic ~~is~~ licensed as a facility pursuant to  
360 chapter 395;

361 b. A clinic in which the majority of the physicians who  
362 provide services in the clinic primarily provide surgical  
363 services;

364 c. A ~~The~~ clinic ~~is~~ owned by a publicly held corporation  
365 whose shares are traded on a national exchange or on the over-  
366 the-counter market and whose total assets at the end of the  
367 corporation's most recent fiscal quarter exceeded \$50 million;

368 d. A ~~The~~ clinic ~~is~~ affiliated with an accredited medical  
369 school at which training is provided for medical students,  
370 residents, or fellows;

371 e. A ~~The~~ clinic that does not prescribe controlled  
372 substances for the treatment of pain;

373 f. A ~~The~~ clinic ~~is~~ owned by a corporate entity exempt from  
374 federal taxation under 26 U.S.C. s. 501(c)(3);

375 g. A ~~The~~ clinic ~~is~~ wholly owned and operated by one or more  
376 board-eligible or board-certified anesthesiologists,  
377 physiatrists, rheumatologists, or neurologists; or

27-00673-18

20188\_\_

378 h. A ~~The~~ clinic ~~is~~ wholly owned and operated by a physician  
379 multispecialty practice where one or more board-eligible or  
380 board-certified medical specialists, who have also completed  
381 fellowships in pain medicine approved by the Accreditation  
382 Council for Graduate Medical Education or who are also board-  
383 certified in pain medicine by the American Board of Pain  
384 Medicine or a board approved by the American Board of Medical  
385 Specialties, the American Association of Physician Specialists,  
386 or the American Osteopathic Association, perform interventional  
387 pain procedures of the type routinely billed using surgical  
388 codes.

389 (g) The department may revoke the clinic's certificate of  
390 registration and prohibit all physicians associated with that  
391 pain-management clinic from practicing at that clinic location  
392 based upon an annual inspection and evaluation of the factors  
393 described in subsection (4)~~(3)~~.

394 (2) CERTIFICATE OF EXEMPTION.-

395 (a) A pain management clinic claiming an exemption from the  
396 registration requirements of subsection (1), must apply for a  
397 certificate of exemption on a form adopted in rule by the  
398 department. The form shall require the applicant to provide:

399 1. The name or names under which the applicant does  
400 business.

401 2. The address at which the pain management clinic is  
402 located.

403 3. The specific exemption the applicant is claiming with  
404 supporting documentation.

405 4. Any other information deemed necessary by the  
406 department.

27-00673-18

20188\_\_

407 (b) Within 30 days after the receipt of a complete  
408 application, the department must approve or deny the  
409 application.

410 (c) The certificate of exemption must be renewed  
411 biennially, except that the department may issue the initial  
412 certificates of exemption for up to 3 years in order to stagger  
413 renewal dates.

414 (d) A certificateholder must prominently display the  
415 certificate of exemption and make it available to the department  
416 or the board upon request.

417 (e) A certificate of exemption is not movable or  
418 transferable. A certificate of exemption is valid only for the  
419 applicant, qualifying owners, licenses, registrations,  
420 certifications, and services provided under a specific statutory  
421 exemption and is valid only to the specific exemption claimed  
422 and granted.

423 (f) A certificateholder must notify the department at least  
424 60 days before any anticipated relocation or name change of the  
425 pain management clinic or a change of ownership.

426 (g) If a pain management clinic no longer qualifies for a  
427 certificate of exemption, the certificateholder must immediately  
428 notify the department and register as a pain management clinic  
429 under subsection (1).

430 (3)-(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities  
431 apply to any physician who provides professional services in a  
432 pain-management clinic that is required to be registered in  
433 subsection (1).

434 (a) A physician may not practice medicine in a pain-  
435 management clinic, as described in subsection (5)-(4), if the

27-00673-18

20188\_\_

436 pain-management clinic is not registered with the department as  
437 required by this section. Any physician who qualifies to  
438 practice medicine in a pain-management clinic pursuant to rules  
439 adopted by the Board of Medicine as of July 1, 2012, may  
440 continue to practice medicine in a pain-management clinic as  
441 long as the physician continues to meet the qualifications set  
442 forth in the board rules. A physician who violates this  
443 paragraph is subject to disciplinary action by his or her  
444 appropriate medical regulatory board.

445 (4)~~(3)~~ INSPECTION.—

446 (a) The department shall inspect the pain-management clinic  
447 annually, including a review of the patient records, to ensure  
448 that it complies with this section and the rules of the Board of  
449 Medicine adopted pursuant to subsection (5)~~(4)~~ unless the clinic  
450 is accredited by a nationally recognized accrediting agency  
451 approved by the Board of Medicine.

452 (5)~~(4)~~ RULEMAKING.—

453 (a) The department shall adopt rules necessary to  
454 administer the registration, exemption, and inspection of pain-  
455 management clinics which establish the specific requirements,  
456 procedures, forms, and fees.

457 Section 5. Effective January 1, 2019, subsections (2)  
458 through (5) of section 459.0137, Florida Statutes, are  
459 renumbered as subsections (3) through (6), respectively,  
460 paragraphs (a) and (g) of subsection (1), paragraph (a) of  
461 present subsection (2), paragraph (a) of present subsection (3),  
462 and paragraph (a) of present subsection (4) are amended, and a  
463 new subsection (2) is added to that section, to read:

464 459.0137 Pain-management clinics.—

27-00673-18

20188\_\_

465 (1) REGISTRATION.—

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

467 a. "Board eligible" means successful completion of an  
 468 anesthesia, physical medicine and rehabilitation, rheumatology,  
 469 or neurology residency program approved by the Accreditation  
 470 Council for Graduate Medical Education or the American  
 471 Osteopathic Association for a period of 6 years from successful  
 472 completion of such residency program.

473 b. "Chronic nonmalignant pain" means pain unrelated to  
 474 cancer which persists beyond the usual course of disease or the  
 475 injury that is the cause of the pain or more than 90 days after  
 476 surgery.

477 c. "Pain-management clinic" or "clinic" means any publicly  
 478 or privately owned facility:

479 (I) That advertises in any medium for any type of pain-  
 480 management services; or

481 (II) Where in any month a majority of patients are  
 482 prescribed opioids, benzodiazepines, barbiturates, or  
 483 carisoprodol for the treatment of chronic nonmalignant pain.

484 2. Each pain-management clinic must register with the  
 485 department or hold a valid certificate of exemption pursuant to  
 486 subsection (2). ~~unless:~~

487 3. The following clinics are exempt from the registration  
 488 requirement of paragraphs (c)-(m), and must apply to the  
 489 department for a certificate of exemption:

490 a. A ~~That~~ clinic ~~is~~ licensed as a facility pursuant to  
 491 chapter 395;

492 b. A clinic in which the majority of the physicians who  
 493 provide services in the clinic primarily provide surgical

27-00673-18

20188\_\_

494 services;

495 c. A ~~The clinic is~~ owned by a publicly held corporation  
496 whose shares are traded on a national exchange or on the over-  
497 the-counter market and whose total assets at the end of the  
498 corporation's most recent fiscal quarter exceeded \$50 million;

499 d. A ~~The clinic is~~ affiliated with an accredited medical  
500 school at which training is provided for medical students,  
501 residents, or fellows;

502 e. A ~~The clinic~~ that does not prescribe controlled  
503 substances for the treatment of pain;

504 f. A ~~The clinic is~~ owned by a corporate entity exempt from  
505 federal taxation under 26 U.S.C. s. 501(c)(3);

506 g. A ~~The clinic is~~ wholly owned and operated by one or more  
507 board-eligible or board-certified anesthesiologists,  
508 physiatrists, rheumatologists, or neurologists; or

509 h. A ~~The clinic is~~ wholly owned and operated by a physician  
510 multispecialty practice where one or more board-eligible or  
511 board-certified medical specialists, who have also completed  
512 fellowships in pain medicine approved by the Accreditation  
513 Council for Graduate Medical Education or the American  
514 Osteopathic Association or who are also board-certified in pain  
515 medicine by the American Board of Pain Medicine or a board  
516 approved by the American Board of Medical Specialties, the  
517 American Association of Physician Specialists, or the American  
518 Osteopathic Association, perform interventional pain procedures  
519 of the type routinely billed using surgical codes.

520 (g) The department may revoke the clinic's certificate of  
521 registration and prohibit all physicians associated with that  
522 pain-management clinic from practicing at that clinic location



27-00673-18

20188\_\_

523 based upon an annual inspection and evaluation of the factors  
524 described in subsection ~~(4)~~~~(3)~~.

525 (2) CERTIFICATE OF EXEMPTION.-

526 (a) A pain management clinic claiming an exemption from the  
527 registration requirements of subsection (1), must apply for a  
528 certificate of exemption on a form adopted in rule by the  
529 department. The form shall require the applicant to provide:

530 1. The name or names under which the applicant does  
531 business.

532 2. The address at which the pain management clinic is  
533 located.

534 3. The specific exemption the applicant is claiming with  
535 supporting documentation.

536 4. Any other information deemed necessary by the  
537 department.

538 (b) Within 30 days after the receipt of a complete  
539 application, the department must approve or deny the  
540 application.

541 (c) The certificate of exemption must be renewed  
542 biennially, except that the department may issue the initial  
543 certificates of exemption for up to 3 years in order to stagger  
544 renewal dates.

545 (d) A certificateholder must prominently display the  
546 certificate of exemption and make it available to the department  
547 or the board upon request.

548 (e) A certificate of exemption is not movable or  
549 transferable. A certificate of exemption is valid only for the  
550 applicant, qualifying owners, licenses, registrations,  
551 certifications, and services provided under a specific statutory

27-00673-18

20188\_\_

552 exemption and is valid only to the specific exemption claimed  
553 and granted.

554 (f) A certificateholder must notify the department at least  
555 60 days before any anticipated relocation or name change of the  
556 pain management clinic or a change of ownership.

557 (g) If a pain management clinic no longer qualifies for a  
558 certificate of exemption, the certificateholder must immediately  
559 notify the department and register as a pain management clinic  
560 under subsection (1).

561 (3)-(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities  
562 apply to any osteopathic physician who provides professional  
563 services in a pain-management clinic that is required to be  
564 registered in subsection (1).

565 (a) An osteopathic physician may not practice medicine in a  
566 pain-management clinic, as described in subsection (5)-(4), if  
567 the pain-management clinic is not registered with the department  
568 as required by this section. Any physician who qualifies to  
569 practice medicine in a pain-management clinic pursuant to rules  
570 adopted by the Board of Osteopathic Medicine as of July 1, 2012,  
571 may continue to practice medicine in a pain-management clinic as  
572 long as the physician continues to meet the qualifications set  
573 forth in the board rules. An osteopathic physician who violates  
574 this paragraph is subject to disciplinary action by his or her  
575 appropriate medical regulatory board.

576 (4)-(3) INSPECTION.—

577 (a) The department shall inspect the pain-management clinic  
578 annually, including a review of the patient records, to ensure  
579 that it complies with this section and the rules of the Board of  
580 Osteopathic Medicine adopted pursuant to subsection (5)-(4)

27-00673-18

20188\_\_

581 unless the clinic is accredited by a nationally recognized  
582 accrediting agency approved by the Board of Osteopathic  
583 Medicine.

584 (5)~~(4)~~ RULEMAKING.—

585 (a) The department shall adopt rules necessary to  
586 administer the registration, exemption, and inspection of pain-  
587 management clinics which establish the specific requirements,  
588 procedures, forms, and fees.

589 Section 6. Section 465.0155, Florida Statutes, is amended  
590 to read:

591 465.0155 Standards of practice.—

592 (1) Consistent with the provisions of this act, the board  
593 shall adopt by rule standards of practice relating to the  
594 practice of pharmacy which shall be binding on every state  
595 agency and shall be applied by such agencies when enforcing or  
596 implementing any authority granted by any applicable statute,  
597 rule, or regulation, whether federal or state.

598 (2) (a) Before dispensing a controlled substance to a person  
599 not known to the pharmacist, the pharmacist must require the  
600 person purchasing, receiving, or otherwise acquiring the  
601 controlled substance to present valid photographic  
602 identification or other verification of his or her identity. If  
603 the person does not have proper identification, the pharmacist  
604 may verify the validity of the prescription and the identity of  
605 the patient with the prescriber or his or her authorized agent.  
606 Verification of health plan eligibility through a real-time  
607 inquiry or adjudication system is considered to be proper  
608 identification.

609 (b) This subsection does not apply in an institutional

27-00673-18

20188\_\_

610 setting or to a long-term care facility, including, but not  
611 limited to, an assisted living facility or a hospital to which  
612 patients are admitted.

613 (c) As used in this subsection, the term "proper  
614 identification" means an identification that is issued by a  
615 state or the Federal Government containing the person's  
616 photograph, printed name, and signature or a document considered  
617 acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

618 Section 7. Paragraph (d) is added to subsection (2) of  
619 section 465.0276, Florida Statutes, to read:

620 465.0276 Dispensing practitioner.—

621 (2) A practitioner who dispenses medicinal drugs for human  
622 consumption for fee or remuneration of any kind, whether direct  
623 or indirect, must:

624 (d)1. Before dispensing a controlled substance to a person  
625 not known to the dispenser, require the person purchasing,  
626 receiving, or otherwise acquiring the controlled substance to  
627 present valid photographic identification or other verification  
628 of his or her identity. If the person does not have proper  
629 identification, the dispenser may verify the validity of the  
630 prescription and the identity of the patient with the prescriber  
631 or his or her authorized agent. Verification of health plan  
632 eligibility through a real-time inquiry or adjudication system  
633 is considered to be proper identification.

634 2. This paragraph does not apply in an institutional  
635 setting or to a long-term care facility, including, but not  
636 limited to, an assisted living facility or a hospital to which  
637 patients are admitted.

638 3. As used in this paragraph, the term "proper

27-00673-18

20188\_\_

639 identification" means an identification that is issued by a  
640 state or the Federal Government containing the person's  
641 photograph, printed name, and signature or a document considered  
642 acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

643 Section 8. Subsections (2), (3), (4), and (5) of section  
644 893.03, Florida Statutes, are amended to read:

645 893.03 Standards and schedules.—The substances enumerated  
646 in this section are controlled by this chapter. The controlled  
647 substances listed or to be listed in Schedules I, II, III, IV,  
648 and V are included by whatever official, common, usual,  
649 chemical, trade name, or class designated. The provisions of  
650 this section shall not be construed to include within any of the  
651 schedules contained in this section any excluded drugs listed  
652 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
653 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
654 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
655 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
656 Anabolic Steroid Products."

657 (2) SCHEDULE II.—A substance in Schedule II has a high  
658 potential for abuse and has a currently accepted but severely  
659 restricted medical use in treatment in the United States, and  
660 abuse of the substance may lead to severe psychological or  
661 physical dependence. The following substances are controlled in  
662 Schedule II:

663 (a) Unless specifically excepted or unless listed in  
664 another schedule, any of the following substances, whether  
665 produced directly or indirectly by extraction from substances of  
666 vegetable origin or independently by means of chemical  
667 synthesis:

27-00673-18

20188\_\_

668 1. Opium and any salt, compound, derivative, or preparation  
669 of opium, except nalmefene or isoquinoline alkaloids of opium,  
670 including, but not limited to the following:

671 a. Raw opium.

672 b. Opium extracts.

673 c. Opium fluid extracts.

674 d. Powdered opium.

675 e. Granulated opium.

676 f. Tincture of opium.

677 g. Codeine.

678 h. Dihydroetorphine.

679 i.~~h.~~ Ethylmorphine.

680 j.~~i.~~ Etorphine hydrochloride.

681 k.~~j.~~ Hydrocodone and hydrocodone combination products.

682 l.~~k.~~ Hydromorphone.

683 m.~~l.~~ Levo-alphaacetylmethadol (also known as levo-alpha-  
684 acetylmethadol, levomethadyl acetate, or LAAM).

685 n.~~m.~~ Metopon (methyldihydromorphinone).

686 o.~~n.~~ Morphine.

687 p. Oripavine.

688 q.~~o.~~ Oxycodone.

689 r.~~p.~~ Oxymorphone.

690 s.~~q.~~ Thebaine.

691 2. Any salt, compound, derivative, or preparation of a  
692 substance which is chemically equivalent to or identical with  
693 any of the substances referred to in subparagraph 1., except  
694 that these substances shall not include the isoquinoline  
695 alkaloids of opium.

696 3. Any part of the plant of the species *Papaver somniferum*,

27-00673-18

20188\_\_

697 L.

698 4. Cocaine or ecgonine, including any of their  
699 stereoisomers, and any salt, compound, derivative, or  
700 preparation of cocaine or ecgonine, except that these substances  
701 shall not include ioflupane I 123.

702 (b) Unless specifically excepted or unless listed in  
703 another schedule, any of the following substances, including  
704 their isomers, esters, ethers, salts, and salts of isomers,  
705 esters, and ethers, whenever the existence of such isomers,  
706 esters, ethers, and salts is possible within the specific  
707 chemical designation:

- 708 1. Alfentanil.
- 709 2. Alphaprodine.
- 710 3. Anileridine.
- 711 4. Bezitramide.
- 712 5. Bulk propoxyphene (nondosage forms).
- 713 6. Carfentanil.
- 714 7. Dihydrocodeine.
- 715 8. Diphenoxylate.
- 716 9. Fentanyl.
- 717 10. Isomethadone.
- 718 11. Levomethorphan.
- 719 12. Levorphanol.
- 720 13. Metazocine.
- 721 14. Methadone.
- 722 15. Methadone-Intermediate, 4-cyano-2-  
723 dimethylamino-4,4-diphenylbutane.
- 724 16. Moramide-Intermediate, 2-methyl-  
725 3-morpholino-1,1-diphenylpropane-carboxylic acid.

27-00673-18

20188\_\_

- 726 17. Nabilone.
- 727 18. Pethidine (meperidine).
- 728 19. Pethidine-Intermediate-A,4-cyano-1-
- 729 methyl-4-phenylpiperidine.
- 730 20. Pethidine-Intermediate-B,ethyl-4-
- 731 phenylpiperidine-4-carboxylate.
- 732 21. Pethidine-Intermediate-C,1-methyl-4- phenylpiperidine-
- 733 4-carboxylic acid.
- 734 22. Phenazocine.
- 735 23. Phencyclidine.
- 736 24. 1-Phenylcyclohexylamine.
- 737 25. Piminodine.
- 738 26. 1-Piperidinocyclohexanecarbonitrile.
- 739 27. Racemethorphan.
- 740 28. Racemorphan.
- 741 29. Remifentanil.
- 742 30.29. Sufentanil.
- 743 31. Tapentadol.
- 744 32. Thiafentanil.

745 (c) Unless specifically excepted or unless listed in  
 746 another schedule, any material, compound, mixture, or  
 747 preparation which contains any quantity of the following  
 748 substances, including their salts, isomers, optical isomers,  
 749 salts of their isomers, and salts of their optical isomers:

- 750 1. Amobarbital.
- 751 2. Amphetamine.
- 752 3. Glutethimide.
- 753 4. Lisdexamfetamine.
- 754 5.4. Methamphetamine.



27-00673-18

20188\_\_

755       ~~6.5.~~ Methylphenidate.

756       ~~7.6.~~ Pentobarbital.

757       ~~8.7.~~ Phenmetrazine.

758       ~~9.8.~~ Phenylacetone.

759       ~~10.9.~~ Secobarbital.

760       (d) Dronabinol (synthetic THC) in oral solution in a drug  
761 product approved by the United States Food and Drug  
762 Administration.

763       (3) SCHEDULE III.—A substance in Schedule III has a  
764 potential for abuse less than the substances contained in  
765 Schedules I and II and has a currently accepted medical use in  
766 treatment in the United States, and abuse of the substance may  
767 lead to moderate or low physical dependence or high  
768 psychological dependence or, in the case of anabolic steroids,  
769 may lead to physical damage. The following substances are  
770 controlled in Schedule III:

771       (a) Unless specifically excepted or unless listed in  
772 another schedule, any material, compound, mixture, or  
773 preparation which contains any quantity of the following  
774 substances having a depressant or stimulant effect on the  
775 nervous system:

776       1. Any substance which contains any quantity of a  
777 derivative of barbituric acid, including thiobarbituric acid, or  
778 any salt of a derivative of barbituric acid or thiobarbituric  
779 acid, including, but not limited to, butabarbital and  
780 butalbital.

781       2. Benzphetamine.

782       3. Buprenorphine.

783       ~~4.3.~~ Chlorhexadol.

27-00673-18

20188\_\_

- 784        5.4~~.~~ Chlorphentermine.
- 785        6.5~~.~~ Clortermine.
- 786        7. Embutramide.
- 787        8.6~~.~~ Lysergic acid.
- 788        9.7~~.~~ Lysergic acid amide.
- 789        10.8~~.~~ Methyprylon.
- 790        11. Perampanel.
- 791        12.9~~.~~ Phendimetrazine.
- 792        13.10~~.~~ Sulfondiethylmethane.
- 793        14.11~~.~~ Sulfonethylmethane.
- 794        15.12~~.~~ Sulfonmethane.
- 795        16.13~~.~~ Tiletamine and zolazepam or any salt thereof.
- 796        (b) Nalorphine.
- 797        (c) Unless specifically excepted or unless listed in
- 798        another schedule, any material, compound, mixture, or
- 799        preparation containing limited quantities of any of the
- 800        following controlled substances or any salts thereof:
- 801            1. Not more than 1.8 grams of codeine per 100 milliliters
- 802            or not more than 90 milligrams per dosage unit, with an equal or
- 803            greater quantity of an isoquinoline alkaloid of opium.
- 804            2. Not more than 1.8 grams of codeine per 100 milliliters
- 805            or not more than 90 milligrams per dosage unit, with recognized
- 806            therapeutic amounts of one or more active ingredients which are
- 807            not controlled substances.
- 808            3. Not more than 300 milligrams of hydrocodone per 100
- 809            milliliters or not more than 15 milligrams per dosage unit, with
- 810            a fourfold or greater quantity of an isoquinoline alkaloid of
- 811            opium.
- 812            4. Not more than 300 milligrams of hydrocodone per 100

27-00673-18

20188\_\_

813 milliliters or not more than 15 milligrams per dosage unit, with  
814 recognized therapeutic amounts of one or more active ingredients  
815 that are not controlled substances.

816 5. Not more than 1.8 grams of dihydrocodeine per 100  
817 milliliters or not more than 90 milligrams per dosage unit, with  
818 recognized therapeutic amounts of one or more active ingredients  
819 which are not controlled substances.

820 6. Not more than 300 milligrams of ethylmorphine per 100  
821 milliliters or not more than 15 milligrams per dosage unit, with  
822 one or more active, nonnarcotic ingredients in recognized  
823 therapeutic amounts.

824 7. Not more than 50 milligrams of morphine per 100  
825 milliliters or per 100 grams, with recognized therapeutic  
826 amounts of one or more active ingredients which are not  
827 controlled substances.

828  
829 For purposes of charging a person with a violation of s. 893.135  
830 involving any controlled substance described in subparagraph 3.  
831 or subparagraph 4., the controlled substance is a Schedule III  
832 controlled substance pursuant to this paragraph but the weight  
833 of the controlled substance per milliliters or per dosage unit  
834 is not relevant to the charging of a violation of s. 893.135.  
835 The weight of the controlled substance shall be determined  
836 pursuant to s. 893.135(6).

837 (d) Anabolic steroids.

838 1. The term "anabolic steroid" means any drug or hormonal  
839 substance, chemically and pharmacologically related to  
840 testosterone, other than estrogens, progestins, and  
841 corticosteroids, that promotes muscle growth and includes:

27-00673-18

20188\_\_

- 842 a. Androsterone.  
843 b. Androsterone acetate.  
844 c. Boldenone.  
845 d. Boldenone acetate.  
846 e. Boldenone benzoate.  
847 f. Boldenone undecylenate.  
848 g. Chlorotestosterone (Clostebol).  
849 h. Dehydrochlormethyltestosterone.  
850 i. Dihydrotestosterone (Stanolone).  
851 j. Drostanolone.  
852 k. Ethylestrenol.  
853 l. Fluoxymesterone.  
854 m. Formebolone (Formebolone).  
855 n. Mesterolone.  
856 o. Methandrostenolone (Methandienone).  
857 p. Methandranone.  
858 q. Methandriol.  
859 r. Methenolone.  
860 s. Methyltestosterone.  
861 t. Mibolerone.  
862 u. Nortestosterone (Nandrolone).  
863 v. Norethandrolone.  
864 w. Nortestosterone decanoate.  
865 x. Nortestosterone phenylpropionate.  
866 y. Nortestosterone propionate.  
867 z. Oxandrolone.  
868 aa. Oxymesterone.  
869 bb. Oxymetholone.  
870 cc. Stanozolol.

27-00673-18

20188\_\_

871 dd. Testolactone.  
872 ee. Testosterone.  
873 ff. Testosterone acetate.  
874 gg. Testosterone benzoate.  
875 hh. Testosterone cypionate.  
876 ii. Testosterone decanoate.  
877 jj. Testosterone enanthate.  
878 kk. Testosterone isocaproate.  
879 ll. Testosterone oleate.  
880 mm. Testosterone phenylpropionate.  
881 nn. Testosterone propionate.  
882 oo. Testosterone undecanoate.  
883 pp. Trenbolone.  
884 qq. Trenbolone acetate.  
885 rr. Any salt, ester, or isomer of a drug or substance  
886 described or listed in this subparagraph if that salt, ester, or  
887 isomer promotes muscle growth.

888 2. The term does not include an anabolic steroid that is  
889 expressly intended for administration through implants to cattle  
890 or other nonhuman species and that has been approved by the  
891 United States Secretary of Health and Human Services for such  
892 administration. However, any person who prescribes, dispenses,  
893 or distributes such a steroid for human use is considered to  
894 have prescribed, dispensed, or distributed an anabolic steroid  
895 within the meaning of this paragraph.

896 (e) Ketamine, including any isomers, esters, ethers, salts,  
897 and salts of isomers, esters, and ethers, whenever the existence  
898 of such isomers, esters, ethers, and salts is possible within  
899 the specific chemical designation.

27-00673-18

20188\_\_

900 (f) Dronabinol (synthetic THC) in sesame oil and  
901 encapsulated in a soft gelatin capsule in a drug product  
902 approved by the United States Food and Drug Administration.

903 (g) Any drug product containing gamma-hydroxybutyric acid,  
904 including its salts, isomers, and salts of isomers, for which an  
905 application is approved under s. 505 of the Federal Food, Drug,  
906 and Cosmetic Act.

907 (4) (a) SCHEDULE IV.—A substance in Schedule IV has a low  
908 potential for abuse relative to the substances in Schedule III  
909 and has a currently accepted medical use in treatment in the  
910 United States, and abuse of the substance may lead to limited  
911 physical or psychological dependence relative to the substances  
912 in Schedule III.

913 (b) Unless specifically excepted or unless listed in  
914 another schedule, any material, compound, mixture, or  
915 preparation which contains any quantity of the following  
916 substances, including its salts, isomers, and salts of isomers  
917 whenever the existence of such salts, isomers, and salts of  
918 isomers is possible within the specific chemical designation,  
919 are controlled in Schedule IV:

- 920 1. Alfaxalone.  
921 2.~~(a)~~ Alprazolam.  
922 3.~~(b)~~ Barbital.  
923 4.~~(c)~~ Bromazepam.  
924 5.~~(iii)~~ Butorphanol tartrate.  
925 6.~~(d)~~ Camazepam.  
926 7.~~(jjj)~~ Carisoprodol.  
927 8.~~(e)~~ Cathine.  
928 9.~~(f)~~ Chloral betaine.

27-00673-18

20188\_\_

929        10.~~(g)~~ Chloral hydrate.  
930        11.~~(h)~~ Chlordiazepoxide.  
931        12.~~(i)~~ Clobazam.  
932        13.~~(j)~~ Clonazepam.  
933        14.~~(k)~~ Clorazepate.  
934        15.~~(l)~~ Clotiazepam.  
935        16.~~(m)~~ Cloxazolam.  
936        17. Dexfenfluramine.  
937        18.~~(n)~~ Delorazepam.  
938        19. Dichloralphenazone.  
939        20.~~(p)~~ Diazepam.  
940        21.~~(q)~~ Diethylpropion.  
941        22. Eluxadoline.  
942        23.~~(r)~~ Estazolam.  
943        24. Eszopiclone.  
944        25.~~(s)~~ Ethchlorvynol.  
945        26.~~(t)~~ Ethinamate.  
946        27.~~(u)~~ Ethyl loflazepate.  
947        28.~~(v)~~ Fencamfamin.  
948        29.~~(w)~~ Fenfluramine.  
949        30.~~(x)~~ Fenproporex.  
950        31.~~(y)~~ Fludiazepam.  
951        32.~~(z)~~ Flurazepam.  
952        33. Fospropofol.  
953        34.~~(aa)~~ Halazepam.  
954        35.~~(bb)~~ Haloxazolam.  
955        36.~~(cc)~~ Ketazolam.  
956        37.~~(dd)~~ Loprazolam.  
957        38.~~(ee)~~ Lorazepam.

27-00673-18

20188\_\_

- 958        39. Lorcaserin.
- 959        40.~~(ff)~~ Lormetazepam.
- 960        41.~~(gg)~~ Mazindol.
- 961        42.~~(hh)~~ Mebutamate.
- 962        43.~~(ii)~~ Medazepam.
- 963        44.~~(jj)~~ Mefenorex.
- 964        45.~~(kk)~~ Meprobamate.
- 965        46.~~(ll)~~ Methohexital.
- 966        47.~~(mm)~~ Methylphenobarbital.
- 967        48.~~(nn)~~ Midazolam.
- 968        49. Modafinil.
- 969        50.~~(oo)~~ Nimetazepam.
- 970        51.~~(pp)~~ Nitrazepam.
- 971        52.~~(qq)~~ Nordiazepam.
- 972        53.~~(rr)~~ Oxazepam.
- 973        54.~~(ss)~~ Oxazolam.
- 974        55.~~(tt)~~ Paraldehyde.
- 975        56.~~(uu)~~ Pemoline.
- 976        57.~~(vv)~~ Pentazocine.
- 977        58. Petrichloral.
- 978        59.~~(ww)~~ Phenobarbital.
- 979        60.~~(xx)~~ Phentermine.
- 980        61.~~(yy)~~ Pinazepam.
- 981        62.~~(zz)~~ Pipradrol.
- 982        63.~~(aaa)~~ Prazepam.
- 983        64.~~(o)~~ Propoxyphene (dosage forms).
- 984        65.~~(bbb)~~ Propylhexedrine, excluding any patent or
- 985        proprietary preparation containing propylhexedrine, unless
- 986        otherwise provided by federal law.



27-00673-18

20188\_\_

987 66.~~(eee)~~ Quazepam.

988 67. Sibutramine.

989 68.~~(eee)~~ SPA[(-)-1 dimethylamino-1, 2  
990 diphenylethane].

991 69. Suvorexant.

992 70.~~(fff)~~ Temazepam.

993 71.~~(ddd)~~ Tetrazepam.

994 72. Tramadol.

995 73.~~(ggg)~~ Triazolam.

996 74. Zaleplon.

997 75. Zolpidem.

998 76. Zopiclone.

999 77.~~(hhh)~~ Not more than 1 milligram of difenoxin and not  
1000 less than 25 micrograms of atropine sulfate per dosage unit.

1001 (5) SCHEDULE V.—A substance, compound, mixture, or  
1002 preparation of a substance in Schedule V has a low potential for  
1003 abuse relative to the substances in Schedule IV and has a  
1004 currently accepted medical use in treatment in the United  
1005 States, and abuse of such compound, mixture, or preparation may  
1006 lead to limited physical or psychological dependence relative to  
1007 the substances in Schedule IV.

1008 (a) Substances controlled in Schedule V include any  
1009 compound, mixture, or preparation containing any of the  
1010 following limited quantities of controlled substances, which  
1011 shall include one or more active medicinal ingredients which are  
1012 not controlled substances in sufficient proportion to confer  
1013 upon the compound, mixture, or preparation valuable medicinal  
1014 qualities other than those possessed by the controlled substance  
1015 alone:

27-00673-18

20188\_\_

- 1016 1. Not more than 200 milligrams of codeine per 100  
 1017 milliliters or per 100 grams.
- 1018 2. Not more than 100 milligrams of dihydrocodeine per 100  
 1019 milliliters or per 100 grams.
- 1020 3. Not more than 100 milligrams of ethylmorphine per 100  
 1021 milliliters or per 100 grams.
- 1022 4. Not more than 2.5 milligrams of diphenoxylate and not  
 1023 less than 25 micrograms of atropine sulfate per dosage unit.
- 1024 5. Not more than 100 milligrams of opium per 100  
 1025 milliliters or per 100 grams.
- 1026 6. Not more than 0.5 milligrams of difenoxin and not less  
 1027 than 25 micrograms of atropine sulfate per dosage unit.
- 1028 7. Brivaracetam.
- 1029 8. Ezogabine.
- 1030 9. Lacosamide.
- 1031 10. Pregabalin.
- 1032 ~~(b) Narcotic drugs. Unless specifically excepted or unless~~  
 1033 ~~listed in another schedule, any material, compound, mixture, or~~  
 1034 ~~preparation containing any of the following narcotic drugs and~~  
 1035 ~~their salts: Buprenorphine.~~
- 1036 (b)(e) Stimulants. Unless specifically excepted or unless  
 1037 listed in another schedule, any material, compound, mixture, or  
 1038 preparation which contains any quantity of the following  
 1039 substances having a stimulant effect on the central nervous  
 1040 system, including its salts, isomers, and salts of isomers:  
 1041 Pyrovalerone.
- 1042 Section 9. Section 893.055, Florida Statutes, is amended to  
 1043 read:  
 1044 (Substantial rewording of section. See

27-00673-18

20188\_\_

- 1045 s. 893.055, F.S., for present text.)  
1046 893.055 Prescription drug monitoring program.—  
1047 (1) As used in this section, the term:  
1048 (a) "Administration" means the obtaining and giving of a  
1049 single dose of medicinal drugs by a legally authorized person to  
1050 a patient for her or his consumption.  
1051 (b) "Active investigation" means an investigation that is  
1052 being conducted with a reasonable, good faith belief that it  
1053 could lead to the filing of administrative, civil, or criminal  
1054 proceedings, or that is ongoing and continuing and for which  
1055 there is a reasonable, good faith anticipation of securing an  
1056 arrest or prosecution in the foreseeable future.  
1057 (c) "Controlled substance" means a controlled substance  
1058 listed in Schedule II, Schedule III, Schedule IV, or Schedule V  
1059 of s. 893.03 or 21 U.S.C. s. 812.  
1060 (d) "Dispense" means the transfer of possession of one or  
1061 more doses of a medicinal drug by a health care practitioner to  
1062 the ultimate consumer or to his or her agent.  
1063 (e) "Dispenser" means a dispensing health care practitioner  
1064 or pharmacist licensed to dispense medicinal drugs in this  
1065 state.  
1066 (f) "Health care practitioner" or "practitioner" means any  
1067 practitioner licensed under chapter 458, chapter 459, chapter  
1068 461, chapter 463, chapter 464, chapter 465, or chapter 466.  
1069 (g) "Health care regulatory board" means any board or  
1070 commission as defined in s. 456.001(1).  
1071 (h) "Law enforcement agency" means the Department of Law  
1072 Enforcement, a sheriff's office in this state, a police  
1073 department in this state, or a law enforcement agency of the

27-00673-18

20188\_\_

1074 Federal Government which enforces the laws of this state or the  
1075 United States relating to controlled substances, and which its  
1076 agents and officers are empowered by law to conduct criminal  
1077 investigations and make arrests.

1078 (i) "Pharmacy" includes a community pharmacy, an  
1079 institutional pharmacy, a nuclear pharmacy, a special pharmacy,  
1080 or an Internet pharmacy that is licensed by the department under  
1081 chapter 465 and that dispenses or delivers medicinal drugs,  
1082 including controlled substances to an individual or address in  
1083 this state.

1084 (j) "Prescriber" means a prescribing physician, prescribing  
1085 practitioner, or other prescribing health care practitioner  
1086 authorized by the laws of this state to order medicinal drugs.

1087 (k) "Program manager" means an employee of or a person  
1088 contracted by the department who is designated to ensure the  
1089 integrity of the prescription drug monitoring program in  
1090 accordance with the requirements established in this section.

1091 (2) (a) The department shall maintain an electronic system  
1092 to collect and store controlled substance dispensing information  
1093 and shall release the information as authorized in s. 893.0551.  
1094 The electronic system must:

1095 1. Not infringe upon the legitimate prescribing or  
1096 dispensing of a controlled substance by a prescriber or  
1097 dispenser acting in good faith and in the course of professional  
1098 practice.

1099 2. Be consistent with standards of the American Society for  
1100 Automation in Pharmacy (ASAP).

1101 3. Comply with the Health Insurance Portability and  
1102 Accountability Act (HIPAA) as it pertains to protected health

27-00673-18

20188\_\_

1103 information (PHI), electronic protected health information  
1104 (EPHI), and all other relevant state and federal privacy and  
1105 security laws and regulations.

1106 (b) The department may collaborate with professional health  
1107 care regulatory boards, appropriate organizations, and other  
1108 state agencies to identify indicators of controlled substance  
1109 abuse.

1110 (c) The department shall adopt rules necessary to implement  
1111 this subsection.

1112 (3) For each controlled substance dispensed to a patient in  
1113 the state, the following information must be reported by the  
1114 dispenser to the system as soon thereafter as possible but no  
1115 later than the close of the next business day after the day the  
1116 controlled substance is dispensed unless an extension or  
1117 exemption is approved by the department:

1118 (a) The name of the prescribing practitioner, the  
1119 practitioner's federal Drug Enforcement Administration  
1120 registration number, the practitioner's National Provider  
1121 Identification (NPI) or other appropriate identifier, and the  
1122 date of the prescription.

1123 (b) The date the prescription was filled and the method of  
1124 payment, such as cash by an individual, insurance coverage  
1125 through a third party, or Medicaid payment. This paragraph does  
1126 not authorize the department to include individual credit card  
1127 numbers or other account numbers in the system.

1128 (c) The full name, address, telephone number, and date of  
1129 birth of the person for whom the prescription was written.

1130 (d) The name, national drug code, quantity, and strength of  
1131 the controlled substance dispensed.

27-00673-18

20188\_\_

1132       (e) The full name, federal Drug Enforcement Administration  
1133 registration number, State of Florida Department of Health  
1134 issued pharmacy permit number, and address of the pharmacy or  
1135 other location from which the controlled substance was  
1136 dispensed. If the controlled substance was dispensed by a  
1137 practitioner other than a pharmacist, the practitioner's full  
1138 name, address, federal Drug Enforcement Administration  
1139 registration number, State of Florida Department of Health  
1140 issued license number, and National Provider Identification  
1141 (NPI).

1142       (f) Whether the drug was dispensed as an initial  
1143 prescription or a refill, and the number of refills ordered.

1144       (g) The name of the individual picking up the controlled  
1145 substance prescription and type and issuer of the identification  
1146 provided.

1147       (h) Other appropriate identifying information as determined  
1148 by department rule.

1149       (i) All acts of administration of controlled substances are  
1150 exempt from the reporting requirements of this section.

1151       (4) The following shall have direct access to information  
1152 in the system:

1153       (a) An authorized prescriber or dispenser or his or her  
1154 designee.

1155       (b) An employee of the United States Department of Veterans  
1156 Affairs, United States Department of Defense, or the Indian  
1157 Health Service who provides health care services pursuant to  
1158 such employment and who has the authority to prescribe  
1159 controlled substances shall have access to the information in  
1160 the program's system upon verification of employment.

27-00673-18

20188\_\_

1161 (c) The program manager or designated program and support  
1162 staff may have access to administer the system.

1163 1. The program manager or designated program and support  
1164 staff must complete a level II background screening.

1165 2. In order to calculate performance measures pursuant to  
1166 subsection (14), the program manager or program and support  
1167 staff members who have been directed by the program manager to  
1168 calculate performance measures may have direct access to  
1169 information that contains no identifying information of any  
1170 patient, physician, health care practitioner, prescriber, or  
1171 dispenser.

1172 3. The program manager or designated program and support  
1173 staff must provide the department, upon request, data that does  
1174 not contain patient, physician, health care practitioner,  
1175 prescriber, or dispenser identifying information for public  
1176 health care and safety initiatives purposes.

1177 4. The program manager, upon determining a pattern  
1178 consistent with the department's rules established under  
1179 paragraph (2) (b), may provide relevant information to the  
1180 prescriber and dispenser.

1181 5. The program manager, upon determining a pattern  
1182 consistent with the rules established under paragraph (2) (b) and  
1183 having cause to believe a violation of s. 893.13(7) (a) 8.,  
1184 (8) (a), or (8) (b) has occurred, may provide relevant information  
1185 to the applicable law enforcement agency.

1186 (5) The following entities may not directly access  
1187 information in the system, but may request information from the  
1188 program manager or designated program and support staff:

1189 (a) The department for investigations involving licensees

27-00673-18

20188\_\_

1190 authorized to prescribe or dispense controlled substances.

1191 (b) The Attorney General for Medicaid fraud cases involving  
1192 prescribed controlled substances.

1193 (c) A law enforcement agency during active investigations  
1194 of potential criminal activity, fraud, or theft regarding  
1195 prescribed controlled substances.

1196 (d) A medical examiner when conducting an authorized  
1197 investigation under s. 406.11, to determine the cause of death  
1198 of an individual.

1199 (e) An impaired practitioner consultant who is retained by  
1200 the department under s. 456.076 to review the system information  
1201 of an impaired practitioner program participant or a referral  
1202 who has agreed to be evaluated or monitored through the program  
1203 and who has separately agreed in writing to the consultant's  
1204 access to and review of such information.

1205 (f) A patient or the legal guardian or designated health  
1206 care surrogate of an incapacitated patient who submits a written  
1207 and notarized request that includes the patient's full name,  
1208 address, phone number, date of birth, and a copy of a  
1209 government-issued photo identification. A legal guardian or  
1210 health care surrogate must provide the same information if he or  
1211 she submits the request.

1212 (6) The department may enter into a reciprocal agreement or  
1213 contract to share prescription drug monitoring information with  
1214 another state, district, or territory if the prescription drug  
1215 monitoring programs of other states, districts, or territories  
1216 are compatible with the Florida program.

1217 (a) In determining compatibility, the department shall  
1218 consider:



27-00673-18

20188\_\_

- 1219       1. The safeguards for privacy of patient records and the  
1220 success of the program in protecting patient privacy.
- 1221       2. The persons authorized to view the data collected by the  
1222 program. Comparable entities and licensed health care  
1223 practitioners in other states, districts, or territories of the  
1224 United States, law enforcement agencies, the Attorney General's  
1225 Medicaid Fraud Control Unit, medical regulatory boards, and, as  
1226 needed, management staff that have similar duties as management  
1227 staff who work with the prescription drug monitoring program as  
1228 authorized in s. 893.0551 are authorized access upon approval by  
1229 the department.
- 1230       3. The schedules of the controlled substances that are  
1231 monitored by the program.
- 1232       4. The data reported to or included in the program's  
1233 system.
- 1234       5. Any implementing criteria deemed essential for a  
1235 thorough comparison.
- 1236       6. The costs and benefits to the state of sharing  
1237 prescription information.
- 1238       (b) The department must assess the prescription drug  
1239 monitoring program's continued compatibility with the other  
1240 state's, district's, or territory's program periodically.
- 1241       (c) Any agreement or contract for sharing of prescription  
1242 drug monitoring information between the department and another  
1243 state, district, or territory shall contain the same  
1244 restrictions and requirements as this section or s. 893.0551,  
1245 and the information must be provided according to the  
1246 department's determination of compatibility.
- 1247       (7) The department may enter into agreements or contracts

27-00673-18

20188\_\_

1248 to establish secure connections between the system and a  
1249 prescribing or dispensing health care practitioner's electronic  
1250 health recordkeeping system. The electronic health recordkeeping  
1251 system owner or license holder will be responsible for ensuring  
1252 that only authorized individuals have access to prescription  
1253 drug monitoring program information.

1254 (8) A prescriber or dispenser or a designee of a prescriber  
1255 or dispenser must consult the system to review a patient's  
1256 controlled substance dispensing history before prescribing or  
1257 dispensing a controlled substance.

1258 (a) The duty to consult the system does not apply to a  
1259 prescriber or dispenser or designee of a prescriber or dispenser  
1260 if the system is not operational, as determined by the  
1261 department, or when it cannot be accessed by a health care  
1262 practitioner because of a temporary technological or electrical  
1263 failure.

1264 (b) A prescriber or dispenser or designee of a prescriber  
1265 or dispenser who does not consult the system under this  
1266 subsection shall document the reason he or she did not consult  
1267 the system in the patient's medical record or prescription  
1268 record, and shall not prescribe or dispense greater than a 3-day  
1269 supply of a controlled substance to the patient.

1270 (c) The department shall issue a nondisciplinary citation  
1271 to any prescriber or dispenser who fails to consult the system  
1272 as required by this subsection.

1273 (9) A person who willfully and knowingly fails to report  
1274 the dispensing of a controlled substance as required by this  
1275 section commits a misdemeanor of the first degree, punishable as  
1276 provided in s. 775.082 or s. 775.083.

27-00673-18

20188\_\_

1277       (10) Information in the prescription drug monitoring  
1278 program's system may be released only as provided in this  
1279 subsection and s. 893.0551. The content of the system is  
1280 intended to be informational only and imposes no obligations of  
1281 any nature or any legal duty on a prescriber, dispenser,  
1282 pharmacy, or patient. Information in the system shall be  
1283 provided in accordance with s. 893.13(7)(a)8. and is not subject  
1284 to discovery or introduction into evidence in any civil or  
1285 administrative action against a prescriber, dispenser, pharmacy,  
1286 or patient arising out of matters that are the subject of  
1287 information in the system. The program manager and authorized  
1288 persons who participate in preparing, reviewing, issuing, or any  
1289 other activity related to management of the system may not be  
1290 permitted or required to testify in any such civil or  
1291 administrative action as to any findings, recommendations,  
1292 evaluations, opinions, or other actions taken in connection with  
1293 management of the system.

1294       (11) A prescriber or dispenser, or his or her designee, may  
1295 have access to the information under this section which relates  
1296 to a patient of that prescriber or dispenser as needed for the  
1297 purpose of reviewing the patient's controlled drug prescription  
1298 history. A prescriber or dispenser acting in good faith is  
1299 immune from any civil, criminal, or administrative liability  
1300 that might otherwise be incurred or imposed for receiving or  
1301 using information from the prescription drug monitoring program.  
1302 This subsection does not create a private cause of action, and a  
1303 person may not recover damages against a prescriber or dispenser  
1304 authorized to access information under this subsection for  
1305 accessing or failing to access such information.

27-00673-18

20188\_\_

1306 (12) (a) All costs incurred by the department in  
1307 administering the prescription drug monitoring program shall be  
1308 funded through federal grants, private funding applied for or  
1309 received by the state, or state funds appropriated in the  
1310 General Appropriations Act. The department may not:

1311 1. Commit funds for the monitoring program without ensuring  
1312 funding is available; or

1313 2. Use funds provided, directly or indirectly by  
1314 prescription drug manufacturers to implement the program.

1315 (b) The department shall cooperate with the direct-support  
1316 organization established under subsection (15) in seeking  
1317 federal grant funds, other nonstate grant funds, gifts,  
1318 donations, or other private moneys for the department if the  
1319 costs of doing so are immaterial. Immaterial costs include, but  
1320 are not limited to, the costs of mailing and personnel assigned  
1321 to research or apply for a grant. The department may  
1322 competitively procure and contract pursuant to s. 287.057 for  
1323 any goods and services required be this section.

1324 (13) The department shall conduct or participate in studies  
1325 to examine the feasibility of enhancing the prescription drug  
1326 monitoring program for the purposes of public health initiatives  
1327 and statistical reporting. Such studies shall respect the  
1328 privacy of the patient, the prescriber, and the dispenser. Such  
1329 studies may be conducted by the department or a contracted  
1330 vendor in order to:

1331 (a) Improve the quality of health care services and safety  
1332 by improving the prescribing and dispensing practices for  
1333 prescription drugs;

1334 (b) Take advantage of advances in technology;

27-00673-18

20188\_\_

1335 (c) Reduce duplicative prescriptions and the  
1336 overprescribing of prescription drugs; and

1337 (d) Reduce drug abuse.

1338 (14) The department shall annually report on performance  
1339 measures to the Governor, the President of the Senate, and the  
1340 Speaker of the House of Representatives by the department each  
1341 December 1. Performance measures may include, but are not  
1342 limited to, the following outcomes:

1343 (a) Reduction of the rate of inappropriate use of  
1344 prescription drugs through department education and safety  
1345 efforts.

1346 (b) Reduction of the quantity of pharmaceutical controlled  
1347 substances obtained by individuals attempting to engage in fraud  
1348 and deceit.

1349 (c) Increased coordination among partners participating in  
1350 the prescription drug monitoring program.

1351 (d) Involvement of stakeholders in achieving improved  
1352 patient health care and safety and reduction of prescription  
1353 drug abuse and prescription drug diversion.

1354 (15) The department may establish a direct-support  
1355 organization to provide assistance, funding, and promotional  
1356 support for the activities authorized for the prescription drug  
1357 monitoring program.

1358 (a) As used in this subsection, the term "direct-support  
1359 organization" means an organization that is:

1360 1. A Florida corporation not for profit incorporated under  
1361 chapter 617, exempted from filing fees, and approved by the  
1362 Department of State.

1363 2. Organized and operated to conduct programs and

27-00673-18

20188\_\_

1364 activities; raise funds; request and receive grants, gifts, and  
1365 bequests of money; acquire, receive, hold, and invest, in its  
1366 own name, securities, funds, objects of value, or other  
1367 property, either real or personal; and make expenditures or  
1368 provide funding to or for the direct or indirect benefit of the  
1369 department in the furtherance of the prescription drug  
1370 monitoring program.

1371 (b) The State Surgeon General shall appoint a board of  
1372 directors for the direct-support organization.

1373 1. The board of directors shall consist of no fewer than  
1374 five members who shall serve at the pleasure of the State  
1375 Surgeon General.

1376 2. The State Surgeon General shall provide guidance to  
1377 members of the board to ensure that moneys received by the  
1378 direct-support organization are not received from inappropriate  
1379 sources. Inappropriate sources include, but are not limited to,  
1380 donors, grantors, persons, or organizations that may monetarily  
1381 or substantively benefit from the purchase of goods or services  
1382 by the department in furtherance of the prescription drug  
1383 monitoring program.

1384 (c) The direct-support organization shall operate under  
1385 written contract with the department. The contract must, at a  
1386 minimum, provide for:

1387 1. Approval of the articles of incorporation and bylaws of  
1388 the direct-support organization by the department.

1389 2. Submission of an annual budget for the approval of the  
1390 department.

1391 3. The reversion, without penalty, to the department's  
1392 grants and donations trust fund for the administration of the

27-00673-18

20188\_\_

1393 prescription drug monitoring program of all moneys and property  
1394 held in trust by the direct-support organization for the benefit  
1395 of the prescription drug monitoring program if the direct-  
1396 support organization ceases to exist or if the contract is  
1397 terminated.

1398 4. The fiscal year of the direct-support organization,  
1399 which must begin July 1 of each year and end June 30 of the  
1400 following year.

1401 5. The disclosure of the material provisions of the  
1402 contract to donors of gifts, contributions, or bequests,  
1403 including such disclosure on all promotional and fundraising  
1404 publications, and an explanation to such donors of the  
1405 distinction between the department and the direct-support  
1406 organization.

1407 6. The direct-support organization's collecting, expending,  
1408 and providing of funds to the department for the development,  
1409 implementation, and operation of the prescription drug  
1410 monitoring program as described in this section. The direct-  
1411 support organization may collect and expend funds to be used for  
1412 the functions of the direct-support organization's board of  
1413 directors, as necessary and approved by the department. In  
1414 addition, the direct-support organization may collect and  
1415 provide funding to the department in furtherance of the  
1416 prescription drug monitoring program by:

1417 a. Establishing and administering the prescription drug  
1418 monitoring program's electronic system, including hardware and  
1419 software.

1420 b. Conducting studies on the efficiency and effectiveness  
1421 of the program to include feasibility studies as described in

27-00673-18

20188\_\_

1422 subsection (13).

1423 c. Providing funds for future enhancements of the program  
1424 within the intent of this section.

1425 d. Providing user training of the prescription drug  
1426 monitoring program, including distribution of materials to  
1427 promote public awareness and education and conducting workshops  
1428 or other meetings, for health care practitioners, pharmacists,  
1429 and others as appropriate.

1430 e. Providing funds for travel expenses.

1431 f. Providing funds for administrative costs, including  
1432 personnel, audits, facilities, and equipment.

1433 g. Fulfilling all other requirements necessary to implement  
1434 and operate the program as outlined in this section.

1435 7. Certification by the department that the direct-support  
1436 organization is complying with the terms of the contract in a  
1437 manner consistent with and in furtherance of the goals and  
1438 purposes of the prescription drug monitoring program and in the  
1439 best interests of the state. Such certification must be made  
1440 annually and reported in the official minutes of a meeting of  
1441 the direct-support organization.

1442 (d) The activities of the direct-support organization must  
1443 be consistent with the goals and mission of the department, as  
1444 determined by the department, and in the best interests of the  
1445 state. The direct-support organization must obtain written  
1446 approval from the department for any activities in support of  
1447 the prescription drug monitoring program before undertaking  
1448 those activities.

1449 (e) The direct-support organization shall provide for an  
1450 independent annual financial audit in accordance with s.



27-00673-18

20188\_\_

1451 215.981. Copies of the audit shall be provided to the department  
1452 and the Office of Policy and Budget in the Executive Office of  
1453 the Governor.

1454 (f) The direct-support organization may not exercise any  
1455 power under s. 617.0302(12) or (16).

1456 (g) The direct-support organization is not considered a  
1457 lobbying firm within the meaning of s. 11.045.

1458 (h) The department may permit, without charge, appropriate  
1459 use of administrative services, property, and facilities of the  
1460 department by the direct-support organization, subject to this  
1461 section. The use must be directly in keeping with the approved  
1462 purposes of the direct-support organization and may not be made  
1463 at times or places that would unreasonably interfere with  
1464 opportunities for the public to use such facilities for  
1465 established purposes. Any moneys received from rentals of  
1466 facilities and properties managed by the department may be held  
1467 in a separate depository account in the name of the direct-  
1468 support organization and subject to the provisions of the letter  
1469 of agreement with the department. The letter of agreement must  
1470 provide that any funds held in the separate depository account  
1471 in the name of the direct-support organization must revert to  
1472 the department if the direct-support organization is no longer  
1473 approved by the department to operate in the best interests of  
1474 the state.

1475 (i) The department may adopt rules under s. 120.54 to  
1476 govern the use of administrative services, property, or  
1477 facilities of the department or office by the direct-support  
1478 organization.

1479 (j) The department may not permit the use of any

27-00673-18

20188\_\_

1480 administrative services, property, or facilities of the state by  
 1481 a direct-support organization if that organization does not  
 1482 provide equal membership and employment opportunities to all  
 1483 persons regardless of race, color, religion, gender, age, or  
 1484 national origin.

1485 (k) This subsection is repealed October 1, 2027, unless  
 1486 reviewed and saved from repeal by the Legislature.

1487 Section 10. Section 893.0551, Florida Statutes, is amended  
 1488 to read:

1489 893.0551 Public records exemption for the prescription drug  
 1490 monitoring program.—

1491 (1) For purposes of this section, the terms used in this  
 1492 section have the same meanings as provided in s. 893.055.

1493 (2) The following information of a patient or patient's  
 1494 agent, a health care practitioner, a dispenser, an employee of  
 1495 the practitioner who is acting on behalf of and at the direction  
 1496 of the practitioner, a pharmacist, or a pharmacy that is  
 1497 contained in records held by the department under s. 893.055 is  
 1498 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 1499 of the State Constitution:

1500 (a) Name.

1501 (b) Address.

1502 (c) Telephone number.

1503 (d) Insurance plan number.

1504 (e) Government-issued identification number.

1505 (f) Provider number.

1506 (g) Drug Enforcement Administration number.

1507 (h) Any other unique identifying information or number.

1508 (3) The department shall disclose such ~~confidential and~~

27-00673-18

20188\_\_

1509 ~~exempt~~ information to the following persons or entities upon  
1510 request and after using a verification process to ensure the  
1511 legitimacy of the request as provided in s. 893.055:

1512 (a) A health care practitioner, or his or her designee, who  
1513 certifies that the information is necessary to provide medical  
1514 treatment to a current patient in accordance with ss. 893.05 and  
1515 893.055.

1516 (b) An employee of the United States Department of Veterans  
1517 Affairs, United States Department of Defense, or the Indian  
1518 Health Service who provides health care services pursuant to  
1519 such employment and who has the authority to prescribe  
1520 controlled substances shall have access to the information in  
1521 the program's system upon verification of such employment.

1522 (c) The program manager and designated support staff for  
1523 administration of the program, and to provide relevant  
1524 information to the prescriber, dispenser, and appropriate law  
1525 enforcement agencies, in accordance with s. 893.055.

1526 (d) The department for investigations involving licensees  
1527 authorized to prescribe or dispense controlled substances. The  
1528 department may request information from the program but may not  
1529 have direct access to its system. The department may provide to  
1530 a law enforcement agency pursuant to ss. 456.066 and 456.073  
1531 only information that is relevant to the specific controlled  
1532 substances investigation that prompted the request for the  
1533 information.

1534 (e) ~~(a)~~ The Attorney General or his or her designee when  
1535 working on Medicaid fraud cases involving prescribed controlled  
1536 substances ~~prescription drugs~~ or when the Attorney General has  
1537 initiated a review of specific identifiers of Medicaid fraud or

27-00673-18

20188\_\_

1538 specific identifiers that warrant a Medicaid investigation  
1539 regarding prescribed controlled substances ~~prescription drugs~~.  
1540 The Attorney General's Medicaid fraud investigators may not have  
1541 direct access to the department's system ~~database~~. The Attorney  
1542 General or his or her designee may disclose to a criminal  
1543 justice agency, as defined in s. 119.011, only the ~~confidential~~  
1544 ~~and exempt~~ information received from the department that is  
1545 relevant to an identified active investigation that prompted the  
1546 request for the information.

1547 ~~(b) The department's relevant health care regulatory boards~~  
1548 ~~responsible for the licensure, regulation, or discipline of a~~  
1549 ~~practitioner, pharmacist, or other person who is authorized to~~  
1550 ~~prescribe, administer, or dispense controlled substances and who~~  
1551 ~~is involved in a specific controlled substances investigation~~  
1552 ~~for prescription drugs involving a designated person. The health~~  
1553 ~~care regulatory boards may request information from the~~  
1554 ~~department but may not have direct access to its database. The~~  
1555 ~~health care regulatory boards may provide to a law enforcement~~  
1556 ~~agency pursuant to ss. 456.066 and 456.073 only information that~~  
1557 ~~is relevant to the specific controlled substances investigation~~  
1558 ~~that prompted the request for the information.~~

1559 (f) ~~(e)~~ A law enforcement agency that has initiated an  
1560 active investigation involving a specific violation of law  
1561 regarding prescription drug abuse or diversion of prescribed  
1562 controlled substances and that has entered into a user agreement  
1563 with the department. A law enforcement agency may request  
1564 information from the department but may not have direct access  
1565 to its system ~~database~~. The law enforcement agency may disclose  
1566 to a criminal justice agency, as defined in s. 119.011, only

27-00673-18

20188\_\_

1567 ~~confidential and exempt~~ information received from the department  
 1568 that is relevant to an identified active investigation that  
 1569 prompted the request for such information.

1570 (g) A medical examiner or associate medical examiner, as  
 1571 defined in s 406.06, pursuant to his or her official duties, as  
 1572 required by s. 406.11, to determine the cause of death of an  
 1573 individual. A medical examiner may request information from the  
 1574 department but may not have direct access to the system.

1575 ~~(f) A patient or the legal guardian or designated health~~  
 1576 ~~care surrogate for an incapacitated patient, if applicable,~~  
 1577 ~~making a request as provided in s. 893.055(7)(e)4.~~

1578 (h) An impaired practitioner consultant who has been  
 1579 authorized in writing by a participant in, or by a referral to,  
 1580 the impaired practitioner program to access and review  
 1581 information as provided in s. 893.055(6)(e) ~~893.055(7)(e)5.~~

1582 (i) A patient or the legal guardian or designated health  
 1583 care surrogate for an incapacitated patient, if applicable,  
 1584 making a request as provided in s. 893.055(6)(f).

1585 (4) If the department determines consistent with its rules  
 1586 that a pattern of controlled substance abuse exists, the  
 1587 department may disclose such confidential and exempt information  
 1588 to the applicable law enforcement agency in accordance with s.  
 1589 893.055. The law enforcement agency may disclose to a criminal  
 1590 justice agency, as defined in s. 119.011, only ~~confidential and~~  
 1591 ~~exempt~~ information received from the department that is relevant  
 1592 to an identified active investigation that is specific to a  
 1593 violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s.  
 1594 893.13(8)(b).

1595 (5) Before disclosing ~~confidential and exempt~~ information

27-00673-18

20188\_\_

1596 to a criminal justice agency or a law enforcement agency  
 1597 pursuant to this section, the disclosing person or entity must  
 1598 take steps to ensure the continued confidentiality of all  
 1599 ~~confidential and exempt~~ information. At a minimum, these steps  
 1600 must include redacting any nonrelevant information.

1601 (6) An agency or person who obtains any ~~confidential and~~  
 1602 ~~exempt~~ information pursuant to this section must maintain the  
 1603 confidential and exempt status of that information and may not  
 1604 disclose such information unless authorized by law. Information  
 1605 shared with a state attorney pursuant to paragraph (3) (e) ~~(3) (a)~~  
 1606 or paragraph (3) (f) ~~(3) (e)~~ may be released only in response to a  
 1607 discovery demand if such information is directly related to the  
 1608 criminal case for which the information was requested. Unrelated  
 1609 information may be released only upon an order of a court of  
 1610 competent jurisdiction.

1611 (7) A person who willfully and knowingly violates this  
 1612 section commits a felony of the third degree, punishable as  
 1613 provided in s. 775.082, s. 775.083, or s. 775.084.

1614 Section 11. Paragraphs (pp) and (qq) of subsection (1) of  
 1615 section 458.331, Florida Statutes, are amended to read:

1616 458.331 Grounds for disciplinary action; action by the  
 1617 board and department.—

1618 (1) The following acts constitute grounds for denial of a  
 1619 license or disciplinary action, as specified in s. 456.072(2):

1620 (pp) Applicable to a licensee who serves as the designated  
 1621 physician of a pain-management clinic as defined in s. 458.3265  
 1622 or s. 459.0137:

1623 1. Registering a pain-management clinic through  
 1624 misrepresentation or fraud;

27-00673-18

20188\_\_

1625           2. Procuring, or attempting to procure, the registration of  
1626 a pain-management clinic for any other person by making or  
1627 causing to be made, any false representation;

1628           3. Failing to comply with any requirement of chapter 499,  
1629 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the  
1630 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,  
1631 the Drug Abuse Prevention and Control Act; or chapter 893, the  
1632 Florida Comprehensive Drug Abuse Prevention and Control Act;

1633           4. Being convicted or found guilty of, regardless of  
1634 adjudication to, a felony or any other crime involving moral  
1635 turpitude, fraud, dishonesty, or deceit in any jurisdiction of  
1636 the courts of this state, of any other state, or of the United  
1637 States;

1638           5. Being convicted of, or disciplined by a regulatory  
1639 agency of the Federal Government or a regulatory agency of  
1640 another state for, any offense that would constitute a violation  
1641 of this chapter;

1642           6. Being convicted of, or entering a plea of guilty or nolo  
1643 contendere to, regardless of adjudication, a crime in any  
1644 jurisdiction of the courts of this state, of any other state, or  
1645 of the United States which relates to the practice of, or the  
1646 ability to practice, a licensed health care profession;

1647           7. Being convicted of, or entering a plea of guilty or nolo  
1648 contendere to, regardless of adjudication, a crime in any  
1649 jurisdiction of the courts of this state, of any other state, or  
1650 of the United States which relates to health care fraud;

1651           8. Dispensing any medicinal drug based upon a communication  
1652 that purports to be a prescription as defined in s. 465.003(14)  
1653 or s. 893.02 if the dispensing practitioner knows or has reason

27-00673-18

20188\_\_

1654 to believe that the purported prescription is not based upon a  
1655 valid practitioner-patient relationship; or

1656 9. Failing to timely notify the board of the date of his or  
1657 her termination from a pain-management clinic as required by s.  
1658 458.3265(3) ~~458.3265(2)~~.

1659 (qq) Failing to timely notify the department of the theft  
1660 of prescription blanks from a pain-management clinic or a breach  
1661 of other methods for prescribing within 24 hours as required by  
1662 s. 458.3265(3) ~~458.3265(2)~~.

1663 Section 12. Paragraphs (rr) and (ss) of subsection (1) of  
1664 section 459.015, Florida Statutes, are amended to read:

1665 459.015 Grounds for disciplinary action; action by the  
1666 board and department.—

1667 (1) The following acts constitute grounds for denial of a  
1668 license or disciplinary action, as specified in s. 456.072(2):

1669 (rr) Applicable to a licensee who serves as the designated  
1670 physician of a pain-management clinic as defined in s. 458.3265  
1671 or s. 459.0137:

1672 1. Registering a pain-management clinic through  
1673 misrepresentation or fraud;

1674 2. Procuring, or attempting to procure, the registration of  
1675 a pain-management clinic for any other person by making or  
1676 causing to be made, any false representation;

1677 3. Failing to comply with any requirement of chapter 499,  
1678 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the  
1679 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,  
1680 the Drug Abuse Prevention and Control Act; or chapter 893, the  
1681 Florida Comprehensive Drug Abuse Prevention and Control Act;

1682 4. Being convicted or found guilty of, regardless of



27-00673-18

20188\_\_

1683 adjudication to, a felony or any other crime involving moral  
1684 turpitude, fraud, dishonesty, or deceit in any jurisdiction of  
1685 the courts of this state, of any other state, or of the United  
1686 States;

1687 5. Being convicted of, or disciplined by a regulatory  
1688 agency of the Federal Government or a regulatory agency of  
1689 another state for, any offense that would constitute a violation  
1690 of this chapter;

1691 6. Being convicted of, or entering a plea of guilty or nolo  
1692 contendere to, regardless of adjudication, a crime in any  
1693 jurisdiction of the courts of this state, of any other state, or  
1694 of the United States which relates to the practice of, or the  
1695 ability to practice, a licensed health care profession;

1696 7. Being convicted of, or entering a plea of guilty or nolo  
1697 contendere to, regardless of adjudication, a crime in any  
1698 jurisdiction of the courts of this state, of any other state, or  
1699 of the United States which relates to health care fraud;

1700 8. Dispensing any medicinal drug based upon a communication  
1701 that purports to be a prescription as defined in s. 465.003(14)  
1702 or s. 893.02 if the dispensing practitioner knows or has reason  
1703 to believe that the purported prescription is not based upon a  
1704 valid practitioner-patient relationship; or

1705 9. Failing to timely notify the board of the date of his or  
1706 her termination from a pain-management clinic as required by s.  
1707 459.0137(3) ~~459.0137(2)~~.

1708 (ss) Failing to timely notify the department of the theft  
1709 of prescription blanks from a pain-management clinic or a breach  
1710 of other methods for prescribing within 24 hours as required by  
1711 s. 459.0137(3) ~~459.0137(2)~~.

27-00673-18

20188\_\_

1712 Section 13. Paragraph (b) of subsection (4) of section  
 1713 463.0055, Florida Statutes, is amended to read:

1714 463.0055 Administration and prescription of ocular  
 1715 pharmaceutical agents.—

1716 (4) A certified optometrist shall be issued a prescriber  
 1717 number by the board. Any prescription written by a certified  
 1718 optometrist for an ocular pharmaceutical agent pursuant to this  
 1719 section shall have the prescriber number printed thereon. A  
 1720 certified optometrist may not administer or prescribe:

1721 (b) A controlled substance for the treatment of chronic  
 1722 nonmalignant pain as defined in s. 456.44(1)(f) ~~456.44(1)(e)~~.

1723 Section 14. Paragraph (a) of subsection (1) of section  
 1724 782.04, Florida Statutes, is amended to read:

1725 782.04 Murder.—

1726 (1) (a) The unlawful killing of a human being:

1727 1. When perpetrated from a premeditated design to effect  
 1728 the death of the person killed or any human being;

1729 2. When committed by a person engaged in the perpetration  
 1730 of, or in the attempt to perpetrate, any:

1731 a. Trafficking offense prohibited by s. 893.135(1),

1732 b. Arson,

1733 c. Sexual battery,

1734 d. Robbery,

1735 e. Burglary,

1736 f. Kidnapping,

1737 g. Escape,

1738 h. Aggravated child abuse,

1739 i. Aggravated abuse of an elderly person or disabled adult,

1740 j. Aircraft piracy,

27-00673-18

20188\_\_

- 1741 k. Unlawful throwing, placing, or discharging of a  
 1742 destructive device or bomb,
- 1743 l. Carjacking,  
 1744 m. Home-invasion robbery,  
 1745 n. Aggravated stalking,  
 1746 o. Murder of another human being,  
 1747 p. Resisting an officer with violence to his or her person,  
 1748 q. Aggravated fleeing or eluding with serious bodily injury  
 1749 or death,
- 1750 r. Felony that is an act of terrorism or is in furtherance  
 1751 of an act of terrorism, including a felony under s. 775.30, s.  
 1752 775.32, s. 775.33, s. 775.34, or s. 775.35, or  
 1753 s. Human trafficking; or
- 1754 3. Which resulted from the unlawful distribution by a  
 1755 person 18 years of age or older of any of the following  
 1756 substances, or mixture containing any of the following  
 1757 substances, when such substance or mixture is proven to be the  
 1758 proximate cause of the death of the user:
- 1759 a. A substance controlled under s. 893.03(1);  
 1760 b. Cocaine, as described in s. 893.03(2)(a)4.;  
 1761 c. Opium or any synthetic or natural salt, compound,  
 1762 derivative, or preparation of opium;  
 1763 d. Methadone;  
 1764 e. Alfentanil, as described in s. 893.03(2)(b)1.;  
 1765 f. Carfentanil, as described in s. 893.03(2)(b)6.;  
 1766 g. Fentanyl, as described in s. 893.03(2)(b)9.;  
 1767 h. Sufentanil, as described in s. 893.03(2)(b)30.  
 1768 ~~893.03(2)(b)29.~~; or  
 1769 i. A controlled substance analog, as described in s.

27-00673-18

20188\_\_

1770 893.0356, of any substance specified in sub-subparagraphs a.-h.,  
 1771  
 1772 is murder in the first degree and constitutes a capital felony,  
 1773 punishable as provided in s. 775.082.

1774 Section 15. Paragraphs (a), (c), (d), (e), (f), and (h) of  
 1775 subsection (1), subsection (2), paragraphs (a) and (b) of  
 1776 subsection (4), and subsection (5) of section 893.13, Florida  
 1777 Statutes, are amended to read:

1778 893.13 Prohibited acts; penalties.—

1779 (1) (a) Except as authorized by this chapter and chapter  
 1780 499, a person may not sell, manufacture, or deliver, or possess  
 1781 with intent to sell, manufacture, or deliver, a controlled  
 1782 substance. A person who violates this provision with respect to:

1783 1. A controlled substance named or described in s.  
 1784 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 5.  
 1785 ~~(2) (c) 4.~~ commits a felony of the second degree, punishable as  
 1786 provided in s. 775.082, s. 775.083, or s. 775.084.

1787 2. A controlled substance named or described in s.  
 1788 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., ~~(2) (c) 5.,~~ (2) (c) 6.,  
 1789 (2) (c) 7., (2) (c) 8., (2) (c) 9., (2) (c) 10., (3), or (4) commits a  
 1790 felony of the third degree, punishable as provided in s.  
 1791 775.082, s. 775.083, or s. 775.084.

1792 3. A controlled substance named or described in s.  
 1793 893.03(5) commits a misdemeanor of the first degree, punishable  
 1794 as provided in s. 775.082 or s. 775.083.

1795 (c) Except as authorized by this chapter, a person may not  
 1796 sell, manufacture, or deliver, or possess with intent to sell,  
 1797 manufacture, or deliver, a controlled substance in, on, or  
 1798 within 1,000 feet of the real property comprising a child care

27-00673-18

20188\_\_

1799 facility as defined in s. 402.302 or a public or private  
 1800 elementary, middle, or secondary school between the hours of 6  
 1801 a.m. and 12 midnight, or at any time in, on, or within 1,000  
 1802 feet of real property comprising a state, county, or municipal  
 1803 park, a community center, or a publicly owned recreational  
 1804 facility. As used in this paragraph, the term "community center"  
 1805 means a facility operated by a nonprofit community-based  
 1806 organization for the provision of recreational, social, or  
 1807 educational services to the public. A person who violates this  
 1808 paragraph with respect to:

1809 1. A controlled substance named or described in s.  
 1810 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
 1811 ~~(2)(c)4.~~ commits a felony of the first degree, punishable as  
 1812 provided in s. 775.082, s. 775.083, or s. 775.084. The defendant  
 1813 must be sentenced to a minimum term of imprisonment of 3  
 1814 calendar years unless the offense was committed within 1,000  
 1815 feet of the real property comprising a child care facility as  
 1816 defined in s. 402.302.

1817 2. A controlled substance named or described in s.  
 1818 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.,~~ (2)(c)6.,  
 1819 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
 1820 felony of the second degree, punishable as provided in s.  
 1821 775.082, s. 775.083, or s. 775.084.

1822 3. Any other controlled substance, except as lawfully sold,  
 1823 manufactured, or delivered, must be sentenced to pay a \$500 fine  
 1824 and to serve 100 hours of public service in addition to any  
 1825 other penalty prescribed by law.

1826  
 1827 This paragraph does not apply to a child care facility unless

27-00673-18

20188\_\_

1828 the owner or operator of the facility posts a sign that is not  
 1829 less than 2 square feet in size with a word legend identifying  
 1830 the facility as a licensed child care facility and that is  
 1831 posted on the property of the child care facility in a  
 1832 conspicuous place where the sign is reasonably visible to the  
 1833 public.

1834 (d) Except as authorized by this chapter, a person may not  
 1835 sell, manufacture, or deliver, or possess with intent to sell,  
 1836 manufacture, or deliver, a controlled substance in, on, or  
 1837 within 1,000 feet of the real property comprising a public or  
 1838 private college, university, or other postsecondary educational  
 1839 institution. A person who violates this paragraph with respect  
 1840 to:

1841 1. A controlled substance named or described in s.  
 1842 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
 1843 ~~(2)(c)4.~~ commits a felony of the first degree, punishable as  
 1844 provided in s. 775.082, s. 775.083, or s. 775.084.

1845 2. A controlled substance named or described in s.  
 1846 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.,~~ (2)(c)6.,  
 1847 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
 1848 felony of the second degree, punishable as provided in s.  
 1849 775.082, s. 775.083, or s. 775.084.

1850 3. Any other controlled substance, except as lawfully sold,  
 1851 manufactured, or delivered, must be sentenced to pay a \$500 fine  
 1852 and to serve 100 hours of public service in addition to any  
 1853 other penalty prescribed by law.

1854 (e) Except as authorized by this chapter, a person may not  
 1855 sell, manufacture, or deliver, or possess with intent to sell,  
 1856 manufacture, or deliver, a controlled substance not authorized

27-00673-18

20188\_\_

1857 by law in, on, or within 1,000 feet of a physical place for  
1858 worship at which a church or religious organization regularly  
1859 conducts religious services or within 1,000 feet of a  
1860 convenience business as defined in s. 812.171. A person who  
1861 violates this paragraph with respect to:

1862 1. A controlled substance named or described in s.  
1863 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
1864 ~~(2)(e)4.~~ commits a felony of the first degree, punishable as  
1865 provided in s. 775.082, s. 775.083, or s. 775.084.

1866 2. A controlled substance named or described in s.  
1867 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~ (2)(c)6.,  
1868 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
1869 felony of the second degree, punishable as provided in s.  
1870 775.082, s. 775.083, or s. 775.084.

1871 3. Any other controlled substance, except as lawfully sold,  
1872 manufactured, or delivered, must be sentenced to pay a \$500 fine  
1873 and to serve 100 hours of public service in addition to any  
1874 other penalty prescribed by law.

1875 (f) Except as authorized by this chapter, a person may not  
1876 sell, manufacture, or deliver, or possess with intent to sell,  
1877 manufacture, or deliver, a controlled substance in, on, or  
1878 within 1,000 feet of the real property comprising a public  
1879 housing facility at any time. As used in this section, the term  
1880 "real property comprising a public housing facility" means real  
1881 property, as defined in s. 421.03(12), of a public corporation  
1882 created as a housing authority pursuant to part I of chapter  
1883 421. A person who violates this paragraph with respect to:

1884 1. A controlled substance named or described in s.  
1885 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.

27-00673-18

20188\_\_

1886 ~~(2)(e)4.~~ commits a felony of the first degree, punishable as  
 1887 provided in s. 775.082, s. 775.083, or s. 775.084.

1888 2. A controlled substance named or described in s.  
 1889 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~, (2)(c)6.,  
 1890 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
 1891 felony of the second degree, punishable as provided in s.  
 1892 775.082, s. 775.083, or s. 775.084.

1893 3. Any other controlled substance, except as lawfully sold,  
 1894 manufactured, or delivered, must be sentenced to pay a \$500 fine  
 1895 and to serve 100 hours of public service in addition to any  
 1896 other penalty prescribed by law.

1897 (h) Except as authorized by this chapter, a person may not  
 1898 sell, manufacture, or deliver, or possess with intent to sell,  
 1899 manufacture, or deliver, a controlled substance in, on, or  
 1900 within 1,000 feet of the real property comprising an assisted  
 1901 living facility, as that term is used in chapter 429. A person  
 1902 who violates this paragraph with respect to:

1903 1. A controlled substance named or described in s.  
 1904 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
 1905 ~~(2)(e)4.~~ commits a felony of the first degree, punishable as  
 1906 provided in s. 775.082, s. 775.083, or s. 775.084.

1907 2. A controlled substance named or described in s.  
 1908 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~, (2)(c)6.,  
 1909 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
 1910 felony of the second degree, punishable as provided in s.  
 1911 775.082, s. 775.083, or s. 775.084.

1912 3. Any other controlled substance, except as lawfully sold,  
 1913 manufactured, or delivered, must be sentenced to pay a \$500 fine  
 1914 and to serve 100 hours of public service in addition to any



27-00673-18

20188\_\_

1915 other penalty prescribed by law.

1916 (2) (a) Except as authorized by this chapter and chapter  
1917 499, a person may not purchase, or possess with intent to  
1918 purchase, a controlled substance. A person who violates this  
1919 provision with respect to:

1920 1. A controlled substance named or described in s.  
1921 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 5.  
1922 ~~(2) (e) 4.~~ commits a felony of the second degree, punishable as  
1923 provided in s. 775.082, s. 775.083, or s. 775.084.

1924 2. A controlled substance named or described in s.  
1925 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., ~~(2) (e) 5.~~ (2) (c) 6.,  
1926 (2) (c) 7., (2) (c) 8., (2) (c) 9., (2) (c) 10., (3), or (4) commits a  
1927 felony of the third degree, punishable as provided in s.  
1928 775.082, s. 775.083, or s. 775.084.

1929 3. A controlled substance named or described in s.  
1930 893.03(5) commits a misdemeanor of the first degree, punishable  
1931 as provided in s. 775.082 or s. 775.083.

1932 (b) Except as provided in this chapter, a person may not  
1933 purchase more than 10 grams of any substance named or described  
1934 in s. 893.03(1) (a) or (1) (b), or any combination thereof, or any  
1935 mixture containing any such substance. A person who violates  
1936 this paragraph commits a felony of the first degree, punishable  
1937 as provided in s. 775.082, s. 775.083, or s. 775.084.

1938 (4) Except as authorized by this chapter, a person 18 years  
1939 of age or older may not deliver any controlled substance to a  
1940 person younger than 18 years of age, use or hire a person  
1941 younger than 18 years of age as an agent or employee in the sale  
1942 or delivery of such a substance, or use such person to assist in  
1943 avoiding detection or apprehension for a violation of this

27-00673-18

20188\_\_

1944 chapter. A person who violates this subsection with respect to:

1945 (a) A controlled substance named or described in s.

1946 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.

1947 ~~(2)(e)4.~~ commits a felony of the first degree, punishable as

1948 provided in s. 775.082, s. 775.083, or s. 775.084.

1949 (b) A controlled substance named or described in s.

1950 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.,~~ (2)(c)6.,

1951 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a

1952 felony of the second degree, punishable as provided in s.

1953 775.082, s. 775.083, or s. 775.084.

1954

1955 Imposition of sentence may not be suspended or deferred, and the

1956 person so convicted may not be placed on probation.

1957 (5) A person may not bring into this state any controlled

1958 substance unless the possession of such controlled substance is

1959 authorized by this chapter or unless such person is licensed to

1960 do so by the appropriate federal agency. A person who violates

1961 this provision with respect to:

1962 (a) A controlled substance named or described in s.

1963 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.

1964 ~~(2)(e)4.~~ commits a felony of the second degree, punishable as

1965 provided in s. 775.082, s. 775.083, or s. 775.084.

1966 (b) A controlled substance named or described in s.

1967 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.,~~ (2)(c)6.,

1968 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a

1969 felony of the third degree, punishable as provided in s.

1970 775.082, s. 775.083, or s. 775.084.

1971 (c) A controlled substance named or described in s.

1972 893.03(5) commits a misdemeanor of the first degree, punishable

27-00673-18

20188\_\_

1973 as provided in s. 775.082 or s. 775.083.

1974 Section 16. Paragraphs (c) and (f) of subsection (1) of  
1975 section 893.135, Florida Statutes, are amended to read:

1976 893.135 Trafficking; mandatory sentences; suspension or  
1977 reduction of sentences; conspiracy to engage in trafficking.—

1978 (1) Except as authorized in this chapter or in chapter 499  
1979 and notwithstanding the provisions of s. 893.13:

1980 (c)1. A person who knowingly sells, purchases,  
1981 manufactures, delivers, or brings into this state, or who is  
1982 knowingly in actual or constructive possession of, 4 grams or  
1983 more of any morphine, opium, hydromorphone, or any salt,  
1984 derivative, isomer, or salt of an isomer thereof, including  
1985 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or  
1986 (3)(c)4., or 4 grams or more of any mixture containing any such  
1987 substance, but less than 30 kilograms of such substance or  
1988 mixture, commits a felony of the first degree, which felony  
1989 shall be known as "trafficking in illegal drugs," punishable as  
1990 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
1991 quantity involved:

1992 a. Is 4 grams or more, but less than 14 grams, such person  
1993 shall be sentenced to a mandatory minimum term of imprisonment  
1994 of 3 years and shall be ordered to pay a fine of \$50,000.

1995 b. Is 14 grams or more, but less than 28 grams, such person  
1996 shall be sentenced to a mandatory minimum term of imprisonment  
1997 of 15 years and shall be ordered to pay a fine of \$100,000.

1998 c. Is 28 grams or more, but less than 30 kilograms, such  
1999 person shall be sentenced to a mandatory minimum term of  
2000 imprisonment of 25 years and shall be ordered to pay a fine of  
2001 \$500,000.

27-00673-18

20188\_\_

2002           2. A person who knowingly sells, purchases, manufactures,  
2003 delivers, or brings into this state, or who is knowingly in  
2004 actual or constructive possession of, 14 grams or more of  
2005 hydrocodone, as described in s. 893.03(2)(a)1.k.  
2006 ~~893.03(2)(a)1.j.~~, codeine, as described in s. 893.03(2)(a)1.g.,  
2007 or any salt thereof, or 14 grams or more of any mixture  
2008 containing any such substance, commits a felony of the first  
2009 degree, which felony shall be known as "trafficking in  
2010 hydrocodone," punishable as provided in s. 775.082, s. 775.083,  
2011 or s. 775.084. If the quantity involved:

2012           a. Is 14 grams or more, but less than 28 grams, such person  
2013 shall be sentenced to a mandatory minimum term of imprisonment  
2014 of 3 years and shall be ordered to pay a fine of \$50,000.

2015           b. Is 28 grams or more, but less than 50 grams, such person  
2016 shall be sentenced to a mandatory minimum term of imprisonment  
2017 of 7 years and shall be ordered to pay a fine of \$100,000.

2018           c. Is 50 grams or more, but less than 200 grams, such  
2019 person shall be sentenced to a mandatory minimum term of  
2020 imprisonment of 15 years and shall be ordered to pay a fine of  
2021 \$500,000.

2022           d. Is 200 grams or more, but less than 30 kilograms, such  
2023 person shall be sentenced to a mandatory minimum term of  
2024 imprisonment of 25 years and shall be ordered to pay a fine of  
2025 \$750,000.

2026           3. A person who knowingly sells, purchases, manufactures,  
2027 delivers, or brings into this state, or who is knowingly in  
2028 actual or constructive possession of, 7 grams or more of  
2029 oxycodone, as described in s. 893.03(2)(a)1.q. ~~893.03(2)(a)1.o.~~,  
2030 or any salt thereof, or 7 grams or more of any mixture

27-00673-18

20188\_\_

2031 containing any such substance, commits a felony of the first  
2032 degree, which felony shall be known as "trafficking in  
2033 oxycodone," punishable as provided in s. 775.082, s. 775.083, or  
2034 s. 775.084. If the quantity involved:

2035 a. Is 7 grams or more, but less than 14 grams, such person  
2036 shall be sentenced to a mandatory minimum term of imprisonment  
2037 of 3 years and shall be ordered to pay a fine of \$50,000.

2038 b. Is 14 grams or more, but less than 25 grams, such person  
2039 shall be sentenced to a mandatory minimum term of imprisonment  
2040 of 7 years and shall be ordered to pay a fine of \$100,000.

2041 c. Is 25 grams or more, but less than 100 grams, such  
2042 person shall be sentenced to a mandatory minimum term of  
2043 imprisonment of 15 years and shall be ordered to pay a fine of  
2044 \$500,000.

2045 d. Is 100 grams or more, but less than 30 kilograms, such  
2046 person shall be sentenced to a mandatory minimum term of  
2047 imprisonment of 25 years and shall be ordered to pay a fine of  
2048 \$750,000.

2049 4.a. A person who knowingly sells, purchases, manufactures,  
2050 delivers, or brings into this state, or who is knowingly in  
2051 actual or constructive possession of, 4 grams or more of:

2052 (I) Alfentanil, as described in s. 893.03(2)(b)1.;

2053 (II) Carfentanil, as described in s. 893.03(2)(b)6.;

2054 (III) Fentanyl, as described in s. 893.03(2)(b)9.;

2055 (IV) Sufentanil, as described in s. 893.03(2)(b)30.

2056 ~~893.03(2)(b)29.;~~

2057 (V) A fentanyl derivative, as described in s.

2058 893.03(1)(a)62.;

2059 (VI) A controlled substance analog, as described in s.

27-00673-18

20188\_\_

2060 893.0356, of any substance described in sub-sub-subparagraphs  
2061 (I)-(V); or  
2062 (VII) A mixture containing any substance described in sub-  
2063 sub-subparagraphs (I)-(VI),  
2064  
2065 commits a felony of the first degree, which felony shall be  
2066 known as "trafficking in fentanyl," punishable as provided in s.  
2067 775.082, s. 775.083, or s. 775.084.

2068 b. If the quantity involved under sub-subparagraph a.:

2069 (I) Is 4 grams or more, but less than 14 grams, such person  
2070 shall be sentenced to a mandatory minimum term of imprisonment  
2071 of 3 years, and shall be ordered to pay a fine of \$50,000.

2072 (II) Is 14 grams or more, but less than 28 grams, such  
2073 person shall be sentenced to a mandatory minimum term of  
2074 imprisonment of 15 years, and shall be ordered to pay a fine of  
2075 \$100,000.

2076 (III) Is 28 grams or more, such person shall be sentenced  
2077 to a mandatory minimum term of imprisonment of 25 years, and  
2078 shall be ordered to pay a fine of \$500,000.

2079 5. A person who knowingly sells, purchases, manufactures,  
2080 delivers, or brings into this state, or who is knowingly in  
2081 actual or constructive possession of, 30 kilograms or more of  
2082 any morphine, opium, oxycodone, hydrocodone, codeine,  
2083 hydromorphone, or any salt, derivative, isomer, or salt of an  
2084 isomer thereof, including heroin, as described in s.  
2085 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or  
2086 more of any mixture containing any such substance, commits the  
2087 first degree felony of trafficking in illegal drugs. A person  
2088 who has been convicted of the first degree felony of trafficking

27-00673-18

20188\_\_

2089 in illegal drugs under this subparagraph shall be punished by  
2090 life imprisonment and is ineligible for any form of  
2091 discretionary early release except pardon or executive clemency  
2092 or conditional medical release under s. 947.149. However, if the  
2093 court determines that, in addition to committing any act  
2094 specified in this paragraph:

2095 a. The person intentionally killed an individual or  
2096 counseled, commanded, induced, procured, or caused the  
2097 intentional killing of an individual and such killing was the  
2098 result; or

2099 b. The person's conduct in committing that act led to a  
2100 natural, though not inevitable, lethal result,

2101  
2102 such person commits the capital felony of trafficking in illegal  
2103 drugs, punishable as provided in ss. 775.082 and 921.142. A  
2104 person sentenced for a capital felony under this paragraph shall  
2105 also be sentenced to pay the maximum fine provided under  
2106 subparagraph 1.

2107 6. A person who knowingly brings into this state 60  
2108 kilograms or more of any morphine, opium, oxycodone,  
2109 hydrocodone, codeine, hydromorphone, or any salt, derivative,  
2110 isomer, or salt of an isomer thereof, including heroin, as  
2111 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or  
2112 60 kilograms or more of any mixture containing any such  
2113 substance, and who knows that the probable result of such  
2114 importation would be the death of a person, commits capital  
2115 importation of illegal drugs, a capital felony punishable as  
2116 provided in ss. 775.082 and 921.142. A person sentenced for a  
2117 capital felony under this paragraph shall also be sentenced to

27-00673-18

20188\_\_

2118 pay the maximum fine provided under subparagraph 1.

2119 (f)1. Any person who knowingly sells, purchases,  
2120 manufactures, delivers, or brings into this state, or who is  
2121 knowingly in actual or constructive possession of, 14 grams or  
2122 more of amphetamine, as described in s. 893.03(2)(c)2., or  
2123 methamphetamine, as described in s. 893.03(2)(c)5.

2124 ~~893.03(2)(c)4.~~, or of any mixture containing amphetamine or  
2125 methamphetamine, or phenylacetone, phenylacetic acid,  
2126 pseudoephedrine, or ephedrine in conjunction with other  
2127 chemicals and equipment utilized in the manufacture of  
2128 amphetamine or methamphetamine, commits a felony of the first  
2129 degree, which felony shall be known as "trafficking in  
2130 amphetamine," punishable as provided in s. 775.082, s. 775.083,  
2131 or s. 775.084. If the quantity involved:

2132 a. Is 14 grams or more, but less than 28 grams, such person  
2133 shall be sentenced to a mandatory minimum term of imprisonment  
2134 of 3 years, and the defendant shall be ordered to pay a fine of  
2135 \$50,000.

2136 b. Is 28 grams or more, but less than 200 grams, such  
2137 person shall be sentenced to a mandatory minimum term of  
2138 imprisonment of 7 years, and the defendant shall be ordered to  
2139 pay a fine of \$100,000.

2140 c. Is 200 grams or more, such person shall be sentenced to  
2141 a mandatory minimum term of imprisonment of 15 calendar years  
2142 and pay a fine of \$250,000.

2143 2. Any person who knowingly manufactures or brings into  
2144 this state 400 grams or more of amphetamine, as described in s.  
2145 893.03(2)(c)2., or methamphetamine, as described in s.  
2146 893.03(2)(c)5. ~~893.03(2)(c)4.~~, or of any mixture containing



27-00673-18

20188\_\_

2147 amphetamine or methamphetamine, or phenylacetone, phenylacetic  
 2148 acid, pseudoephedrine, or ephedrine in conjunction with other  
 2149 chemicals and equipment used in the manufacture of amphetamine  
 2150 or methamphetamine, and who knows that the probable result of  
 2151 such manufacture or importation would be the death of any person  
 2152 commits capital manufacture or importation of amphetamine, a  
 2153 capital felony punishable as provided in ss. 775.082 and  
 2154 921.142. Any person sentenced for a capital felony under this  
 2155 paragraph shall also be sentenced to pay the maximum fine  
 2156 provided under subparagraph 1.

2157 Section 17. Paragraphs (b), (c), and (e) of subsection (3)  
 2158 of section 921.0022, Florida Statutes, are amended to read:

2159 921.0022 Criminal Punishment Code; offense severity ranking  
 2160 chart.—

2161 (3) OFFENSE SEVERITY RANKING CHART

2162 (b) LEVEL 2

2163  
 2164

Florida Statute	Felony Degree	Description
379.2431 (1) (e) 3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1) (e) 4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection

2166

27-00673-18

20188\_\_

			Act.
2167	403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
2168	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
2169	590.28(1)	3rd	Intentional burning of lands.
2170	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
2171	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
2172	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
2173	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling;

27-00673-18

20188\_\_

2174	810.09(2) (e)	3rd	facilitating or furthering burglary.
2175	812.014(2) (c) 1.	3rd	Trespassing on posted commercial horticulture property.
2176	812.014(2) (c) 1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
2177	812.014(2) (d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
2178	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
2179	817.234(1) (a) 2.	3rd	False statement in support of insurance claim.
2180	817.481(3) (a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
	817.52(3)	3rd	Failure to redeliver hired

27-00673-18

20188\_\_

2181			vehicle.
	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
2182			
	817.60 (5)	3rd	Dealing in credit cards of another.
2183			
	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
2184			
	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
2185			
	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
2186			
	831.01	3rd	Forgery.
2187			
	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
2188			
	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
2189			

27-00673-18

20188\_\_

2190  
2191  
2192  
2193  
2194  
2195  
2196  
2197  
2198

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

(c) LEVEL 3

27-00673-18

20188\_\_

2199  
2200  
2201  
2202  
2203  
2204  
2205  
2206  
2207

Florida Statute	Felony Degree	Description
119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3) (b) - (d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.

27-00673-18

20188\_\_

	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
2208			
	327.35(2)(b)	3rd	Felony BUI.
2209			
	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
2210			
	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
2211			
	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
2212			
	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.

27-00673-18

20188\_\_

2213

379.2431 3rd Possessing any marine turtle  
(1) (e) 6. species or hatchling, or parts  
thereof, or the nest of any  
marine turtle species described  
in the Marine Turtle Protection  
Act.

2214

379.2431 3rd Soliciting to commit or  
(1) (e) 7. conspiring to commit a  
violation of the Marine Turtle  
Protection Act.

2215

400.9935 (4) (a) 3rd Operating a clinic, or offering  
or (b) services requiring licensure,  
without a license.

2216

400.9935 (4) (e) 3rd Filing a false license  
application or other required  
information or failing to  
report information.

2217

440.1051 (3) 3rd False report of workers'  
compensation fraud or  
retaliation for making such a  
report.

2218

501.001 (2) (b) 2nd Tampers with a consumer product  
or the container using



27-00673-18

20188\_\_

			materially false/misleading information.
2219	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
2220	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
2221	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.
2222	697.08	3rd	Equity skimming.
2223	790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.
2224	806.10 (1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
2225	806.10 (2)	3rd	Interferes with or assaults firefighter in performance of duty.
2226	810.09 (2) (c)	3rd	Trespass on property other than

27-00673-18

20188\_\_

			structure or conveyance armed with firearm or dangerous weapon.
2227	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
2228	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
2229	815.04 (5) (b)	2nd	Computer offense devised to defraud or obtain property.
2230	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
2231	817.233	3rd	Burning to defraud insurer.
2232	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
2233	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
2234	817.236	3rd	Filing a false motor vehicle

27-00673-18

20188\_\_

2235			insurance application.
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
2236			
	817.413 (2)	3rd	Sale of used goods as new.
2237			
	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
2238			
	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
2239			
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
2240			
	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
2241			
	843.19	3rd	Injure, disable, or kill police dog or horse.
2242			

27-00673-18

20188\_\_

2243  
2244  
2245  
2246  
2247

860.15 (3)	3rd	Overcharging for repairs and parts.
870.01 (2)	3rd	Riot; inciting or encouraging.
893.13 (1) (a) 2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., <del>(2) (c) 5.</del> , (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., <u>(2) (c) 10.</u> , (3), or (4) drugs).
893.13 (1) (d) 2.	2nd	Sell, manufacture, or deliver s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., <del>(2) (c) 5.</del> , (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., <u>(2) (c) 10.</u> , (3), or (4) drugs within 1,000 feet of university.
893.13 (1) (f) 2.	2nd	Sell, manufacture, or deliver s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., <del>(2) (c) 5.</del> , (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., <u>(2) (c) 10.</u> , (3), or (4) drugs within 1,000 feet of public housing facility.

27-00673-18

20188\_\_

2248

893.13(4)(c) 3rd Use or hire of minor; deliver to minor other controlled substances.

2249

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

2250

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

2251

893.13(7)(a)9. 3rd Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

2252

893.13(7)(a)10. 3rd Affix false or forged label to package of controlled substance.

2253

893.13(7)(a)11. 3rd Furnish false or fraudulent material information on any document or record required by chapter 893.

893.13(8)(a)1. 3rd Knowingly assist a patient, other person, or owner of an

27-00673-18

20188\_\_

2254	893.13(8)(a)2.	3rd	<p>animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.</p>
2255	893.13(8)(a)3.	3rd	<p>Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.</p>
2256	893.13(8)(a)4.	3rd	<p>Knowingly write a prescription for a controlled substance for a fictitious person.</p>
2257	918.13(1)(a)	3rd	<p>Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.</p>
2258			<p>Alter, destroy, or conceal investigation evidence.</p>

27-00673-18

20188\_\_

2259	944.47 (1) (a) 1. & 2.	3rd	Introduce contraband to correctional facility.
2260	944.47 (1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.
2261	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
2262	(e) LEVEL 5		
2263			
2264			
2265	Florida Statute	Felony Degree	Description
2266	316.027 (2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
2267	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
2268	316.80 (2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
	322.34 (6)	3rd	Careless operation of motor

27-00673-18

20188\_\_

2269

vehicle with suspended license,  
resulting in death or serious  
bodily injury.

327.30(5)

3rd

Vessel accidents involving  
personal injury; leaving scene.

2270

379.365(2)(c)1.

3rd

Violation of rules relating to:  
willful molestation of stone  
crab traps, lines, or buoys;  
illegal bartering, trading, or  
sale, conspiring or aiding in  
such barter, trade, or sale, or  
supplying, agreeing to supply,  
aiding in supplying, or giving  
away stone crab trap tags or  
certificates; making, altering,  
forging, counterfeiting, or  
reproducing stone crab trap  
tags; possession of forged,  
counterfeit, or imitation stone  
crab trap tags; and engaging in  
the commercial harvest of stone  
crabs while license is  
suspended or revoked.

2271

379.367(4)

3rd

Willful molestation of a  
commercial harvester's spiny  
lobster trap, line, or buoy.



27-00673-18

20188\_\_

2272	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
2273	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
2274	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
2275	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
2276	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
2277	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
2278	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
2279	790.01(2)	3rd	Carrying a concealed firearm.

27-00673-18

20188\_\_

2280  
2281  
2282  
2283  
2284  
2285  
2286  
2287

790.162	2nd	Threat to throw or discharge destructive device.
790.163 (1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent

27-00673-18

20188\_\_

			to damage any structure or property.
2288	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
2289	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
2290	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
2291	812.131 (2) (b)	3rd	Robbery by sudden snatching.
2292	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
2293	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
2294	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
2295	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or

27-00673-18

20188\_\_

2296

false statements regarding  
property values relating to the  
solvency of an insuring entity.

817.568 (2) (b)

2nd

Fraudulent use of personal  
identification information;  
value of benefit, services  
received, payment avoided, or  
amount of injury or fraud,  
\$5,000 or more or use of  
personal identification  
information of 10 or more  
persons.

2297

817.611 (2) (a)

2nd

Traffic in or possess 5 to 14  
counterfeit credit cards or  
related documents.

2298

817.625 (2) (b)

2nd

Second or subsequent fraudulent  
use of scanning device,  
skimming device, or reencoder.

2299

825.1025 (4)

3rd

Lewd or lascivious exhibition  
in the presence of an elderly  
person or disabled adult.

2300

827.071 (4)

2nd

Possess with intent to promote  
any photographic material,  
motion picture, etc., which

27-00673-18

20188\_\_

2301

includes sexual conduct by a child.

827.071 (5)

3rd

Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.

2302

839.13 (2) (b)

2nd

Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

2303

843.01

3rd

Resist officer with violence to person; resist arrest with violence.

2304

847.0135 (5) (b)

2nd

Lewd or lascivious exhibition using computer; offender 18 years or older.

2305

847.0137  
(2) & (3)

3rd

Transmission of pornography by electronic device or equipment.

2306

847.0138  
(2) & (3)

3rd

Transmission of material harmful to minors to a minor by electronic device or equipment.

27-00673-18

20188\_\_

2307

874.05 (1) (b)            2nd    Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

2308

874.05 (2) (a)           2nd    Encouraging or recruiting person under 13 years of age to join a criminal gang.

2309

893.13 (1) (a) 1.        2nd    Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 5. ~~(2) (e) 4.~~ drugs).

2310

893.13 (1) (c) 2.        2nd    Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., ~~(2) (e) 5.,~~ (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (2) (c) 10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

2311

27-00673-18

20188\_\_

2312

893.13(1)(d)1.            1st    Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(c)4.~~ drugs) within 1,000 feet of university.

2313

893.13(1)(e)2.            2nd    Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~, (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

2314

893.13(1)(f)1.            1st    Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. ~~(2)(c)4.~~ drugs) within 1,000 feet of public housing facility.

893.13(4)(b)                2nd    Use or hire of minor; deliver to minor other controlled

27-00673-18

20188\_\_

substance.

2315

893.1351(1)

3rd

Ownership, lease, or rental for  
trafficking in or manufacturing  
of controlled substance.

2316

2317

Section 18. Except as otherwise provided in this act, this  
act shall take effect July 1, 2018.

2318





# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Rules, *Chair*  
Judiciary, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Regulated Industries

**JOINT COMMITTEE:**

Joint Legislative Budget Commission

**SENATOR LIZBETH BENACQUISTO**

27th District

January 4, 2018

The Honorable Dana Young  
Senate Health Policy, Chair  
316 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

**RE: SB 8- An act relating to controlled substances**

Dear Madam Chair:

Please allow this letter to serve as my respectful request to agenda SB 8, Relating to controlled substances, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto  
Senate District 27

Cc: Sandra Stovall

**REPLY TO:**

- 2310 First Street, Unit 305, Fort Myers, Florida 33901 (239) 338-2570
- 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18  
Meeting Date

SB 8  
Bill Number (if applicable)

194134  
Amendment Barcode (if applicable)

Topic Controlled Substances

Name Brittany Beane

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email JLFL@gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing The Junior Leagues 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.**

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1-16-18

Meeting Date

SB8

Bill Number (if applicable)

194134

Amendment Barcode (if applicable)

Topic Opioids

Name MARK FONTAINE

Job Title Executive Director

Address 2868 Mahan Drive

Phone 878-2196

Street

Tallahassee

FL

State

32308

Zip

Email mfontaine@adaa.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Alcohol + Drug Abuse Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18  
Meeting Date

8  
Bill Number (if applicable)  
194134  
Amendment Barcode (if applicable)

Topic Opioids

Name Andrew Fay

Job Title Special Counsel

Address PL 02

Phone 850-245-0155

Tallahassee

Email \_\_\_\_\_

City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Office of the Attorney General

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)

1-18-18

Meeting Date

SB-08

Bill Number (if applicable)

Topic Opioid

Amendment Barcode (if applicable)

Name Teresa Miller

Job Title Parent

Address 3608 W Corona St

Phone \_\_\_\_\_

Street

Aampa

Email tmiller@stoprxdrug

City

State

Zip

abuse.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing N/A

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 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18

Meeting Date

SB-08

Bill Number (if applicable)

Topic Opioids

Amendment Barcode (if applicable)

Name Ellen Snelling

Job Title Parent volunteer

Address 521 Lantern Circle

Phone 813-731-2696

Street

Temple Terrace FL 33617

Email er.snelling@verizon.net

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

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 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18  
Meeting Date

8  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title \_\_\_\_\_

Address 1008 Riverside Ave #240

Phone 904-233-3051

Street

Jacksonville, FL 32209

Email nulandlaw@aol.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Chapter, American College of Surgeons

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18  
Meeting Date

8  
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham Dr  
Street

Phone 219 3631

Tallahassee FL 32308  
City State Zip

Email amercer@fpca.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18  
Meeting Date

8  
Bill Number (if applicable)

Topic Opioids

Amendment Barcode (if applicable)

Name Jennifer Ernst

Job Title Chief Operating Officer

Address 1700 Education Ave  
Street

Phone 941-889-8048

Punta Gorda FL 33950  
City State Zip

Email Jernst@cbhcfl.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Charlotte Behavioral Health Care, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1-16-2018

8

*Meeting Date*

*Bill Number (if applicable)*

Topic Controlled Substances

*Amendment Barcode (if applicable)*

Name Erin Choy

Job Title Immediate Past President

Address 404 E. Sixth Avenue

Phone 5616354168

*Street*

Tallahassee

FL

32303

Email erin.choy@gmail.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Junior Leagues 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 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18

Meeting Date

SB 8

Bill Number (if applicable)

Topic CONTROLLED SUBSTANCES

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 391644

Phone 813.264.2977

Street

TAMPA

City

FL

State

33694

Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

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)

1/16/18

Meeting Date

SB 8

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Ashley Narse, MD

Job Title FMHA Vice Speaker

Address 1430 Piedmont Dr. E.

Phone 850 224-6496

Street

Talkhessae

City

FL

State

32308

Zip

Email anorsewatt.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

Jan. 16, 18  
Meeting Date

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

8

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Toni Large

Job Title \_\_\_\_\_

Address 519 E. Park Ave  
Street  
Tallahassee, FL 32308  
City State Zip

Phone (850) 556-1461

Email toni@sulaw.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL Orthopedic Society

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)

1-16-18

Meeting Date

8

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name THAD LOWREY

Job Title VP GOVERNMENTAL RELATIONS

Address 7720 Washington St.  
Street

Phone 727-892-8508

PORT RICHTON FL 34608  
City State Zip

Email Howrey@openpar.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing OPERATION PAR

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)

1/16/18  
Meeting Date

0008  
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor

Address 115. S. Andrews Ave.

Phone 954.789.9293

Ft. Lauderdale FL 33301  
City State Zip

Email dewest@broward.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Broward County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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)

1/16/18  
Meeting Date

0008  
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Candice Ericks

Job Title \_\_\_\_\_

Address 205 S. Adams St  
Street  
Tallahassee FL  
City State Zip

Phone 954-648-1204

Email Candice@ericks-consultants.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Palm Beach County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



Waive in support

# APPEARANCE RECORD

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

1/16/18

Meeting Date

8

Bill Number (if applicable)

Topic controlled substances

Amendment Barcode (if applicable)

Name Alisa Laboff

Job Title Exec. Director

Address PO Box 961

Phone 850-671-4445

Street

TLH

City

32302

State

Zip

Email alisa@namiflorida.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing National Alliance on Mental Illness - 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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18

Meeting Date

SB 8

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Joel Anne Hart

Job Title Chief Legislative Officer

Address 118 E Jefferson St

Phone (813) 224-1089

Street

Tally FL 32301

City

State

Zip

Email jahart@floridadental.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Dental Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

11/16/18

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

538

Meeting Date

Bill Number (if applicable)

Topic

OPiate Bill

Amendment Barcode (if applicable)

Name

AARON WOTHL, MD

Job Title

EMERGENCY PHYSICIAN

Address

1625 SE 13 STREET

Phone

239 938 5869

Street

CAPE CORAL FL 33990

Email

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

FCEP FLORIDA COLLEGE OF EMERGENCY PHYSICIANS

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

8

\_\_\_\_\_  
Meeting Date

\_\_\_\_\_  
Bill Number (if applicable)

Topic \_\_\_\_\_

\_\_\_\_\_  
Amendment Barcode (if applicable)

Name DARREN Duchene

Job Title Long-Acting Naltrexone Program Director

Address FLORIDA Alcohol + Drug Abuse Assoc. Phone \_\_\_\_\_  
Street

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

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.**

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/16/18  
Meeting Date

SB 8

Bill Number (if applicable)

~~15413~~

Amendment Barcode (if applicable)

Topic OPIOIDS

Name NATALIE KELLY

Job Title CEO

Address 1225 CALHOUN STREET  
Street

Phone 850 570 5747

TALLAHASSEE FL 32301  
City State Zip

Email NATALIE@FLMANAGING ENTITIES.COM

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF MANAGING ENTITIES

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)

1/11/18  
Meeting Date

SB8  
Bill Number (if applicable)

Topic SB8

Amendment Barcode (if applicable)

Name Shane Messer

Job Title Legislative Affairs Director

Address 316 E Park Ave

Phone 224-60048

Tallahassee FL 32301  
City State Zip

Email shane@focmh.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Council for Behavioral Healthcare

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**  
**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 138

INTRODUCER: Senator Book

SUBJECT: Perinatal Mental Health

DATE: January 12, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	<b>Favorable</b>
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

---

**I. Summary:**

SB 138 directs the Department of Health (DOH) to establish two toll-free perinatal mental health care hotlines by January 1, 2019: one for the general public and one for health care providers. The public hotline must provide basic information on postpartum depression and perinatal care; and may refer the caller to a local qualified provider. The provider hotline must provide information to assist a provider in addressing the mental health of pregnant or postpartum patients. The DOH must also encourage obstetrical and mental health providers to attend continuing education on perinatal mental health care; and must create public service announcements on perinatal mental health care.

The bill also expands the statutory responsibilities of birth centers and hospitals to require additional infant and maternal postpartum evaluations and follow-up, including, a maternal mental health assessment, information on postpartum depression, and the telephone number of the DOH public perinatal mental health care hotline.

The bill takes effect July 1, 2018.

**II. Present Situation:**

**Perinatal Mental Health Care and Child Birth**

*Perinatal Mental Health Care*

The Florida Legislature has not defined the term *perinatal*, although it is used throughout the statutes in connection with *perinatal* intensive care units, and maternal and fetal morbidity and mortality. The Merriam-Webster Dictionary defines *perinatal* as occurring in, concerning with,

or being in the period around the time of birth.<sup>1</sup> *Perinatal mental health care* is thus mental health care occurring in, concerned with, and around child birth.

### ***Perinatal Anxiety Disorders***

There are four major mood and anxiety disorders that may affect women in the perinatal period:

- Bipolar Disorder (formerly Manic Depressive Disorder);
- Panic Disorder;
- Obsessive Compulsive Disorder; and
- Depression.<sup>2</sup>

Depression interferes with daily life and may last for weeks or months. Depression is a common and serious illness. A recent Center for Disease Control and Prevention (CDC) survey showed that about one in ten reproductive age women, between the ages of 18 to 44, experienced symptoms of major depression.<sup>3</sup> Most women, even those with the most severe forms of depression, can get better with treatment.<sup>4</sup>

Recent studies suggest that approximately 10 to 16 percent of women experience clinically significant depression during pregnancy.<sup>5</sup> Particularly vulnerable are those women with histories of psychiatric illness who discontinue psychotropic medications during pregnancy. A recent study estimated that women who discontinued medication were five times as likely to relapse as compared to women who maintained treatment.<sup>6</sup>

While depression can occur among women with a healthy pregnancy and birth, the following experiences may put some women at a higher risk for perinatal depression:

- Symptoms of depression during or after a previous pregnancy;
- History of depression or bipolar disorder;
- Family history of depression;
- Stressful event before, during, or shortly after childbirth such as job loss, death of loved one, domestic violence, or personal illness;

<sup>1</sup> Merriam-Webster Dictionary - On Line, available at <https://www.merriam-webster.com/dictionary/perinatal> (last visited Jan. 8, 2018).

<sup>2</sup> Altshuler, M.D., Lori L., Hendrick, M.D., Victoria & Cohen, M.D., Lee S., *An Update on Mood and Anxiety Disorders During Pregnancy and the Postpartum Period*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC181144/pdf/i1523-5998-002-06-0217.pdf> (last visited Jan. 8, 2018).

<sup>3</sup> Journal of Women's Health, *Depression and treatment among U.S. pregnant and nonpregnant women of reproductive age, 2005-2009* (August 21, 2012), available at <https://www.ncbi.nlm.nih.gov/pubmed/22691031> (last visited Jan. 9, 2018); Center for Disease Control and Prevention, *Depression Among Women*, (Dec. 13, 2017), available at <https://www.cdc.gov/reproductivehealth/depression/index.htm> (last visited January 8, 2018).

<sup>4</sup> See *Supra* note 3.

<sup>5</sup> Massachusetts Center for Women's Mental Health, *Depression During Pregnancy is Often Not Treated*, (Feb. 10, 2007), available at <https://womensmentalhealth.org/posts/depression-during-pregnancy-is-often-not-treated/> (last visited Jan. 8, 2018); Florida Department of Health, *After Pregnancy*, <http://www.floridahealth.gov/programs-and-services/womens-health/pregnancy/after-pregnancy.html> (last viewed Jan. 9, 2018); See also *Supra* note 2. This United States Center for Disease Control and Prevention funded study indicated that 12 to 16 percent of new mothers experience postpartum depression.

<sup>6</sup> New Research, *Psychiatric Disorders During Pregnancy*, by Massachusetts Center for Women's Mental Health, *Relapse of Major Depression during Pregnancy* (April 22, 2006) available at <https://womensmentalhealth.org/posts/243/> (last visited Jan. 8, 2018).



- Medical complications during childbirth such as premature delivery or infant with medical problems;
- Mixed emotion about pregnancy;
- Lack of emotional support from spouse, partner, family, or friends; or
- Alcohol or drug abuse problems.<sup>7</sup>

### ***Postpartum Blues vs. Depression***

The *postpartum blues*, or the “*baby blues*,” are common feelings experienced by approximately 75 to 80 percent of women in the first 10 days following childbirth; and include mood swings, crying spells, and feelings of sadness, fear, anger, irritability, or anxiety and usually go away within a few days to one to two weeks after childbirth.<sup>8</sup>

*Postpartum depression* is a major depressive episode that also affects women after childbirth and also commonly occurs within one and four weeks of delivery.<sup>9</sup> Postpartum depression can affect any woman regardless of age, race, ethnicity, or economic status.<sup>10</sup> Postpartum depression causes women to experience more intense feelings of depression and intensified feelings of sadness, fear, anger, anxiety, or despair that prevent them from being able to perform their activities of daily living.<sup>11</sup> Postpartum depression may begin shortly before, or any time after child birth, but commonly begins one to four weeks after child birth,<sup>12</sup> and can persist up to a year or more after giving birth.<sup>13</sup> Because of the severity of the symptoms, postpartum depression usually requires treatment.<sup>14</sup>

<sup>7</sup> National Institute of Mental Health, *Postpartum Depression Facts* [https://www.nimh.nih.gov/health/publications/postpartum-depression-facts/postpartum-depression-brochure\\_146657.pdf](https://www.nimh.nih.gov/health/publications/postpartum-depression-facts/postpartum-depression-brochure_146657.pdf) (last visited Jan. 9, 2018).

<sup>8</sup> Florida Department of Health, After Pregnancy, *The “Baby Blues” and Postpartum Depression*, available at <http://www.floridahealth.gov/programs-and-services/womens-health/pregnancy/after-pregnancy.html> (last visited Jan. 9, 2018); Center for Disease Control and Prevention, *Depression Among Women*, (Dec. 13, 2017) available at <https://www.cdc.gov/reproductivehealth/depression/index.htm> (last visited Jan. 8, 2018); Fitelson, E; Kim, Sarah; Scott-Baker, A.; and Leicht, K; International Journal of Women’s Health, *Treatment of postpartum depression: clinical, psychological and pharmacological options*, (Dec. 30, 2010) available at [https://www.ncbi.nlm.nih.gov/pubmed/?term=Leight%20K%5BAuthor%5D&cauthor=true&cauthor\\_uid=21339932](https://www.ncbi.nlm.nih.gov/pubmed/?term=Leight%20K%5BAuthor%5D&cauthor=true&cauthor_uid=21339932) (last visited Jan. 9, 2018).

<sup>9</sup> American Psychiatric Association; *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Washington DC, 1994, p. 386.

<sup>10</sup> See *supra* note 10.

<sup>11</sup> United States Center for Disease Control and Prevention, *Maternal Depression*, (May 23, 2017) available at <https://www.cdc.gov/features/maternal-depression/index.html> (last visited Jan. 9, 2018).

<sup>12</sup> See *supra* note 10; see also Fitelson, E; Kim, Sarah; Scott-Baker, A.; and Leicht, K; International Journal of Women’s Health, *Treatment of postpartum depression: clinical, psychological and pharmacological options* (Dec. 30, 2010), available at [https://www.ncbi.nlm.nih.gov/pubmed/?term=Leight%20K%5BAuthor%5D&cauthor=true&cauthor\\_uid=21339932](https://www.ncbi.nlm.nih.gov/pubmed/?term=Leight%20K%5BAuthor%5D&cauthor=true&cauthor_uid=21339932) (last visited Jan. 9, 2018).

<sup>13</sup> Fitelson, E; Kim, Sarah; Scott-Baker, A.; and Leicht, K; International Journal of Women’s Health, *Treatment of postpartum depression: clinical, psychological and pharmacological options*, (Dec. 30, 2010) available at [https://www.ncbi.nlm.nih.gov/pubmed/?term=Leight%20K%5BAuthor%5D&cauthor=true&cauthor\\_uid=21339932](https://www.ncbi.nlm.nih.gov/pubmed/?term=Leight%20K%5BAuthor%5D&cauthor=true&cauthor_uid=21339932) (last visited Jan. 9, 2018).

<sup>14</sup> Center for Disease Control and Prevention, *Depression Among Women*, (Dec. 13, 2017) available at <https://www.cdc.gov/reproductivehealth/depression/index.htm> (last visited Jan. 8, 2018).

## Regulation of Perinatal Mental Health Care and Child Birth Settings

At least three state agencies have responsibilities related to the regulation and delivery of perinatal mental health care and child birth. The Department of Children and Families (DCF) evaluates, researches, plans, and recommends to the Governor and the Legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders.<sup>15</sup> The DCF also oversees and contracts for the delivery of mental health services funded with certain federal and state funds through the Substance Abuse and Mental Health (SAMH) program office.

The Agency for Health Care Administration (AHCA) regulates hospitals and birthing centers.<sup>16</sup> The DOH is responsible for the state's public health system;<sup>17</sup> and is the agency designated by the legislature to administer and provide maternal and child health services.<sup>18</sup> Healthy Start, for example, provides the following services to expectant and new mothers:

- Periodic prenatal care for low or medium risk pregnant patients;
- Referrals for higher risk pregnancy patients;
- Periodic medical examinations and nutrition counseling, including the benefits of breast feeding;
- Pediatric primary care, programs subject to the availability of funds;
- Prenatal and infant health care, subject to the availability of funds, including:
  - Case identification;
  - Risk factor assessment;
  - Case management;
  - Home health care; and
  - Childbirth and parenting education.<sup>19</sup>

The goal of Healthy Start is to reduce infant mortality, reduce the number of low birth weight babies, and improve health and developmental outcomes. Healthy Start legislation provides for universal risk screening of all Florida's pregnant women and newborn infants to identify those at risk of poor birth, health, and developmental outcomes. The range of Healthy Start services available to pregnant women, infants and children up to age 3 include:

- Information, referral and ongoing care coordination and support to assure access to needed services;
- Psychosocial, nutritional, and smoking cessation counseling;
- Childbirth, breastfeeding, and parenting support and education; and
- Home visiting.<sup>20</sup>

---

<sup>15</sup> Section 394.453, F.S.

<sup>16</sup> Sections 395.003 and 383.301, F.S.

<sup>17</sup> Section 381.001, F.S.

<sup>18</sup> Section 383.011, F.S. *See also* Department of Health, *Programs and Services*, <http://www.floridahealth.gov/programs-and-services/index.html>, (last visited Jan. 9, 2018). Some of the programs the DOH administers or provides to mothers and children include Breastfeeding, Birth Certificates, Children's Medical Services (CMS), Florida's Children's Medical Services Managed Care Plan, Drowning Prevention, Early Steps, Healthy Start, Kid Care, Lead Poisoning, Newborn Screening, School Health Program (available in all 67 counties), Sudden Unexpected Infant Death, and WIC nutrition program.

<sup>19</sup> *See* Department of Health, *Healthy Start*, <http://www.floridahealth.gov/programs-and-services/childrens-health/healthy-start/index.html> (last visited Jan. 8, 2018).

<sup>20</sup> *See supra* note 19.

Care for postpartum women under the Healthy Start program includes a nondescript examination within six weeks of delivery.<sup>21</sup>

The DOH does not provide or perform mental health services.<sup>22</sup> The DOH, through its county health departments and other state programs,<sup>23</sup> refer clients in need of mental health services to providers in local areas;<sup>24</sup> and though its web site provides information on, *The “Baby Blues” and Postpartum Depression*.<sup>25</sup>

The DOH contracts for the provision of a toll-free Family Health Line<sup>26</sup> to provide consumers with information on community resources, pregnancy, prenatal care, childbirth, breastfeeding, family planning, infant and toddler care, parenting, smoking cessation, substance abuse and the Medicaid Family Planning Waiver Program. That hotline received 10,011 calls,<sup>27</sup> and information is available to callers in English, Spanish and Haitian Creole.<sup>28</sup>

### ***Childbirth Settings***

The Legislature has recognized the need for a person to have the freedom to choose the manner, cost, and setting for childbirth.<sup>29</sup> There are three potential settings from which a women may *choose* for childbirth: at home (other non-licensed location), at a licensed birthing center, or at a hospital.<sup>30</sup>

The home delivery setting for childbirth is not regulated, like birthing centers and hospitals; but the practices of physicians, physician assistants (PAs),<sup>31</sup> Advanced Registered Nurse Practitioners (ARNPs), Certified Nurse Midwives (CNMs), and Licensed Midwives (LMs) who may attend a women during a home delivery, are licensed and regulated by the DOH.<sup>32</sup>

A licensed physician may attend any birth in any setting, including home delivery, if he or she can do so with reasonable skill and safety, and within the standard of care.<sup>33</sup> A physician may also delegate any delivery to his or her PA.<sup>34</sup> There are no specific laws or administrative rules

<sup>21</sup> Agency for Health Care Administration, *Medicaid Contract No. FP###*, (Effective Feb. 1, 2017) p. 20, available at [http://ahca.myflorida.com/medicaid/statewide\\_mc/pdf/Contracts/2017-02-01/02-01-17\\_EXHIBIT\\_II-A\\_MMA.pdf](http://ahca.myflorida.com/medicaid/statewide_mc/pdf/Contracts/2017-02-01/02-01-17_EXHIBIT_II-A_MMA.pdf) (last visited Jan. 8, 2018).

<sup>22</sup> Department of Health, *Senate Bill 138 Analysis* (August 15, 2017) (on file with the Senate Committee on Health Policy).

<sup>23</sup> Department of Health, *Programs and Services*, <http://www.floridahealth.gov/programs-and-services/index.html>, (last visited Jan. 9, 2018).

<sup>24</sup> See *supra* note 22.

<sup>25</sup> Department of Health, *After Pregnancy*, <http://www.floridahealth.gov/programs-and-services/womens-health/pregnancy/after-pregnancy.html> (last viewed Jan. 9, 2018).

<sup>26</sup> Department of Health, *Family Health Line*, <http://www.floridahealth.gov/programs-and-services/womens-health/pregnancy/family-health-line.html> (last visited Jan. 9, 2018).

<sup>27</sup> See *supra* note 22; the hotline costs \$17,532.62 per month or \$210,391 per year.

<sup>28</sup> See *supra* note 26.

<sup>29</sup> See s. 467.002, F.S.

<sup>30</sup> See chs. 383 and 467, F.S., Rules 59A-11 and 64B24-7, F.A.C.

<sup>31</sup> See ss. 458.347 and 459.022, F.S.

<sup>32</sup> See *supra* note 31.

<sup>33</sup> See ss. 458.347 and 459.022, F.S.

<sup>34</sup> See ss. 458.347 and 459.022, F.S. See also Rules 64B8-30.001 and 64B15-6.001, F.A.C.

that address the required perinatal care required for a patient choosing home delivery by physicians and PAs.<sup>35</sup>

Section 464.012(4)(b), F.S., permits a ARNP-CNM to perform a postpartum examination, to the extent authorized by an established protocol with a supervising physician, but does not specify that a perinatal mental health assessment is to be included in that examination; or at any time during the perinatal period for a home delivery.

Licensed birth centers are places, outside of the home or hospital, where women with normal, uncomplicated, low risk pregnancies may choose to have their babies.<sup>36</sup> Sections 383.330 through 383.335, F.S., establish minimum standards of care for birth centers.<sup>37</sup> Birth centers are licensed by the AHCA, but the clinical staff of the birth centers must be physicians, ARNP-CNMs, or LMs; and are licensed and regulated by the DOH.

In order for a pregnant women to be accepted for childbirth by a licensed birth center she must be initially determined to be at low maternal risk and be regularly evaluated throughout the pregnancy to assure that she remains at low risk for poor pregnancy outcome.<sup>38</sup> The women must receive specific prenatal,<sup>39</sup> intrapartum,<sup>40</sup> and postpartum care,<sup>41</sup> but regulatory rules do not include specific mental health screening, or education, for prenatal or postpartum depression.

The mother and infant must be discharged from the licensed birth center within 24 hours of birth, except under unusual circumstances.<sup>42</sup> A postpartum examination of the mother is required to be performed within 72 hours after delivery, and must include, at a minimum:

- Interval history;
- Blood pressure measurement; and
- Observation of the breasts, perineum and abdomen.<sup>43</sup>

A second postpartum examination is required at four to six weeks postpartum, and must include all of the above, and:

- Weight;
- Hemoglobin or hematocrit; and,
- Bi-manual pelvic examination.<sup>44</sup>

At some point during the postpartum period the mother must also be counseled regarding:

- Breast feeding;
- Perineal care;
- Family planning;

---

<sup>35</sup> See chs. 458 and 459, F.S., and Rules 64B8-9 and 64B15-14, F.A.C.

<sup>36</sup> Section 383.302(2), F.S.

<sup>37</sup> Section 383.309(1), F.S.

<sup>38</sup> Rule 59A-11.009, F.A.C.

<sup>39</sup> Rule 59A-11.012, F.A.C.

<sup>40</sup> Rule 59A-11.013, F.A.C.

<sup>41</sup> Rule 59A-11.016, F.A.C.

<sup>42</sup> Section 383.318, F.S., and Rule 59A-11.016(6), F.A.C.

<sup>43</sup> Rule 59A-11.016(6), F.A.C.

<sup>44</sup> See chs. 383 and 467, F.S., Rules 59A-11 and 64B24-7, F.A.C.

- Signs of common complications;
- Activities and exercises;
- Sex relations;
- Care and feeding of the newborn; and
- Changing family relationships.<sup>45</sup>

None of the required postpartum examinations or counseling for mothers utilizing licensed birth centers require any type of mental health screening or education on postpartum depression. However, if complications occur during the postpartum period, which could include postpartum depression, a consultation or referral must be made to the appropriate source for secondary or tertiary care.<sup>46</sup>

Hospitals are regulated by the AHCA under ch. 395, F.S. Within the context of the bill, the only statutory requirement for a hospital providing birthing services is that women using the facility for child birth must receive instruction on safe sleep practices and possible causes of Sudden Unexpected Infant Death (SUID) in the hospital's instruction on newborn care.<sup>47</sup> There are no other statutory or administrative requirements that a hospital providing birthing services mandate its medical staff perform any type of postpartum mental health assessment, follow-up care, or postpartum depression education.

### III. Effect of Proposed Changes:

SB 138 may be cited as the, *Florida Families First Act*. It creates s. 383.014, F.S., which directs the DOH to establish by January 1, 2019, and maintain, two perinatal mental health care toll-free hotlines, one accessible to the general public, and one for health care providers, as defined in s. 408.07, F.S.<sup>48</sup> The hotline for general public access must:

- Provide basic information on postpartum depression and perinatal care;
- May recommend that the caller or patient be further evaluated by a qualified health care provider; and
- May refer a caller or patient to an appropriate health care provider in the caller's or patient's local area.

The hotline for health care providers must:

- Provide information to assist health care providers in addressing the mental health of a pregnant or postpartum patient;
- Maintain and offer contact information for health care providers throughout the state who have experience in caring for pregnant or postpartum patients; and
- Compile resources to encourage the efficient and coordinated care of pregnant or postpartum patients.

<sup>45</sup> See chs. 383 and 467, F.S., Rules 59A-11 and 64B24-7, F.A.C.

<sup>46</sup> See chs. 383 and 467, F.S., Rules 59A-11 and 64B24-7, F.A.C.

<sup>47</sup> Section 395.1053, F.S.

<sup>48</sup> Section 408.07(25), F.S., defines *health care providers* as those licensed under chs. 458 (allopathic doctor & PA), 459 (osteopathic doctor & PA), 460 (chiropractor), 461 (podiatrist), 463 (optometrist), 464 (nurses), 465 (pharmacist), 466 (dentist and hygienist), 483, 484, 486, 490, 491, or 468, parts I (speech & language pathologists & audiologists), III (occupational therapists), IV (radiological technicians), V (respiratory therapists), or X (dietician and nutritionist).

The bill requires the DOH to create public service announcements (PSAs) to educate the public on perinatal mental health care, and the PSAs must include the telephone number of the public perinatal mental health care hotline.

The DOH must also encourage mental health care providers, and health care providers who conduct postpartum evaluations or treat postpartum patients, to attend continuing medical education courses on perinatal mental health care.

The bill amends s. 383.318, F.S., to require licensed birth centers to provide the following additional postpartum services and follow-up care:

- A maternal postpartum assessment that includes mental health screening;
- Information on postpartum depression; and
- The telephone number of the public perinatal mental health care hotline.

The bill amends s. 395.1053, F.S., to require hospitals providing birthing services to provide similar postpartum education and care services to that of birthing centers, including:

- Physical examination of the infant;
- Metabolic screening tests required by s. 383.14, F.S.;<sup>49</sup>
- Referral to sources for pediatric care;
- Maternal postpartum assessment that incorporates mental health screening;
- Information on postpartum depression and the telephone number of the perinatal mental health care hotline established in s. 383.014, F.S.;
- Instruction in child care, including immunization and breastfeeding; in addition to information on safe sleep practices and possible causes of Sudden Unexpected Infant Death;
- Family planning services; and
- Referral to secondary or tertiary care, as indicated.

The bill takes effect July 1, 2018.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

---

<sup>49</sup> Section 383.14, F.S., requires the DOH to screen newborns for metabolic disorders before becoming one week of age. Currently the DOH screens for 53 total conditions. Department of Health, *Newborn Screening*, <http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/index.html> (last visited Jan. 8, 2018). Babies born in a hospital must be tested for metabolic disorders between 24 and 48 hours after birth. Babies discharged before 24 hours after birth must be tested before discharge, and again between 24 hours and five days after birth. Rule 64C-7.002, F.A.C.

C. Trust Funds Restrictions:

None

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Hospitals and birthing centers may incur additional costs due to the mandated evaluations and follow-up care, which would likely be billed to patients, insurers, and Medicaid.

C. Government Sector Impact:

SB 138 requires the DOH to establish and maintain two telephone hotlines, one for the public and one for providers. The DOH estimates that the cost of the two hotlines created by this bill would be \$775,920 for the first year, and \$259,320 for the second year. The estimated cost to the DOH for the public service announcements and promotional/educational materials is \$380,600 in year one and \$42,500 in year two. The total estimated cost is \$1,156, 520 in year one, and \$301,820 in year two.<sup>50</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 383.318 and 395.1053.

This bill creates section 383.014 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.)

None.

---

<sup>50</sup> See *supra* note 22.

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 Book

32-00046-18

2018138\_\_

1                   A bill to be entitled  
2       An act relating to perinatal mental health; providing  
3       a short title; creating s. 383.014, F.S.; requiring  
4       the Department of Health to establish and maintain a  
5       toll-free hotline accessible to the general public and  
6       a toll-free hotline accessible to health care  
7       providers; requiring the department to create public  
8       service announcements to educate the public on  
9       perinatal mental health care; requiring the department  
10      to encourage certain health care providers to attend  
11      continuing medical education courses on perinatal  
12      mental health care; amending s. 383.318, F.S.;  
13      revising components that are included in the  
14      postpartum evaluation and followup care provided by  
15      birth centers to include a mental health screening and  
16      the provision of certain information on postpartum  
17      depression; amending s. 395.1053, F.S.; requiring  
18      hospitals that provide birthing services to provide  
19      the same postpartum evaluation and followup care that  
20      is required to be provided by birth centers; providing  
21      an effective date.

22  
23           WHEREAS, the Alachua County Perinatal Mental Health  
24      Coalition released its 2017 Maternal Mental Health Needs  
25      Assessment, which found that perinatal mental illness is the  
26      leading health complication related to pregnancy and birth, and

27           WHEREAS, as many as 1 in 5 mothers nationally will  
28      experience Perinatal Mood and Anxiety Disorder (PMD), and

29           WHEREAS, as many as 1 in 10 fathers will also experience

32-00046-18

2018138\_\_

30 symptoms of PMD, and

31 WHEREAS, Florida loses approximately \$900 million annually  
32 because of the failure to recognize and treat perinatal mental  
33 illnesses, and

34 WHEREAS, approximately 44,000 Florida babies are born to a  
35 parent experiencing a perinatal mental illness, and those babies  
36 may experience social, emotional, and cognitive detriments if  
37 their affected parents do not have access to proper care or  
38 receive treatment, NOW, THEREFORE,

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. This act may be cited as the "Florida Families  
43 First Act."

44 Section 2. Section 383.014, Florida Statutes, is created to  
45 read:

46 383.014 Perinatal mental health care.—By January 1, 2019,  
47 the Department of Health shall:

48 (1) Establish and maintain a perinatal mental health care  
49 toll-free hotline, accessible to the general public, which:

50 (a) Provides basic information on postpartum depression and  
51 perinatal care;

52 (b) May recommend that a caller or patient be further  
53 evaluated by a qualified health care provider; and

54 (c) May refer a caller or patient to an appropriate health  
55 care provider in the caller's or patient's local area.

56 (2) Establish and maintain a perinatal mental health care  
57 provider toll-free hotline for health care providers, as defined  
58 in s. 408.07, which:

32-00046-18

2018138\_\_

59 (a) Provides information to assist health care providers in  
60 addressing the mental health of a pregnant or postpartum  
61 patient;

62 (b) Maintains and offers the contact information of health  
63 care providers throughout the state who have experience in  
64 caring for pregnant or postpartum patients; and

65 (c) Compiles resources to encourage the efficient and  
66 coordinated care of pregnant or postpartum patients.

67 (3) Create public service announcements (PSAs) to educate  
68 the public on perinatal mental health care. The PSAs must  
69 include the telephone number of the perinatal mental health care  
70 hotline established in subsection (1).

71 (4) Encourage mental health care providers, and health care  
72 providers who conduct postpartum evaluations or treat postpartum  
73 patients, to attend continuing medical education courses on  
74 perinatal mental health care.

75 Section 3. Subsection (3) of section 383.318, Florida  
76 Statutes, is amended to read:

77 383.318 Postpartum care for birth center clients and  
78 infants.-

79 (3) The birth center shall provide a postpartum evaluation  
80 and followup care that includes all of the following ~~shall be~~  
81 provided, which shall include:

82 (a) Physical examination of the infant.

83 (b) Metabolic screening tests required by s. 383.14.

84 (c) Referral to sources for pediatric care.

85 (d) Maternal postpartum assessment that incorporates mental  
86 health screening.

87 (e) Information on postpartum depression and the telephone

32-00046-18

2018138\_\_

88 number of the perinatal mental health care hotline established  
89 in s. 383.014.

90 (f)(e) Instruction in child care, including immunization,  
91 breastfeeding, safe sleep practices, and possible causes of  
92 Sudden Unexpected Infant Death.

93 (g)(f) Family planning services.

94 (h)(g) Referral to secondary or tertiary care, as  
95 indicated.

96 Section 4. Section 395.1053, Florida Statutes, is amended  
97 to read:

98 395.1053 Postpartum care and education.—A hospital that  
99 provides birthing services shall provide a postpartum evaluation  
100 and followup care that includes all of the following:

101 (1) Physical examination of the infant.

102 (2) Metabolic screening tests required by s. 383.14.

103 (3) Referral to sources for pediatric care.

104 (4) Maternal postpartum assessment that incorporates mental  
105 health screening.

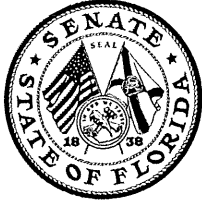
106 (5) Information on postpartum depression and the telephone  
107 number of the perinatal mental health care hotline established  
108 in s. 383.014.

109 (6) Instruction in child care, including immunization,  
110 breastfeeding, ~~incorporate information on~~ safe sleep practices,  
111 and ~~the~~ possible causes of Sudden Unexpected Infant Death ~~into~~  
112 the ~~hospital's~~ postpartum instruction on the care of newborns.

113 (7) Family planning services.

114 (8) Referral to secondary or tertiary care, as indicated.

115 Section 5. This act shall take effect July 1, 2018.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Appropriations Subcommittee on the  
Environment and Natural Resources, *Chair*  
Appropriations  
Appropriations Subcommittee on Health and  
Human Services  
Education  
Environmental Preservation and  
Conservation  
Health Policy  
Rules

## SENATOR LAUREN BOOK

*Democratic Leader Pro Tempore*  
32nd District

August 28, 2017

Chair Dana Young  
Committee on Health Policy  
530 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Young,

I respectfully request that you place SB 138, relating to Perinatal Mental Health, on the agenda of the Committee on Health Policy at your earliest convenience.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book  
Senate District 32

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

## REPLY TO:

- 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

JOE NEGRON  
President of the Senate

ANITERE FLORES  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

412-K  
4:00

1-16-2018

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

SB 138

Meeting Date

Bill Number (if applicable)

Topic PERINATAL MENTAL HEALTH

Amendment Barcode (if applicable)

Name STEPHEN R. LOON

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DRIVE

Phone 878-7364

Street

TALLAHASSEE

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing FLORIDA DISTOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

SB 138

Bill Number (if applicable)

Meeting Date

Topic SB 138 - FL Families First

Amendment Barcode (if applicable)

Name Dr. Heather Flynn

Job Title FSU College of Medicine

Address 1115 West Cal St

Phone 850 645 7367

Street

Tallahassee

City

FL

State

32306

Zip

Email Heather.Flynn@med.fsu.edu

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/16/18

SB 138

Meeting Date

Bill Number (if applicable)

Topic Perinatal Mental Health

Amendment Barcode (if applicable)

Name Lauren DePaola, LCSW

Job Title Owner, Postpartum Wellness + Family Counseling

Address 17698 NW 181 Street

Phone 352-278-2838

Street

City Madsen FL

Zip 32115

Email laurandepaulalcsww@yahoo.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against (The Chair will read this information into the record.)

Representing FL Maternal Mental Health Collaborative

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)

Meeting Date \_\_\_\_\_

138  
Bill Number (if applicable)

Topic Bill 138

Amendment Barcode (if applicable)

Name Lanisha Wetherington

Job Title Executive Director

Address 3137 Lookout Trail

Phone 850-727-9461

Street

Tallahassee FL 32309

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing March of Dimes

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)

1/16/18  
Meeting Date

138  
Bill Number (if applicable)

Topic Perbatal Mental Health

Amendment Barcode (if applicable)

Name Christina Herdt

Job Title Owner/Operator of Christina's Cakes, LLC

Address 3909 Resene Dr, Apt 1516

Phone 850-320-5255

Street

Tallahassee

City

FL

State

32311

Zip

Email Christina.herd@

gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/16/18  
Meeting Date

138  
Bill Number (if applicable)

Topic Perinatal Mental Health

Amendment Barcode (if applicable)

Name Doug Bell

Job Title \_\_\_\_\_

Address 119 S Monroe  
Street

Phone 205 9000

TLH FL  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Chapter American Academy of Pediatrics

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)

1/16/18  
Meeting Date

138  
Bill Number (if applicable)

Topic Perinatal Mental Health

Amendment Barcode (if applicable)

Name Alisa LaPorte

Job Title Exec. Director

Address PO Box 961

Phone 850-671-4445

Street

Tallahassee  
City State Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing National Alliance of Mental Illness

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)

1-16-18

Meeting Date

138

Bill Number (if applicable)

Topic Perinatal Mental Health

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title MS

Address 1025 E Brevard St

Phone 257-4280

Street

Jal

City

FL

State

32308

Zip

Email barbadevane1@Yahoo.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL NOW National Organization for Women

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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 information 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)

1/16/18

Meeting Date

SB 138

Bill Number (if applicable)

Topic Perinatal Mental Health

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 South Monroe Street #200

Phone 850-205-9000

Street

Tallahassee FL 32301

Email aimee.diazlyon@mhdfirm.com

City

State

Zip

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

Waive Speaking: [X] In Support [ ] Against (The Chair will read this information into the record.)

Representing Florida Psychiatric Society

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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date

138

Bill Number (if applicable)

Topic SB 138 Florida Families first act

Amendment Barcode (if applicable)

Name Amanda Dibley

Job Title

Address 2181 Portsmouth circle

Phone 850 363 9267

Street  
Tallahassee FL 32311

Email amandadibley@gmail.com

City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing SB 138 - Florida Families first Act

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)

1/16/18  
Meeting Date

138  
Bill Number (if applicable)

Topic PERINATAL CARE

Amendment Barcode (if applicable)

Name CHARO VALERO

Job Title STATE POLICY DIRECTOR

Address 8235 NE 83RD AVE  
Street

Phone 786 442 8199

Miami FL 33138  
City State Zip

Email CHARO@LATINA INSTITUTE.ORG

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL LATINA ADVOCACY 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.



THE FLORIDA SENATE

APPEARANCE RECORD

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

1/16/18

Meeting Date

138

Bill Number (if applicable)

Topic Amy Kimmell; Perinatal Mental Health

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

Phone

City

Tallahassee FL

State

Zip

Email

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

Waive Speaking: [ ] In Support [ ] Against (The Chair will read this information into the record.)

Representing Tallahassee Postpartum

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

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

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

\_\_\_\_\_  
Meeting Date

138  
\_\_\_\_\_  
Bill Number (if applicable)

Topic SB138

\_\_\_\_\_  
Amendment Barcode (if applicable)

Name Rebecca Hartley - Woods

Job Title stone maker

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

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.**

**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 474

INTRODUCER: Senator Brandes

SUBJECT: Physician Orders for Life-sustaining Treatment

DATE: January 12, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	<b>Favorable</b>
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

---

**I. Summary:**

SB 474 recognizes a Physician Order for Life Sustaining Treatment (POLST) and establishes a Clearinghouse for Compassionate and Palliative Care Plans (clearinghouse) for state residents as a central registry for advance directives for health care. The Agency for Health Care Administration (AHCA) is directed to establish and maintain the registry, either independently or through a national or private clearinghouse. Plans are required to be electronically accessible. The AHCA is also directed to disseminate information about the clearinghouse once available.

The bill also provides requirements for the contents of the POLST form and its proper execution, and addresses the relationship of a POLST with other advance directives. The Department of Health (DOH) is required to develop the form by rule.

A separate public records exemption bill, CS/SB 476, is linked to SB 474.

The effective date of the bill is July 1, 2018.

**II. Present Situation:**

**End of Life Decision-Making**

Individuals may express their end of life health care decisions through one or more different mechanisms such as formal or informal discussions with a health care provider or a loved one or through one of several recognized legal documents. Such discussions may occur because of an individual's particular medical condition, age, or as part of an annual medical examination. Sometimes, the conversation may be the result of a recent hospitalization and the health care provider seeks guidance from the patient or the patient's caregiver about how to treat the

individual's condition next, such as when and if to change to comfort (palliative or hospice) care rather than care that is aimed at a cure for the patient's illness.<sup>1</sup>

Florida law defines an advance directive as any witnessed, oral statements or written instructions that express a person's desires about any aspect of his or her future health care, including the designation of a health care surrogate, a living will, or an anatomical gift.<sup>2</sup> Designation of a health care surrogate, a living will, or an anatomical gift each serve different purposes and have their own unique requirements and specifications under the law.

One type of advance directive, a "do not resuscitate order" (DNRO) results in the withholding of cardiopulmonary resuscitation (CPR) from an individual if a DNRO is presented to the health care professional treating the patient. For the DNRO to be valid, it must be on the form adopted by the DOH, signed by the patient's physician and by the patient, or if the patient is incapacitated, the patient's health care surrogate or proxy, court-appointed guardian, or attorney in fact under a durable power of attorney.<sup>3</sup> Florida's DNRO form is printed on yellow paper.<sup>4</sup> It is the responsibility of the Emergency Medical Services provider to ensure that the DNRO form or the patient identification device, which is a miniature version of the form, accompanies the patient.<sup>5</sup> A DNRO may be revoked by the patient at any time, if signed by the patient, or the patient's health care surrogate, proxy, court-appointed guardian or a person acting under a durable power of attorney.<sup>6</sup>

Not available in Florida, a Physician Order for Life-Sustaining Treatment (POLST), documents a patient's health care wishes in the form of a physician order for a variety of end of life measures, including CPR.<sup>7</sup> A DNRO is limited only to the withholding of CPR. The POLST form can only be completed by a physician and is then provided to the patient to be kept secured in a visible location for emergency personnel.<sup>8</sup> It is suggested that the form be completed when an individual has a serious illness or frailty, regardless of age, as the POLST serves as a medical order for a current, life-threatening illness where the patient has a life expectancy of a year or less.<sup>9</sup> The POLST is intended to express the patient's treatment wishes when the patient is unable to speak for himself or herself during a medical crisis.

Other states' POLST forms include questions relating to what level of care is wanted for CPR (attempt or do not attempt); medical intervention (comfort only, limited additional intervention, or full treatment); and artificially administered nutrition (none, trial, or long-term). Many POLST forms also include information on how to void the authorization before the expiration date, contact information for the surrogate, and information about the medical professionals who may

---

<sup>1</sup> Information from Your Family Doctor: *End of Life Choices for Families*, Am Fam Physician, 2004 Aug 15; 70(4): 725-726, <https://www.aafp.org/afp/2004/0815/p725.html> (last visited: Dec. 22, 2017).

<sup>2</sup> See s. 765.101, F.S.

<sup>3</sup> See ss. 395.1041, 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, and 7665.205, F.S.

<sup>4</sup> Rule 64J-2.018, F.A.C.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> POLST.ORG, *About the National POLST Paradigm*, <http://www.polst.org/about-the-national-polst-paradigm/> (last visited Jan. 8, 2018).

<sup>8</sup> POLST.ORG, *FAQ*, <http://www.polst.org/advance-care-planning/faq/> (last visited Dec. 22, 2017).

<sup>9</sup> POLST.ORG, *POLST v. Advance Directives*, <http://www.polst.org/advance-care-planning/polst-and-advance-directives/> (last visited Dec. 22, 2017).

have completed the form. At least 22 other states have implemented or endorsed a POLST program, with California, Oregon and West Virginia being identified as having mature programs.<sup>10</sup>

In comparison to a POLST, an advance directive's purpose is to give instructions on the appointment of a health care representative, express intentions for future treatment or health care, or for an anatomical gift.<sup>11</sup> Florida law allows such advance directives to be expressed in writing or by an oral designation of another person to make health care decisions upon that person's incapacity.<sup>12</sup>

A living will is another mechanism used by individuals to express life-prolonging wishes through a written document or a witnessed oral statement.<sup>13</sup> Any competent adult may make a living will or written declaration, at any given time, to address the providing, withholding, or withdrawing of life-prolonging procedures should that individual have a terminal or end-stage condition.<sup>14</sup> A living will requires the signature of the individual in the presence of two witnesses, one of whom is not the spouse nor a blood relative. It becomes the individual's responsibility to notify health care providers about the living will, so it can be made a part of the individual's medical record.

The statute also provides a suggested form, but in all capital letters, makes clear that a living will does not need to follow the form to be accepted as part of the patient's medical records.<sup>15</sup> Many non-profit organizations also make similar advance directive forms easily available online or in hard copy formats for the designation of health care surrogates or the creation of living wills.<sup>16</sup>

Effective January 1, 2016, advance care planning (ACP) services from physicians and other health care professionals was available as a separate billed service covered by Medicare.<sup>17</sup> If a Medicare beneficiary wants to discuss advance care planning at his or her first annual visit with a physician and then any updates during any subsequent annual wellness visit, physicians and other health care professionals may provide the service during those visits and bill Medicare separately for it. Such services can be provided in both facility and non-facility settings. Previous to this date, ACP services could only be billed as part of another visit; it could not be the sole reason for the physician visit.<sup>18</sup> Providers must also notify their patients if they are unwilling to follow the individual's wishes as expressed in an advance directive document.

---

<sup>10</sup> POLST.ORG, *Programs in Your State*, <http://www.polst.org/programs-in-your-state/> (last visited Dec. 22, 2017).

<sup>11</sup> See s. 765.101, F.S.

<sup>12</sup> See s. 765.101(2), F.S.

<sup>13</sup> See s. 765.101(13), F.S.

<sup>14</sup> Section 765.302, F.S.

<sup>15</sup> Section 765.303, F.S.

<sup>16</sup> See *Aging with Dignity, Five Wishes – Florida*, <https://www.agingwithdignity.org/Florida>, (last visited: Dec. 22, 2017); Florida Health Care Association, [http://www.fhca.org/consumers/health\\_care\\_advanced\\_directives/](http://www.fhca.org/consumers/health_care_advanced_directives/), (last visited: Dec. 22, 2017); and AARP-Florida, <http://www.caringinfo.org/files/public/ad/Florida.pdf> (last visited: Dec. 22, 2017).

<sup>17</sup> 42 CFR 410.15.

<sup>18</sup> Henry J. Kaiser Family Foundation, *10 FAQs: Medicare's Role in End of Life Care*, <http://kff.org/medicare/fact-sheet/10-faqs-medicares-role-in-end-of-life-care/> (last visited Jan. 8, 2018).

## Clearinghouse for Compassionate and Palliative Care Plans

In addition to the availability of the POLST form, several states also have registries for the collection of advance directives.

The Oregon Legislature followed its POLST form creation with its registry in July 2009.<sup>19</sup> Overseen by the Oregon Health Authority, the Oregon POLST Registry received more than 55,000 POLST forms via fax, eFax, mail, electronic files transfer, or other secure messaging means in 2015.<sup>20</sup> In total, Oregon's registry had an estimated 300,000 forms representing almost 200,000 registrants as of the end of 2015.<sup>21</sup>

An individual is not required to send a completed POLST form to the registry. If an individual does not want his or her form in the registry, the Oregon POLST form contains an "opt-out" box that can be checked.<sup>22</sup> When a POLST form is submitted to the registry by the primary care physician, the individual receives a confirmation letter in return, a magnet, and a set of stickers with their registry identification number for future access.<sup>23</sup> The number is to be given to the individual's primary care physician and the magnet and stickers put in prominent places, including something the person might usually carry with them. Beginning in January 2018, Naturopathic Physicians became authorized to sign POLST forms.

West Virginia has its WV e-Directive Registry which makes advance directives, DNROs, West Virginia Physician Orders for Scope of Treatments (POSTs), living wills, and medical powers of attorney available online 24/7 to health care practitioners and facilities when the individual specifically opts in to the registry. While the registry is currently under re-construction, providers must make a request for information via fax sheet and records are distributed between 8:00 a.m. and 4:00 p.m. via a toll-free fax number.<sup>24</sup> Usually, the e-Directive Registry accepts new forms through its direct upload process online or toll-free fax.<sup>25</sup>

Idaho's Health Care Directives Registry is offered through its Secretary of State's office. Individuals may submit several types of health care directive documents, including a Physician Order for Scope of Treatment (POST) form, living will, or durable power of attorney for health care.<sup>26</sup> Documents can be submitted online to the Secretary of State or via the mail. Once registration is confirmed, individuals receive a wallet sized registration card with an individualized filing number and password and information about using the registry.<sup>27</sup>

---

<sup>19</sup> Oregon POLST Registry 2015 Annual Report, <http://polst.org/wp-content/uploads/2016/09/2015OregonPOLSTRegistryAnnualReport.pdf>, p. 5, (last visited Jan. 2, 2018).

<sup>20</sup> Id at 7.

<sup>21</sup> Id at 20.

<sup>22</sup> POLST Oregon, <http://www.or.polst.org/registry-resources> (last visited Dec. 22, 2017).

<sup>23</sup> Id.

<sup>24</sup> West Virginia Center for End-of-Life Care, *e-Directive Registry, Request for Release of Records from the WV e-Directive Registry*, <http://wvendlife.org/media/1113/registry-treating-provider-release-of-information-rev-july2017.pdf> (last visited Dec. 27, 2017).

<sup>25</sup> West Virginia Center for End-of-Life Care, *Introducing the WV E-Directive Registry*, <http://wvendlife.org/providers/e-directive-registry/> (last visited: Dec. 27, 2017).

<sup>26</sup> Idaho Secretary of State, *Health Care Directive Registry*, <https://sos.idaho.gov/hcdr/index.html> (last visited Dec. 22, 2017).

<sup>27</sup> Id.

New York utilizes a secure web-based application for its electronic Medical Orders for Life-Sustaining Treatment (eMOLST) forms. The forms can be printed for the medical record and then stored and linked to the electronic eMOLST registry. The forms can be accessed by emergency medical services, hospitals, nursing homes, and most all health care providers in the community via the online portal.<sup>28</sup> The eMOLST form may also be used for minor patients.<sup>29</sup>

### III. Effect of Proposed Changes:

#### Physician Orders for Life-Sustaining Treatment (POLST) Program (Section 1)

The bill creates s. 401.451, F.S., the Physician Order for Life-Sustaining Treatment (POLST) program, within the DOH. The DOH is directed to implement and administer the program and to collaborate with the AHCA on the implementation and operation of the Clearinghouse for Compassionate and Palliative Care plans (clearinghouse).

Under s. 401.451, F.S., definitions are provided for the following terms:

- “Advance directive” means the same as in s. 765.101, F.S.;<sup>30</sup>
- “Agency” means the Agency for Health Care Administration;
- “Clearinghouse for Compassionate and Palliative Care Plans”<sup>31</sup> or “clearinghouse” means the same as in s. 408.064, F.S.,<sup>32</sup>(which is created in this bill);
- “End-stage condition” means the same as in s. 765.101, F.S.;<sup>33</sup>
- “Examining physician” means a physician who examines a patient who wishes, or whose legal representative wishes, to execute a POLST form; who attests to the patient’s or the patient’s representative’s ability to make and communicate health care decisions; who signs the POLST form; and who attests to the patient’s or the patient’s legal representative’s execution of the POLST form;
- “Health care provider” means the same as in s. 408.07, F.S.;
- “Legal representative” means a patient’s legally authorized health care surrogate or proxy as provided in ch. 765, F.S., a patient’s court-appointed guardian as provided in ch. 744, F.S., who has been delegated authority to make health care decisions on behalf of the patient; an attorney in fact under a durable power of attorney as provided in ch. 709, F.S., who has been

<sup>28</sup> eMOLST - Electronic Medical Orders for Life Sustaining Treatment in New York State, *available at* [http://www.compassionandsupport.org/index.php/for\\_professionals/molst\\_training\\_center/emolst](http://www.compassionandsupport.org/index.php/for_professionals/molst_training_center/emolst) (last visited Dec. 22, 2017).

<sup>29</sup> Medical Orders for Life Sustaining Treatment - Professionals (FAQS), *available at* [http://www.compassionandsupport.org/index.php/for\\_professionals/molst\\_training\\_center/frequently\\_asked\\_questions/molst\\_faqs\\_page\\_1](http://www.compassionandsupport.org/index.php/for_professionals/molst_training_center/frequently_asked_questions/molst_faqs_page_1) (last visited Dec. 22, 2017).

<sup>30</sup> “Advance directive” means a witnessed written document or oral statement in which instructions are given by a principal or in which the principal’s desires are expressed concerning any aspect of the principal’s health care or health information, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift made pursuant to part V of ch. 765, F.S.

<sup>31</sup> “Compassionate and palliative care plan” means any end-of-life document or medical care directive document recognized by this state and executed by a resident of this state, including, but not limited to, an advance directive, an order not to resuscitate, a physician order for life-sustaining treatment, or a health care surrogate designation.

<sup>32</sup> “Clearinghouse” means the state’s electronic database of compassionate and palliative care plans submitted by residents of this state and managed by the agency pursuant to s. 408.064, F.S.

<sup>33</sup> “End-stage condition” means an irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

delegated authority to make health care decisions on behalf of the patient, or a patient's parent if the patient is a minor;

- “Order not to resuscitate ” means an order issued pursuant to s. 401.45(3), F.S.; and
- “Physician order for life-sustaining treatment” or “POLST” means an order issued pursuant to s. 401.451, F.S., which specifies a patient with an end stage condition and provides directives for that patient's medical treatment under certain conditions.

The bill establishes specific duties for the DOH for the POLST program. These duties include the requirement to:

- Adopt rules to implement and administer the POLST program;
- Prescribe a standardized POLST form;
- Provide the POLST form in an electronic format on the DOH's website and prominently state the requirements for a POLST form;
- Consult with health care professional licensing groups, provider advocacy groups, medical ethicists, and other appropriate stakeholders on the development of rules and forms;
- Collaborate with the AHCA to develop and maintain the clearinghouse;
- Ensure that the DOH staff receive ongoing training on the POLST program and the availability of POLST forms;
- Recommend a statewide, uniform process through which a patient that has, or whose legal representative has, executed a POLST form is identified and the health care providers currently treating the patient are provided with contact information for the examining physician who signed the POLST form;
- Adopt POLST-related continuing education requirements for health care providers licensed by the DOH; and
- Develop a process for collecting provider feedback to facilitate the periodic re-design of the POLST form consistent with current health care best practices.

### **POLST Form (Section 1)**

The form must be voluntarily executed by the patient, or if the patient is incapacitated or a minor, by the patient's legal representative. All directives included in the form must be made by the patient, or if the patient is a minor, the patient's legal representative.

To be valid and to be included in a patient's medical records, the POLST form must meet all of the following requirements:

- Be printed on one or both sides of a single piece of paper as determined by the DOH rule;
- Include the signatures of the patient and the patient's examining physician or, if the patient is incapacitated or a minor, the patient's legal representative and the patient's examining physician, executed after consultation with the patient or the patient's legal representative as appropriate;
- Indicate prominently that completion of the form is voluntary, the use of the form is not a condition of any treatment, and the form cannot be given any affect if the patient is conscious and competent to make health care decisions;
- Prominently provide in a conspicuous location on the form a space for the examining physician to attest and affirm that, in his or her good faith clinical judgment, at the time the POLST form is completed and signed, the patient has the ability to make and communicate



health care decisions or, if the patient is incapacitated or a minor, that the patient's legal representative has such an ability;

- Provide an expiration date, provided by the patient's examining physician, that is within one year after the patient or the patient's legal representative signs the form or that is contingent on the completion of the course of treatment addressed in the POLST form, whichever occurs first;
- Identify the medical condition or conditions, provided by the patient's examining physician, that necessitate the POLST form; and
- Not include a directive regarding hydration or the preselection of any decisions or directives.

The POLST form may only be used by a patient whose examining physician has determined that the patient has an end-stage condition or who, in the good faith clinical judgment of the examining physician, is suffering from at least one life-limiting medical condition that will likely result in the death of the patient within one year.

At a minimum, the patient's physician must review the POLST form with the patient or the patient's representative, when the patient:

- Is transferred from one health care setting or level of care to another;
- Is discharged from a health care setting to return home before the expiration of the POLST form;
- Experiences a substantial change in his or her condition as determined by the patient's examining physician, in which case the review must occur within 24 hours of the substantial change; or
- Expresses an intent to change his or her treatment preferences.

A POLST form may be revoked at any time by a patient, or the patient's legal representative if the patient is a minor or the patient is incapacitated or and the authority to revoke a POLST form has been granted by the patient to his or her legal representative. The execution of a subsequent POLST form by a patient and his or her examining physician under this section automatically revokes any prior POLST form previously executed by the patient.

In addition, if any directive on a patient's POLST form conflicts with another advance directive of the patient which addresses a substantially similar health care condition or treatment, the document most recently signed by the patient takes precedence. Such directives may include, but are not limited to:

- Living wills;
- Health care powers of attorney;
- POLST forms for the specific medical condition of treatment; or
- An order not-to-resuscitate.

If a family member of the patient, the health care facility providing services to the patient, or the patient's physician who may reasonably be expected to be affected by the patient's POLST form directives believes the directives executed by the patient's legal representative are in conflict with the patient's prior expressed desires regarding end-of-life care, he or she or the facility may seek expedited judicial intervention pursuant to the Florida Probate Rules.

The bill establishes immunity from criminal prosecution, civil liability, or professional discipline for a licensee, physician, medical director, emergency medical technician, or paramedic who in good faith complies with or carries out the directives of a POLST form. Also, any person, acting in good faith as a legal representative, is not subject to civil liability or criminal prosecution for executing a POLST form pursuant to this law.

If medical orders on a POLST form are carried out to withhold life-sustaining treatment for a minor, the order must include certification by a health care provider in addition to the physician executing the POLST form that, in their clinical judgement, the order is in the best interest of the minor patient. A POLST form for a minor patient must also be signed by the minor patient's legal representative. The minor patient's physician must certify the basis for the authority of the minor patient's legal representative to execute the POLST form, including his or her compliance with the relevant statutory provisions of ch. 765, F.S., relating to health care advance directives and ch. 744, F.S., relating to guardianship.

The bill further requires that when a patient who has executed a valid POLST form is transferred from one health care facility to another, the health care facility initiating the transfer must communicate the existence of the POLST form to the receiving facility before the transfer. Upon the patient's transfer, the receiving facility's treating physician must review the POLST form with the patient or if the patient is incapacitated or a minor, the patient's legal representative.

Facilities and providers may not require a person to complete, revise, or revoke a POLST as a prerequisite or condition of receiving services or treatment or as a condition of admission. The execution, revision, or revocation of a POLST form must be a voluntary decision of the patient, or if incapacitated or a minor, the patient's legal representative.

The presence or absence of a POLST form does not affect, impair, or modify a contract of life or health insurance or annuity to which an individual is a party and may not serve as the basis for any delay in issuing or refusing to issue an annuity or policy of life or health insurance or for an increase or decrease in premiums charged to an individual.

A POLST form is invalid if payment or other remuneration was offered or made in exchange for its execution.

The bill specifies that the act may not be construed to condone, authorize, or approve mercy killing or euthanasia. A statement of legislative intent provides that this act is not to be construed as permitting any affirmative or deliberate act to end a person's life, except to permit the natural process of dying.

### **Clearinghouse for Compassionate and Palliative Care Plans (Section 2)**

Section 2 creates s. 408.064, F.S., which establishes the Clearinghouse for Compassionate and Palliative Care Plans (clearinghouse) within the AHCA. The AHCA is responsible for establishing and maintaining the clearinghouse directly or through a designee. The clearinghouse must be a reliable and secure database that will allow Florida residents to electronically submit their individual plans for compassionate and palliative care. The database may only be accessed by a health care provider who is treating the patient-resident.

As used in this section, the bill provides definitions for these terms:

- “Advance directive” means the same as in s. 765.101, F.S.;<sup>34</sup>
- “Clearinghouse for Compassionate and Palliative Care Plans” or “clearinghouse” means the state’s electronic database of compassionate and palliative care plans submitted by residents of this state and managed by the agency pursuant to this section;
- “Compassionate and palliative care plan” or “plan” means any end-of-life document or medical directive document recognized by this state and executed by a resident of this state, including, but not limited to, an advance directive, an order to do-not-resuscitate, a physician order for life-sustaining treatment, or a health care surrogate designation;
- “Department” means the Department of Health;
- “End-stage condition” means the same as in s. 765.101, F.S.;<sup>35</sup>
- “Order not to resuscitate” means an order issued pursuant to s. 401.45(3), F.S.; and
- “Physician order for life-sustaining treatment” or “POLST” means an order issued pursuant to s. 401.451, F.S., which specifies the care and medical treatment under certain medical conditions for a patient with an end stage conditions.

The AHCA is required to establish and maintain the clearinghouse by January 1, 2019. The database must allow for electronic submission, storage, indexing, and retrieval of compassionate and palliative care plans. The AHCA must also develop and maintain an identity validation system that confirms the identity of the facility, health care provider, or other authorized individual seeking retrieval of plans while protecting the privacy of patient’s personal and medical information. The system must meet all applicable state and federal privacy and security standards.

The AHCA is directed to seek input on the clearinghouse from state residents, compassionate and palliative care providers, and health care facilities for its development and implementation. The AHCA may subscribe to or participate in a national or private clearinghouse that will accomplish the same goals in lieu of establishing an independent clearinghouse. Once clearinghouse information is available, the AHCA is required to publish and disseminate information regarding the availability of the clearinghouse to Floridians. The AHCA must also provide training to health care providers and health care facilities on how to access plans.

### **Statutory Revisions to Include POLST (Sections 3-10 and 12)**

Provisions in statute requiring health professional staff to honor “do not resuscitate” orders (DNROs) are revised to include recognition of a POLST document in the same manner.

The table below reflects the statutes impacted by these revisions.

---

<sup>34</sup> “Advance directive” means a witnessed written document or oral statement in which instructions are given by a principal or in which the principal’s desires are expressed concerning any aspect of the principal’s health care or health information, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift made pursuant to part V of ch. 765, F.S.

<sup>35</sup> “End-stage condition” means an irreversible condition that is caused by injury, disease, or illness which has resulted in progressively severe and permanent deterioration, and which, to a reasonable degree of medical probability, treatment of the condition would be ineffective.

<b>Statutory Revisions - Addition of POLST Language</b>		
<b>Bill Section</b>	<b>F.S. Citation</b>	<b>Description</b>
3	§400.142	Nursing Homes; Emergency medication kits; DNROs
4	§400.487	Home Health Service Agreements; DNROs
5	§400.605	Hospices; Administration; forms; fees
6	§400.6095	Hospice; patient admission; assessment; plan of care; discharge; death
7	§401.35	Medical Transportation Services: Rules
8	§401.45	Denial of emergency treatment; civil liability
9	§429.255	Assisted Living Facilities; Use of personnel; emergency care
10	§429.73	Rules and standards relating to adult family-care homes
11	§456.072	Grounds for discipline; penalties; enforcement
12	§765.205	Responsibility of the surrogate

**Section 11** - amends s. 456.072, F.S., relating to discipline for health care practitioners generally, to allow a licensee to withhold or withdraw cardiopulmonary resuscitation (CPR) or the use of an automated external defibrillator if presented with an order not to resuscitate or a POLST which includes a DNRO. The DOH is directed to adopt rules for the implementation of such orders. Additionally, the bill provides that licensees who withhold CPR or the use of an automated external defibrillator may not be subject to criminal prosecution and may not be considered to have acted in a negligent or unprofessional manner for carrying out DNRO or POLST orders.

The bill further provides that the absence of an order [not] to resuscitate pursuant to s. 408.064, F.S., or a POLST form executed pursuant to s. 408.064, F.S., does not preclude a licensee from withholding or withdrawing CPR or the use of an external automated defibrillator or otherwise carrying out medical orders allowed by law.

The effective date of the bill is July 1, 2018.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

A separate public records exemption bill for the Clearinghouse for Compassionate and Palliative Care Plans (SB 476) is linked to this bill to ensure that the personally identifying information contained on the POLST forms is kept confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The POLST forms contain sensitive medical information and personal identifying information.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The AHCA anticipates that a private sector vendor would be selected to operate the clearinghouse. The estimated fiscal impact for implementation would be \$661,101 for the first year and \$618,434 for the second year.<sup>36</sup> Based on initial research conducted by the AHCA, there are no currently existing national databases that exist or regional databases that cover all of Florida that meet the requirements outlined in the bill, although it is possible that there might be one that could be customized to meet the requirements.<sup>37</sup>

Patients might request their providers complete and submit POLST forms on their behalf to the clearinghouse which could increase a provider's administrative costs.

C. Government Sector Impact:

The AHCA estimates the overall costs for SB 474 to be \$1,084,143 for the first year of implementation and \$1,041,476 for the second year of operations as detailed in the chart below.<sup>38</sup> Cost estimates for the clearinghouse were based on experiences of Washington State and adjusted for Florida's population size and inflation, according to the AHCA.<sup>39</sup>

The AHCA requested 3.00 FTEs for the implementation and administration of the clearinghouse under the alternative option as a contracted service. The 3.00 FTEs would also be responsible for educating and conducting outreach activities for residents and providers about the availability of the POLST and the clearinghouse statewide.

The AHCA has also noted that it does not believe that the clearinghouse can be implemented in the 6 month timeframe outlined in the bill and recommends a one year timeframe.

The DOH estimated its fiscal impact based on significant personnel time relating to developing rules and procedures for the POLST form and orders not to resuscitate pursuant to a POLST form and to create and maintain the clearinghouse in coordination

---

<sup>36</sup> Agency for Health Care Administration, *Senate Bill 474 Analysis*, p. 7-9, (Oct. 13, 2017) (on file with the Senate Committee on Health Policy).

<sup>37</sup> *Id.* at 5.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 2.

with the AHCA and DOEA.<sup>40</sup> The DOH indicated these costs are estimated at \$232,230 for the first year and \$218,808 for the second year.<sup>41</sup> To conduct these activities, the DOH requested 3 FTEs and their associated expenses as shown in the chart below.

<b>FISCAL IMPACT – SB 474</b>		
<b>Expenditure</b>	<b>Year One</b>	<b>Year Two</b>
<b>Department of Health<sup>42</sup></b>		
<b>Professional Positions</b>		
Program Administrator	\$64,598	\$64,598
Program Manager	\$64,598	\$64,598
Administrative Assistant II	41,962	41,962
<b>Total Salary &amp; Fringe:</b>	<b>\$171,159</b>	<b>\$171,159</b>
<b>Non-Recurring Expense Std.</b>		
Professional:	\$13,422	-
<b>Total Non-Recurring Expense:</b>	<b>\$13,422</b>	<b>-</b>
<b>Recurring Expense Std.</b>		
Professional:	\$17,844	\$17,844
<b>Total Recurring Expense Standard:</b>	<b>\$17,844</b>	<b>\$17,844</b>
<b>Recurring Professional Travel Std.</b>		
Medium Travel	\$28,818	\$28,818
<b>Total Recurring Expense – Travel:</b>	<b>\$28,818</b>	<b>\$28,818</b>
<b>HR Outsourcing</b>		
FTE	\$987	\$987
CHD	\$-	\$-
OPS	\$-	\$-
<b>Total HR Outsourcing:</b>	<b>\$987</b>	<b>\$987</b>
Total Recurring Costs – DOH	\$218,808	\$218,808
<b>Total Non-Recurring &amp; Recurring Costs – DOH</b>	<b>\$232,230</b>	<b>\$232,808</b>
<b>Agency for Health Care Administration<sup>43</sup></b>		
<b>Expenditure</b>	<b>Year One</b>	<b>Year Two</b>
<b>Professional Staff</b>		
3 FTEs Professional Staff	\$13,422	\$-
<b>Total Non-Recurring Expense – 3 FTEs</b>	<b>\$13,422</b>	<b>\$-</b>
<b>Salaries</b>		
Government Ops Consultant II (1 FTE)	\$62,128	\$62,128
Health Services & Facility Consultant (2 FTEs)	116,948	116,948
<b>Total Salary and Benefits (3 FTEs):</b>	<b>\$179,076</b>	<b>\$179,076</b>
<b>Expenses</b>		
Professional Staff (3 FTEs @ \$5,993)	\$17,979	\$17,979
Educational Materials (facilities and providers)	75,000	75,000
Educational Materials (consumers)	150,000	150,000
<b>Total Expenses:</b>	<b>\$242,979</b>	<b>\$242,979</b>
<b>Human Resources Services</b>		
FTE Positions (3 FTEs @ \$329):	\$987	\$987

<sup>40</sup> Department of Health, *Senate Bill 474 Analysis*, pp. 4-5 (Oct. 10, 2017) (on file with the Senate Committee on Health Policy).

<sup>41</sup> *Id.* at 5.

<sup>42</sup> *Supra* note 40.

<sup>43</sup> Agency for Health Care Administration, *Senate Bill 474 Analysis*, pp. 7-9, (Oct. 13, 2017) (on file with the Senate Committee of Health Policy).

<b>FISCAL IMPACT – SB 474</b>		
<b>Expenditure</b>	<b>Year One</b>	<b>Year Two</b>
<b>Total Human Resources Services:</b>	<b>\$987</b>	<b>\$987</b>
<b>Special Categories/Contracted Services</b>		
Contracted Services	\$611,101	\$618,434
Contracted Services (Customized Services)	50,000	\$-
<b>Total Special Categories/Contracted Services:</b>	<b>\$661,101</b>	<b>\$618,434</b>
Total Recurring Costs – AHCA:	\$1,084,143	1,041,476
Total Non-Recurring Costs – AHCA:	\$13,422	\$-
<b>Total Net Impact – AHCA:</b>	<b>\$1,097,565</b>	<b>\$1,041,476</b>

In 2016 under an identical bill, the Department of Elderly Affairs (DOEA) estimated a minimal fiscal impact related to rulemaking for implementation of the POLST forms at hospices, assisted living facilities, and adult family day cares.<sup>44</sup> The DOEA indicated these costs could be absorbed within existing resources.<sup>45</sup> No fiscal impact has been received from DOEA for SB 474.

**VI. Technical Deficiencies:**

SB 474 does not amend s. 395.1041(3)(l), F.S., to protect hospital personnel for honoring a POLST form.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, 456.072, and 765.205.

This bill creates the following sections of the Florida Statutes: 401.451 and 408.064.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

<sup>44</sup> Department of Elderly Affairs, *Senate Bill 664 Analysis*, p. 2 (Dec. 15, 2015) (on file with the Senate Committee on Health Policy).

<sup>45</sup> *Id* at 4.

---

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

---



By Senator Brandes

24-00549-18

2018474\_\_

1                   A bill to be entitled  
2           An act relating to physician orders for life-  
3           sustaining treatment; creating s. 401.451, F.S.;  
4           establishing the Physician Orders for Life-Sustaining  
5           Treatment (POLST) Program within the Department of  
6           Health; defining terms; providing duties of the  
7           department; providing requirements for POLST forms;  
8           providing a restriction on the use of POLST forms;  
9           requiring periodic review of POLST forms; providing  
10          for the revocation of POLST forms under certain  
11          circumstances; authorizing expedited judicial  
12          intervention under certain circumstances; specifying  
13          which document takes precedence when directives in  
14          POLST forms conflict with other advance directives;  
15          providing limited immunity for legal representatives  
16          and specified health care providers acting in good  
17          faith in reliance on POLST forms; specifying  
18          additional requirements for POLST forms executed on  
19          behalf of minor patients under certain circumstances;  
20          requiring the review of a POLST form upon the transfer  
21          of a patient; prohibiting POLST forms from being  
22          required as a condition for treatment or admission to  
23          health care facilities; providing that the presence or  
24          absence of POLST forms does not affect, impair, or  
25          modify certain insurance contracts; declaring a POLST  
26          form invalid if it is executed in exchange for payment  
27          or other remuneration; providing construction;  
28          creating s. 408.064, F.S.; defining terms; requiring  
29          the Agency for Health Care Administration to establish

24-00549-18

2018474\_\_

30 and maintain a database of compassionate and  
31 palliative care plans by a specified date; providing  
32 duties of the agency; authorizing the agency to  
33 subscribe to or participate in a public or private  
34 clearinghouse in lieu of establishing and maintaining  
35 an independent database; amending ss. 400.142 and  
36 400.487, F.S.; authorizing specified personnel to  
37 withhold or withdraw cardiopulmonary resuscitation if  
38 presented with a POLST form that contains an order not  
39 to resuscitate the patient; providing immunity from  
40 criminal prosecution or civil liability to such  
41 personnel for such actions; providing that the absence  
42 of a POLST form does not preclude physicians or home  
43 health agency personnel from withholding or  
44 withdrawing cardiopulmonary resuscitation under  
45 certain conditions; amending s. 400.605, F.S.;

46 requiring the Department of Elderly Affairs, in  
47 consultation with the agency, to adopt by rule  
48 procedures for the implementation of POLST forms in  
49 hospice care; amending s. 400.6095, F.S.; authorizing  
50 hospice care teams to withhold or withdraw  
51 cardiopulmonary resuscitation if presented with POLST  
52 forms that contain an order not to resuscitate;  
53 providing immunity from criminal prosecution or civil  
54 liability to hospice staff for such actions; providing  
55 that the absence of a POLST form does not preclude  
56 physicians from withholding or withdrawing  
57 cardiopulmonary resuscitation; amending s. 401.35,  
58 F.S.; requiring the Department of Health to establish

24-00549-18

2018474\_\_

59 circumstances and procedures for honoring certain  
60 POLST forms; amending s. 401.45, F.S.; authorizing  
61 emergency medical personnel to withhold or withdraw  
62 cardiopulmonary resuscitation or other medical  
63 interventions if presented with POLST forms that  
64 contain an order not to resuscitate; amending s.  
65 429.255, F.S.; authorizing assisted living facility  
66 personnel to withhold or withdraw cardiopulmonary  
67 resuscitation or the use of an automated external  
68 defibrillator if presented with POLST forms that  
69 contain an order not to resuscitate; providing  
70 immunity from criminal prosecution or civil liability  
71 to facility staff and facilities for such actions;  
72 providing that the absence of a POLST form does not  
73 preclude physicians from withholding or withdrawing  
74 cardiopulmonary resuscitation or the use of an  
75 automated external defibrillator; amending s. 429.73,  
76 F.S.; requiring the Department of Elderly Affairs to  
77 adopt rules for the implementation of POLST forms in  
78 adult family-care homes; authorizing providers of such  
79 homes to withhold or withdraw cardiopulmonary  
80 resuscitation if presented with POLST forms that  
81 contain an order not to resuscitate; providing  
82 immunity from criminal prosecution or civil liability  
83 to providers for such actions; amending s. 456.072,  
84 F.S.; authorizing certain licensees to withhold or  
85 withdraw cardiopulmonary resuscitation or the use of  
86 an automated external defibrillator if presented with  
87 orders not to resuscitate or POLST forms that contain

24-00549-18

2018474\_\_

88 an order not to resuscitate; requiring the Department  
89 of Health to adopt rules providing for the  
90 implementation of such orders; providing immunity from  
91 criminal prosecution or civil liability to licensees  
92 for withholding or withdrawing cardiopulmonary  
93 resuscitation or the use of an automated external  
94 defibrillator or for carrying out specified orders  
95 under certain circumstances; providing that the  
96 absence of a POLST form does not preclude a licensee  
97 from withholding or withdrawing cardiopulmonary  
98 resuscitation or the use of an automated external  
99 defibrillator under certain conditions; amending s.  
100 765.205, F.S.; requiring health care surrogates to  
101 provide written consent for POLST forms under certain  
102 circumstances; providing an effective date.

103  
104 Be It Enacted by the Legislature of the State of Florida:

105  
106 Section 1. Section 401.451, Florida Statutes, is created to  
107 read:

108 401.451 Physician Orders for Life-Sustaining Treatment  
109 Program.—The Physician Orders for Life-Sustaining Treatment  
110 Program is established within the Department of Health to  
111 implement and administer the development and use of physician  
112 orders for life-sustaining treatment consistent with this  
113 section and to collaborate with the Agency for Health Care  
114 Administration in the implementation and operation of the  
115 Clearinghouse for Compassionate and Palliative Care Plans  
116 created under s. 408.064.

24-00549-18

2018474\_\_

117 (1) DEFINITIONS.—As used in this section, the term:

118 (a) "Advance directive" has the same meaning as provided in  
119 s. 765.101.

120 (b) "Agency" means the Agency for Health Care  
121 Administration.

122 (c) "Clearinghouse for Compassionate and Palliative Care  
123 Plans" or "clearinghouse" has the same meaning as provided in s.  
124 408.064.

125 (d) "End-stage condition" has the same meaning as provided  
126 in s. 765.101.

127 (e) "Examining physician" means a physician who examines a  
128 patient who wishes, or whose legal representative wishes, to  
129 execute a POLST form; who attests to the ability of the patient  
130 or the patient's legal representative to make and communicate  
131 health care decisions; who signs the POLST form; and who attests  
132 to the execution of the POLST form by the patient or by the  
133 patient's legal representative.

134 (f) "Health care provider" has the same meaning as provided  
135 in s. 408.07.

136 (g) "Legal representative" means a patient's legally  
137 authorized health care surrogate or proxy as provided in chapter  
138 765, a patient's court-appointed guardian as provided in chapter  
139 744 who has been delegated authority to make health care  
140 decisions on behalf of the patient, an attorney in fact under a  
141 durable power of attorney as provided in chapter 709 who has  
142 been delegated authority to make health care decisions on behalf  
143 of the patient, or a patient's parent if the patient is under 18  
144 years of age.

145 (h) "Order not to resuscitate" means an order issued under

24-00549-18

2018474\_\_

146 s. 401.45(3).

147 (i) "Physician order for life-sustaining treatment" or  
148 "POLST" means an order issued pursuant to this section which  
149 specifies a patient with an end-stage condition and provides  
150 directives for that patient's medical treatment and care under  
151 certain conditions.

152 (2) DUTIES OF THE DEPARTMENT.—The department shall:

153 (a) Adopt rules to implement and administer the POLST  
154 program.

155 (b) Prescribe a standardized POLST form.

156 (c) Provide the POLST form in an electronic format on the  
157 department's website and prominently state on the website the  
158 requirements for a POLST form as specified under paragraph

159 (3) (a).

160 (d) Consult with health care professional licensing groups,  
161 provider advocacy groups, medical ethicists, and other  
162 appropriate stakeholders on the development of rules and forms  
163 to implement and administer the POLST program.

164 (e) Collaborate with the agency to develop and maintain the  
165 clearinghouse.

166 (f) Ensure that department staff receive ongoing training  
167 on the POLST program and are aware of the availability of POLST  
168 forms.

169 (g) Recommend a statewide, uniform process for identifying  
170 a patient who has, or whose legal representative has, executed a  
171 POLST form and for providing the contact information for the  
172 examining physician to the health care providers currently  
173 treating the patient.

174 (h) Adopt POLST-related continuing education requirements

24-00549-18

2018474\_\_

175 for health care providers licensed by the department.

176 (i) Develop a process for collecting feedback from health  
177 care providers to facilitate the periodic redesign of the POLST  
178 form in accordance with current health care best practices.

179 (3) POLST FORM.—

180 (a) Requirements.—A POLST form may not include a directive  
181 regarding hydration or the preselection of any decision or  
182 directive. A POLST form must be voluntarily executed by the  
183 patient or, if the patient is incapacitated or a minor, the  
184 patient's legal representative, and all directives included in  
185 the form must be made by the patient or, if the patient is  
186 incapacitated or a minor, the patient's legal representative at  
187 the time of signing the form. A POLST form is not valid and may  
188 not be included in a patient's medical records or submitted to  
189 the clearinghouse unless the form:

190 1. Is clearly printed on one or both sides of a single  
191 piece of paper as determined by department rule;

192 2. Includes the signatures of the patient and the patient's  
193 examining physician or, if the patient is incapacitated or a  
194 minor, the patient's legal representative and the patient's  
195 examining physician. The POLST form may be executed only after  
196 the examining physician consults with the patient or the  
197 patient's legal representative, as appropriate;

198 3. Prominently states that completion of a POLST form is  
199 voluntary, that the execution or use of a POLST form may not be  
200 required as a condition for medical treatment, and that a POLST  
201 form may not be given effect if the patient is conscious and  
202 competent to make health care decisions;

203 4. Prominently provides in a conspicuous location on the

24-00549-18

2018474\_\_

204 form a space for the patient's examining physician to attest  
205 that, in his or her clinical judgment and with good faith, at  
206 the time the POLST form is completed and signed, the patient has  
207 the ability to make and communicate health care decisions or, if  
208 the patient is incapacitated or a minor, that the patient's  
209 legal representative has such ability;

210 5. Includes an expiration date, provided by the patient's  
211 examining physician, that is within 1 year after the patient or  
212 the patient's legal representative signs the form or that is  
213 contingent on completion of the course of treatment addressed in  
214 the POLST form, whichever occurs first; and

215 6. Identifies the medical condition or conditions, provided  
216 by the patient's examining physician, that necessitate the POLST  
217 form.

218 (b) Restriction on the use of a POLST form.—A POLST form  
219 may be completed only by or for a patient determined by the  
220 patient's examining physician to have an end-stage condition or  
221 a patient who, in the good faith clinical judgment of the  
222 examining physician, is suffering from a life-limiting medical  
223 condition that will likely result in the death of the patient  
224 within 1 year after the execution of the form.

225 (c) Periodic review of a POLST form.—At a minimum, the  
226 patient's examining physician must review the patient's POLST  
227 form with the patient or the patient's legal representative, as  
228 appropriate, when the patient:

229 1. Is transferred from one health care facility or level of  
230 care to another in accordance with subsection (6);

231 2. Is discharged from a health care facility to return home  
232 before the expiration of the POLST form;



24-00549-18

2018474\_\_

233 3. Experiences a substantial change in his or her condition  
234 as determined by the patient's examining physician, in which  
235 case the review must occur within 24 hours after the substantial  
236 change; or

237 4. Expresses an intent to change his or her medical  
238 treatment preferences.

239 (d) Revocation of a POLST form.—

240 1. A POLST form may be revoked at any time by the patient  
241 or the patient's legal representative if the patient is a minor  
242 or if the patient is incapacitated and has granted the authority  
243 to revoke a POLST form to his or her legal representative.

244 2. The execution of a POLST form by a patient and the  
245 patient's examining physician or, if the patient is  
246 incapacitated or a minor, by the patient's legal representative  
247 and the patient's examining physician under this section  
248 automatically revokes all POLST forms previously executed by the  
249 patient.

250 (e) Review of a legal representative's decision on a POLST  
251 form.—If a family member of the patient, the health care  
252 facility providing services to the patient, or the patient's  
253 physician who may reasonably be expected to be affected by the  
254 patient's POLST form directives believes that directives  
255 executed by the patient's legal representative are in conflict  
256 with the patient's prior expressed desires regarding end-of-life  
257 care, the family member, facility, or physician may seek  
258 expedited judicial intervention pursuant to the Florida Probate  
259 Rules.

260 (f) Conflicting advance directives.—To the extent that a  
261 directive made on a patient's POLST form conflicts with another

24-00549-18

2018474\_\_

262 advance directive of the patient which addresses a substantially  
263 similar health care condition or treatment, the document most  
264 recently signed by the patient takes precedence. Such directives  
265 may include, but are not limited to:

266 1. A living will.

267 2. A health care power of attorney.

268 3. A POLST form for the specific medical condition or  
269 treatment.

270 4. An order not to resuscitate.

271 (4) ACTING IN GOOD FAITH; LIMITED IMMUNITY.—

272 (a) An individual acting in good faith as a legal  
273 representative who executes a POLST form on behalf of an  
274 incapacitated patient or a minor patient in accordance with this  
275 section and rules adopted by the department is not subject to  
276 criminal prosecution or civil liability for executing the POLST  
277 form.

278 (b) A licensee, physician, medical director, emergency  
279 medical technician, paramedic, or registered nurse who in good  
280 faith complies with a POLST form is not subject to criminal  
281 prosecution or civil liability for complying with the POLST  
282 form, and has not engaged in negligent or unprofessional conduct  
283 as a result of carrying out the directives of a POLST form  
284 executed in accordance with this section and rules adopted by  
285 the department.

286 (5) POLST FORM FOR A MINOR PATIENT.—If a medical order on a  
287 POLST form executed for a minor patient directs that life-  
288 sustaining treatment may be withheld from the minor patient, the  
289 order must include certifications by the patient's examining  
290 physician and a health care provider other than the examining

24-00549-18

2018474\_\_

291 physician stating that, in their clinical judgment, an order to  
292 withhold medical treatment is in the best interest of the minor  
293 patient. A POLST form for a minor patient must be signed by the  
294 minor patient's legal representative. The minor patient's  
295 examining physician must certify the basis for the authority of  
296 the minor patient's legal representative to execute the POLST  
297 form on behalf of the minor patient, including the legal  
298 representative's compliance with the relevant provisions of  
299 chapter 744 or chapter 765.

300 (6) PATIENT TRANSFER; POLST FORM REVIEW REQUIRED.—If a  
301 patient whose goals and preferences for care have been entered  
302 in a valid POLST form is transferred from one health care  
303 facility or level of care to another, the health care facility  
304 or level of care initiating the transfer must communicate the  
305 existence of the POLST form to the receiving facility or level  
306 of care before the transfer. Upon the patient's transfer, the  
307 treating health care provider at the receiving facility or level  
308 of care must review the POLST form with the patient or, if the  
309 patient is incapacitated or a minor, the patient's legal  
310 representative.

311 (7) POLST FORM NOT A PREREQUISITE.—A POLST form may not be  
312 a prerequisite for receiving medical services or for admission  
313 to a health care facility. A health care facility or health care  
314 provider may not require a person to complete, revise, or revoke  
315 a POLST form as a condition of receiving medical services or  
316 treatment or as a condition of admission. The execution,  
317 revision, or revocation of a POLST form must be a voluntary  
318 decision of the patient or, if the patient is incapacitated or a  
319 minor, the patient's legal representative.

24-00549-18

2018474\_\_

320 (8) INSURANCE NOT AFFECTED.—The presence or absence of a  
321 POLST form does not affect, impair, or modify a contract of life  
322 or health insurance or annuity to which an individual is a party  
323 and may not serve as the basis for a delay in issuing or  
324 refusing to issue a policy of life or health insurance or an  
325 annuity or for an increase or decrease in premiums charged to  
326 the individual.

327 (9) INVALIDITY.—A POLST form is invalid if payment or other  
328 remuneration was offered or made in exchange for execution of  
329 the form.

330 (10) CONSTRUCTION.—This section may not be construed to  
331 condone, authorize, or approve mercy killing or euthanasia. The  
332 Legislature does not intend that this act be construed as  
333 authorizing an affirmative or deliberate act to end a person's  
334 life, except to allow the natural process of dying.

335 Section 2. Section 408.064, Florida Statutes, is created to  
336 read:

337 408.064 Clearinghouse for Compassionate and Palliative Care  
338 Plans.—

339 (1) DEFINITIONS.—As used in this section, the term:

340 (a) "Advance directive" has the same meaning as provided in  
341 s. 765.101.

342 (b) "Clearinghouse for Compassionate and Palliative Care  
343 Plans" or "clearinghouse" means the state's electronic database  
344 of compassionate and palliative care plans submitted by  
345 residents of this state and managed by the agency pursuant to  
346 this section.

347 (c) "Compassionate and palliative care plan" or "plan"  
348 means an end-of-life document or medical directive document

24-00549-18

2018474\_\_

349 recognized by this state and executed by a resident of this  
350 state, including, but not limited to, an advance directive, an  
351 order not to resuscitate, a physician order for life-sustaining  
352 treatment, or a health care surrogate designation.

353 (d) "Department" means the Department of Health.

354 (e) "End-stage condition" has the same meaning as provided  
355 in s. 765.101.

356 (f) "Order not to resuscitate" means an order issued  
357 pursuant to s. 401.45(3).

358 (g) "Physician order for life-sustaining treatment" or  
359 "POLST" means an order issued pursuant to s. 401.451 which  
360 specifies a patient with an end-stage condition and provides  
361 directions for that patient's medical treatment and care under  
362 certain conditions.

363 (2) ELECTRONIC DATABASE.—The Agency for Health Care  
364 Administration shall:

365 (a) By January 1, 2019, establish and maintain the  
366 Clearinghouse for Compassionate and Palliative Care Plans, a  
367 reliable and secure database consisting of compassionate and  
368 palliative care plans submitted by residents of this state which  
369 is accessible to health care providers, health care facilities,  
370 and other authorized individuals through a secure electronic  
371 portal. The clearinghouse must allow the electronic submission,  
372 storage, indexing, and retrieval of such plans and allow access  
373 to them by the treating health care providers of the patients.

374 (b) Develop and maintain a validation system that confirms  
375 the identity of the health care facility, health care provider,  
376 or other authorized individual seeking the retrieval of a plan  
377 and provides privacy protections that meet all state and federal

24-00549-18

2018474\_\_

378 privacy and security standards for the release of a patient's  
379 personal and medical information to a third party.

380 (c) Consult with compassionate and palliative care  
381 providers, health care facilities, and residents of this state  
382 as necessary and appropriate to facilitate the development and  
383 implementation of the clearinghouse.

384 (d) Publish and disseminate to residents of this state  
385 information regarding the clearinghouse.

386 (e) In collaboration with the department, develop and  
387 maintain a process for the submission of compassionate and  
388 palliative care plans by residents of this state or by health  
389 care providers on behalf of, and at the direction of, their  
390 patients, or the patients' legal representatives as defined in  
391 s. 401.451, for inclusion in the clearinghouse.

392 (f) Provide training to health care providers and health  
393 care facilities in this state on how to access plans in the  
394 clearinghouse.

395 (3) ALTERNATIVE IMPLEMENTATION.—In lieu of establishing and  
396 maintaining the clearinghouse, the agency may subscribe to or  
397 otherwise participate in a database operated by a public or  
398 private entity if that database meets the requirements of this  
399 section. The alternative database must operate on a statewide  
400 basis in this state, and may operate on a nationwide or  
401 regionwide basis.

402 Section 3. Subsection (3) of section 400.142, Florida  
403 Statutes, is amended to read:

404 400.142 Emergency medication kits; orders not to  
405 resuscitate.—

406 (3) Facility staff may withhold or withdraw cardiopulmonary

24-00549-18

2018474\_\_

407 resuscitation if presented with an order not to resuscitate  
 408 executed pursuant to s. 401.45 or a physician order for life-  
 409 sustaining treatment (POLST) form executed pursuant to s.  
 410 401.451 which contains an order not to resuscitate. Facility  
 411 staff and facilities are not subject to criminal prosecution or  
 412 civil liability, or considered to have engaged in negligent or  
 413 unprofessional conduct, for withholding or withdrawing  
 414 cardiopulmonary resuscitation pursuant to such an order or a  
 415 POLST form. The absence of an order not to resuscitate executed  
 416 pursuant to s. 401.45 or a POLST form executed pursuant to s.  
 417 401.451 does not preclude a physician from withholding or  
 418 withdrawing cardiopulmonary resuscitation as otherwise  
 419 authorized ~~permitted~~ by law.

420 Section 4. Section 400.487, Florida Statutes, is amended to  
 421 read:

422 400.487 Home health service agreements; physician's,  
 423 physician assistant's, and advanced registered nurse  
 424 practitioner's treatment orders; patient assessment;  
 425 establishment and review of plan of care; provision of services;  
 426 orders not to resuscitate; physician orders for life-sustaining  
 427 treatment.—

428 (1) Services provided by a home health agency must be  
 429 covered by an agreement between the home health agency and the  
 430 patient or the patient's legal representative specifying the  
 431 home health services to be provided, the rates or charges for  
 432 services paid with private funds, and the sources of payment,  
 433 which may include Medicare, Medicaid, private insurance,  
 434 personal funds, or a combination thereof. A home health agency  
 435 providing skilled care must make an assessment of the patient's

24-00549-18

2018474\_\_

436 needs within 48 hours after the start of services.

437 (2) If ~~When~~ required by the ~~provisions of~~ chapter 464; part  
438 I, part III, or part V of chapter 468; or chapter 486, the  
439 attending physician, physician assistant, or advanced registered  
440 nurse practitioner, acting within his or her respective scope of  
441 practice, shall establish treatment orders for a patient who is  
442 to receive skilled care. The treatment orders must be signed by  
443 the physician, physician assistant, or advanced registered nurse  
444 practitioner before a claim for payment for the skilled services  
445 is submitted by the home health agency. If the claim is  
446 submitted to a managed care organization, the treatment orders  
447 must be signed within the time allowed under the provider  
448 agreement. The treatment orders shall be reviewed, as frequently  
449 as the patient's illness requires, by the physician, physician  
450 assistant, or advanced registered nurse practitioner in  
451 consultation with the home health agency.

452 (3) A home health agency shall arrange for supervisory  
453 visits by a registered nurse to the home of a patient receiving  
454 home health aide services in accordance with the patient's  
455 direction, approval, and agreement to pay the charge for the  
456 visits.

457 (4) Each patient has the right to be informed of and to  
458 participate in the planning of his or her care. Each patient  
459 must be provided, upon request, a copy of the plan of care  
460 established and maintained for that patient by the home health  
461 agency.

462 (5) If ~~When~~ nursing services are ordered, the home health  
463 agency to which a patient has been admitted for care must  
464 provide the initial admission visit, all service evaluation



24-00549-18

2018474\_\_

465 visits, and the discharge visit by a direct employee. Services  
466 provided by others under contractual arrangements to a home  
467 health agency must be monitored and managed by the admitting  
468 home health agency. The admitting home health agency is fully  
469 responsible for ensuring that all care provided through its  
470 employees or contract staff is delivered in accordance with this  
471 part and applicable rules.

472 (6) The skilled care services provided by a home health  
473 agency, directly or under contract, must be supervised and  
474 coordinated in accordance with the plan of care.

475 (7) Home health agency personnel may withhold or withdraw  
476 cardiopulmonary resuscitation if presented with an order not to  
477 resuscitate executed pursuant to s. 401.45 or a physician order  
478 for life-sustaining treatment (POLST) form executed pursuant to  
479 s. 401.451 which contains an order not to resuscitate. The  
480 agency shall adopt rules providing for the implementation of  
481 such orders. Home health personnel and agencies are ~~shall~~ ~~be~~  
482 subject to criminal prosecution or civil liability, and are not  
483 ~~nor be~~ considered to have engaged in negligent or unprofessional  
484 conduct, for withholding or withdrawing cardiopulmonary  
485 resuscitation pursuant to such orders ~~an order~~ and rules adopted  
486 by the agency.

487 Section 5. Paragraph (e) of subsection (1) of section  
488 400.605, Florida Statutes, is amended to read:

489 400.605 Administration; forms; fees; rules; inspections;  
490 fines.—

491 (1) The agency, in consultation with the department, may  
492 adopt rules to administer the requirements of part II of chapter  
493 408. The department, in consultation with the agency, shall by

24-00549-18

2018474\_\_

494 rule establish minimum standards and procedures for a hospice  
495 pursuant to this part. The rules must include:

496 (e) Procedures relating to the implementation of advance  
497 ~~advanced~~ directives; physician orders for life-sustaining  
498 treatment (POLST) forms executed pursuant to s. 401.451; and  
499 orders not to resuscitate ~~do not resuscitate orders.~~

500 Section 6. Subsection (8) of section 400.6095, Florida  
501 Statutes, is amended to read:

502 400.6095 Patient admission; assessment; plan of care;  
503 discharge; death.—

504 (8) The hospice care team may withhold or withdraw  
505 cardiopulmonary resuscitation if presented with an order not to  
506 resuscitate executed pursuant to s. 401.45 or a physician order  
507 for life-sustaining treatment (POLST) form executed pursuant to  
508 s. 401.451 which contains an order not to resuscitate. The  
509 department shall adopt rules providing for the implementation of  
510 such orders. Hospice staff are ~~shall~~ not ~~be~~ subject to criminal  
511 prosecution or civil liability, and are not ~~nor be~~ considered to  
512 have engaged in negligent or unprofessional conduct, for  
513 withholding or withdrawing cardiopulmonary resuscitation  
514 pursuant to such orders ~~an order~~ and applicable rules. The  
515 absence of an order to resuscitate executed pursuant to s.  
516 401.45 or a POLST form executed pursuant to s. 401.451 does not  
517 preclude a physician from withholding or withdrawing  
518 cardiopulmonary resuscitation as otherwise authorized ~~permitted~~  
519 by law.

520 Section 7. Subsection (4) of section 401.35, Florida  
521 Statutes, is amended to read:

522 401.35 Rules.—The department shall adopt rules, including

24-00549-18

2018474\_\_

523 definitions of terms, necessary to carry out the purposes of  
524 this part.

525 (4) The rules must establish circumstances and procedures  
526 under which emergency medical technicians and paramedics may  
527 honor orders by the patient's physician not to resuscitate  
528 executed pursuant to s. 401.45, or under a physician order for  
529 life-sustaining treatment (POLST) form executed pursuant to s.  
530 401.451 which contains an order not to resuscitate, or honor  
531 orders to withhold or withdraw other forms of medical  
532 intervention, and the documentation and reporting requirements  
533 for handling such requests.

534 Section 8. Paragraph (a) of subsection (3) of section  
535 401.45, Florida Statutes, is amended to read:

536 401.45 Denial of emergency treatment; civil liability.—

537 (3) (a) Resuscitation or other forms of medical intervention  
538 may be withheld or withdrawn from a patient by an emergency  
539 medical technician, ~~or~~ paramedic, or other health care  
540 professional if the technician, paramedic, or professional is  
541 presented with evidence of an order not to resuscitate by the  
542 patient's physician or evidence of a physician order for life-  
543 sustaining treatment (POLST) form executed pursuant to s.  
544 401.451 which contains an order not to resuscitate or an order  
545 not to perform other medical intervention, as applicable ~~is~~  
546 presented to the emergency medical technician or paramedic. To  
547 be valid, an order not to resuscitate or not to perform other  
548 medical intervention, ~~to be valid,~~ must be on the form adopted  
549 by rule of the department. The form must be signed by the  
550 patient's physician and by the patient or, if the patient is  
551 incapacitated, the patient's health care surrogate or proxy as

24-00549-18

2018474\_\_

552 provided in chapter 765, court-appointed guardian as provided in  
553 chapter 744, or attorney in fact under a durable power of  
554 attorney as provided in chapter 709 or, if the patient is a  
555 minor, the patient's parent or legal guardian. The court-  
556 appointed guardian or attorney in fact must have been delegated  
557 authority to make health care decisions on behalf of the  
558 patient.

559 Section 9. Subsection (4) of section 429.255, Florida  
560 Statutes, is amended to read:

561 429.255 Use of personnel; emergency care.—

562 (4) Facility staff may withhold or withdraw cardiopulmonary  
563 resuscitation or the use of an automated external defibrillator  
564 if presented with an order not to resuscitate executed pursuant  
565 to s. 401.45 or a physician order for life-sustaining treatment  
566 (POLST) form executed pursuant to s. 401.451 which contains an  
567 order not to resuscitate. The department shall adopt rules  
568 providing for the implementation of such orders. Facility staff  
569 and facilities are shall not ~~be~~ subject to criminal prosecution  
570 or civil liability, and are not ~~nor be~~ considered to have  
571 engaged in negligent or unprofessional conduct, for withholding  
572 or withdrawing cardiopulmonary resuscitation or the use of an  
573 automated external defibrillator pursuant to such an order or a  
574 POLST form which contains an order not to resuscitate and rules  
575 adopted by the department. The absence of an order not to  
576 resuscitate executed pursuant to s. 401.45 or a POLST form  
577 executed pursuant to s. 401.451 does not preclude a physician  
578 from withholding or withdrawing cardiopulmonary resuscitation or  
579 the use of an automated external defibrillator as otherwise  
580 authorized ~~permitted~~ by law.

24-00549-18

2018474\_\_

581 Section 10. Subsection (3) of section 429.73, Florida  
582 Statutes, is amended to read:

583 429.73 Rules and standards relating to adult family-care  
584 homes.—

585 (3) The department shall adopt rules providing for the  
586 implementation of orders not to resuscitate and physician orders  
587 for life-sustaining treatment (POLST) forms executed pursuant to  
588 s. 401.451. The provider may withhold or withdraw  
589 cardiopulmonary resuscitation if presented with an order not to  
590 resuscitate executed pursuant to s. 401.45 or a POLST form  
591 executed pursuant to s. 401.451 which contains an order not to  
592 resuscitate. The provider is ~~shall~~ not ~~be~~ subject to criminal  
593 prosecution or civil liability, and is not ~~nor be~~ considered to  
594 have engaged in negligent or unprofessional conduct, for  
595 withholding or withdrawing cardiopulmonary resuscitation  
596 pursuant to such orders ~~an order~~ and applicable rules.

597 Section 11. Present subsections (7) and (8) of section  
598 456.072, Florida Statutes, are redesignated as subsections (8)  
599 and (9), respectively, and a new subsection (7) is added to that  
600 section, to read:

601 456.072 Grounds for discipline; penalties; enforcement.—

602 (7) A licensee may withhold or withdraw cardiopulmonary  
603 resuscitation or the use of an automated external defibrillator  
604 if presented with an order not to resuscitate executed pursuant  
605 to s. 401.45 or a physician order for life-sustaining treatment  
606 (POLST) form executed pursuant to s. 401.451 which contains an  
607 order not to resuscitate. The department shall adopt rules  
608 providing for the implementation of such orders. A licensee is  
609 not subject to criminal prosecution or civil liability, and is

24-00549-18

2018474\_\_

610 not considered to have engaged in negligent or unprofessional  
611 conduct, for withholding or withdrawing cardiopulmonary  
612 resuscitation or the use of an automated external defibrillator,  
613 or otherwise carrying out an order in an order not to  
614 resuscitate executed pursuant to s. 401.45 or a POLST form  
615 executed pursuant to s. 401.451, pursuant to the order not to  
616 resuscitate or the POLST form and pursuant to rules adopted by  
617 the department. The absence of an order not to resuscitate  
618 executed pursuant to s. 401.45 or a POLST form executed pursuant  
619 to s. 401.451 does not preclude a licensee from withholding or  
620 withdrawing cardiopulmonary resuscitation or the use of an  
621 automated external defibrillator or otherwise carrying out a  
622 medical order authorized by law.

623 Section 12. Paragraph (c) of subsection (1) of section  
624 765.205, Florida Statutes, is amended to read:

625 765.205 Responsibility of the surrogate.—

626 (1) The surrogate, in accordance with the principal's  
627 instructions, unless such authority has been expressly limited  
628 by the principal, shall:

629 (c) Provide written consent using an appropriate form  
630 whenever consent is required, including a physician's order not  
631 to resuscitate or a physician order for life-sustaining  
632 treatment (POLST) form executed pursuant to s. 401.451.

633 Section 13. This act shall take effect July 1, 2018.



The Florida Senate

## Committee Agenda Request

**To:** Senator Dana D. Young  
Committee on Health Policy

**Subject:** Committee Agenda Request

**Date:** October 26, 2017

---

I respectfully request that **Senate Bill #474**, relating to **Physician Orders for Life-sustaining Treatment**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-16-18

Meeting Date

SB 474

Bill Number (if applicable)

Topic POLST (SB 474)

Amendment Barcode (if applicable)

Name DR. Diane Gowski (MD)

Job Title Physician / Hospitalist

Address 1383 Temple St

Phone 727-480-7574

Street

Clearwater FL 33756

Email dtanetz@aol.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against (The Chair will read this information into the record.)

Representing State director for Florida guilds of the Catholic Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-16-18

Meeting Date

474

Bill Number (if applicable)

Topic POLST

Amendment Barcode (if applicable)

Name MARTHA DeCASTRO

Job Title VP for Nursing + Cancer Care Policy

Address 306 E. College Ave

Phone 850 222 9800

Street

Tallahassee

City

FL

State

32301

Zip

Email martha@fla.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Hospital Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18

Meeting Date

474

Bill Number (if applicable)

Topic POLST

Amendment Barcode (if applicable)

Name Ken Brummel-Smith, MD

Job Title retired physician

Address 4608 Grove Park Dr.

Phone 850-228-8787

Street

Tallahassee

FL

32311

Email kenbrummelsmith@gmail.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FL Medical Directors Assoc

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)

01162016

*Meeting Date*

SB 474

*Bill Number (if applicable)*

Topic Physician Orders for Life Sustaining Treatment

*Amendment Barcode (if applicable)*

Name Teresa Ward

Job Title Attorney at Law

Address 1591 Summit Lake Drive

Phone 850-544-5171

*Street*

Tallahassee

FL

32317

Email teresacooperward@gmail.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Florida Right to Life

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.***

APPEARANCE RECORD

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

1/16/2018  
Meeting Date

SB-474  
Bill Number (if applicable)

Topic P.O.L.S.T.

Amendment Barcode (if applicable)

Name Lynda Bell

Job Title President, Florida Right to Life

Address 507 S. Prospect Ave.

Phone 850-999-8821

Street  
City Clearwater, FL. State Zip 33756

Email Lyndaforlife@bellsouth.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Right to Life

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)

4874

Meeting Date \_\_\_\_\_  
Topic ROLST  
Name AARON WORTH MS  
Job Title 1625 SE 13 ST  
Address KARE CORP FL 33990 Phone 239 9385869  
Street \_\_\_\_\_  
City FL State FL Zip \_\_\_\_\_  
Email \_\_\_\_\_

Bill Number (if applicable) \_\_\_\_\_

Amendment Barcode (if applicable) \_\_\_\_\_

Speaking:  For  Against  Information  
Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA COLLEGE OF EMERGENCY PHYSICIANS

Appearing at request of Chair:  Yes  No  
Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**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 476

INTRODUCER: Health Policy Committee and Senator Brandes

SUBJECT: Public Records/Compassionate and Palliative Care Plans/Agency for Health Care Administration

DATE: January 16, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Fav/CS
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 476 creates a public records exemption for personal identifying information in the Compassionate and Palliative Care Plans Clearinghouse (clearinghouse) managed by the Agency for Health Care Administration (AHCA) or its designee under s. 408.604, F.S. Specifically, the bill makes the information confidential and exempt from the public records law.

The bill also provides a process by which, upon request and after verification of the legitimacy of the request, the AHCA may disclose such confidential and exempt information to:

- A health care provider as defined in s. 408.07, F.S., to provide medical treatment to a patient with a terminal illness;
- A patient or the legal guardian or designated health care surrogate of a patient with a terminal illness; or
- A health care facility to treat a patient with a terminal illness.

The bill provides an open government sunset review date of October 2, 2023, and includes the constitutionally required public necessity statement.

The bill requires a two-thirds vote from each chamber for passage.

The bill has no impact on state revenues or expenditures.

This bill is effective on the same date that SB 474 (2018), or similar legislation, takes effect.

## II. Present Situation:

### Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that:

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory

---

<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>13</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.<sup>14</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>15</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>16</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>17</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>18</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>19</sup> or
- It protects trade or business secrets.<sup>20</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>21</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

<sup>13</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>14</sup> *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>15</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

<sup>18</sup> Section 119.15(6)(b)1., F.S.

<sup>19</sup> Section 119.15(6)(b)2., F.S.

<sup>20</sup> Section 119.15(6)(b)3., F.S.

<sup>21</sup> Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?



If enacting a new exemption then a public necessity statement written with specificity justifying the exemption and a two-thirds vote of each chamber are required for passage.<sup>22</sup> If an existing exemption is reenacted without substantive changes or if an existing exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records remain exempt unless provided for by law.<sup>23</sup>

### **End of Life Decision-Making Options in Florida**

Individuals may express their end of life health care decisions through one or more different mechanisms such as formal or informal discussions with a health care provider or a loved one or through one of several recognized legal documents. Sometimes, the conversation may be the result of a recent hospitalization and the health care provider seeks guidance from the patient or the patient's caregiver about how to treat the individual's condition next, such as when and if to change to comfort (palliative or hospice) care rather than care that is aimed at a cure for the patient's illness.<sup>24</sup> Florida law defines an advance directive as any witnessed, oral statements or written instructions that express a person's desires about any aspect of his or her future health care, including the designation of a health care surrogate, a living will, or an anatomical gift.<sup>25</sup> Designation of a health care surrogate, a living will, or an anatomical gift each serve different purposes and have their own unique requirements and specifications under the law.

One type of advance directive not currently available in Florida, a Physician Order for Life-Sustaining Treatment (POLST), documents a patient's health care wishes in the form of a physician order for a variety of end of life measures, including cardiopulmonary resuscitation (CPR).<sup>26</sup> The POLST form can only be completed by a physician and is then provided to the patient to be kept secured in a visible location for emergency personnel.<sup>27</sup> It is suggested that the form be completed when an individual has a serious illness or frailty, regardless of age, as the POLST serves as a medical order for a current, life-threatening illness where the patient has a life expectancy of a year or less.<sup>28</sup> The POLST is intended to express the patient's treatment wishes when the patient is unable to speak for himself or herself during a medical crises.

- 
3. What is the identifiable public purpose or goal of the exemption?
  4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
  5. Is the record or meeting protected by another exemption?
  6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>22</sup> FLA. CONST. art. I, s. 24(c).

<sup>23</sup> Section 119.15(7), F.S.

<sup>24</sup> American Family Physician, *Information from Your Family Doctor: End of Life Choices for Families* (August 14, 2004); 70(4): 725-726, <https://www.aafp.org/afp/2004/0815/p725.html> (last visited: Jan. 9, 2018).

<sup>25</sup> See s. 765.101, F.S.

<sup>26</sup> POLST.ORG, *About the National POLST Paradigm*, <http://www.polst.org/about-the-national-polst-paradigm/> (last visited Jan. 9, 2018).

<sup>27</sup> POLST.ORG, *FAQ*, <http://www.polst.org/advance-care-planning/faq/> (last visited Jan. 8, 2018).

<sup>28</sup> POLST.ORG, *POLST v. Advance Directives*, <http://www.polst.org/advance-care-planning/polst-and-advance-directives/> (last visited Jan. 8, 2018).

### **Physician Orders for Life-Sustaining Treatment (POLST) Program**

SB 474 creates s. 401.451, F.S., the Physician Order for Life-Sustaining Treatment (POLST) program, within the DOH. The bill requires the DOH to implement and administer the POLST program (program) and to collaborate with the AHCA on the implementation and operation of the Clearinghouse for Compassionate and Palliative Care plans (clearinghouse) which would electronically store the forms.

A POLST provides directives for the patient's medical care and treatment under certain conditions. The contents of the POLST form is also prescribed by SB 474. It must be voluntarily executed by the patient, or if the patient is incapacitated or the patient is a minor, by the patient's legal representative with all directives included in the form at the time of the signing.

Any licensee, physician, medical director, emergency medical technician, or paramedic who in good faith complies with a POLST form is not subject to criminal prosecution or civil liability, and has not engaged in negligent or unprofessional conduct as a result of carrying out the directives of a POLST form. A person, acting in good faith as a legal representative, is not subject to civil liability or criminal prosecution for executing a POLST form pursuant to this law.

SB 474 further requires that when a patient who has executed a valid POLST form is transferred from one health care facility to another, the health care facility initiating the transfer must communicate the existence of the POLST form to the receiving facility before the transfer. Upon the patient's transfer, the receiving facility's treating physician must review the POLST form with the patient or if the patient is incapacitated or a minor, the patient's legal representative.

### ***Clearinghouse for Compassionate and Palliative Care Plans***

SB 474 also creates s. 408.064, F.S., which establishes the Clearinghouse for Compassionate and Palliative Care Plans (clearinghouse) within the AHCA. The clearinghouse serves as a warehouse for POLST plans and other advance directives. Under SB 474, the AHCA is responsible for establishing and maintaining the clearinghouse directly or through a designee. The clearinghouse is required to be a reliable and secure database that will allow Florida residents to electronically submit their individual plans for compassionate and palliative care. The deadline for completion of the clearinghouse is January 1, 2019.

The secure database shall consist of compassionate and palliative care plans submitted by state residents and must be accessible to health care providers, facilities, and other authorized individuals through a secure portal. The database must allow for electronic submission, storage, indexing, and retrieval of plans. The AHCA must also develop and maintain an identity validation system that confirms the identity of the facility, health care provider, or other authorized individual seeking retrieval of plans while protecting the privacy of patient's personal and medical information. The system must meet all applicable state and federal privacy and security standards.

The AHCA may subscribe to or participate in a national or private clearinghouse that will accomplish the same goals in lieu of establishing an independent clearinghouse. Once clearinghouse information is available, the AHCA is required to publish and disseminate

information regarding the availability of the clearinghouse to Floridians. The AHCA must also provide training to health care providers and health care facilities on how to access plans.

### **Health Insurance Portability and Accountability Act (HIPAA)**

Federal law provides a right to privacy for health and medical records under the Health Insurance Portability and Accountability Act (HIPAA) of 1996,<sup>29</sup> the law required the federal Health and Human Services Secretary to develop privacy regulations by 1999 if Congress did not enact federal legislation on the same subject matter. The final regulation, the Privacy Rule, was published December 28, 2000.<sup>30</sup> The main goal of the federal Privacy Rule is the protection of individual health information while allowing for the flow of necessary health data for the promotion and provision of quality health care. The other objective was to inform individuals about how their health information was to be used and to allow individuals more control over the use of their health information.<sup>31</sup>

The Privacy Rule covers health plans, health care providers, and health care clearinghouses<sup>32</sup> which are collectively known as “covered entities.” The rule protects all individually identifiable health information<sup>33</sup> or protects health information held or transmitted by a covered entity or its business associates.<sup>34</sup> A covered entity is permitted, but not required, to use and disclose protected information, without an individual’s authorization for the following purposes or situations:

- To the individual;
- For treatment, payment, and health care operations;
- In an opportunity to agree or object (example: patient listings in hospital directory);
- For public interest and benefit activities (example: when required by law); and
- In a limited data set for purposes of research, public health, or health care operations.<sup>35</sup>

A HIPAA-covered health care provider or health care plan may share a patient’s protected health information if it has a court order. A subpoena issued by someone other than a judge, such as a court clerk or an attorney in a case is different from a court order. However, a HIPAA-covered provider may disclose HIPAA-covered provider or plan information to a party issuing a

---

<sup>29</sup> Health Insurance Portability and Accountability, Act, Pub. L. 104-191, (Aug. 21, 1996).

<sup>30</sup> Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82,462 (Dec. 29, 2000) (codified at 45 CFR 160 and 45 CFR 164; effective Feb. 26, 2001).

<sup>31</sup> U.S. Department of Health and Human Services, Office for Civil Rights, *Summary of the HIPAA Privacy Rule*, p 1, <https://www.hhs.gov/sites/default/files/privacysummary.pdf> (last visited Jan. 9, 2018).

<sup>32</sup> A health care clearinghouse is an entity that processes nonstandard information that they receive from another entity into a standard (i.e.: standard format or data content) or vice versa.

<sup>33</sup> Individually identifiable health information is information that relates to the individuals past, present or future physical or mental health condition; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual.

<sup>34</sup> A business associate is defined as a person or organization, other than a member of a covered entity’s workforce, that performs certain functions or activities on behalf of, or provides certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individual identifiable health information. Functions include claims processing, data analysis, utilization, and billing. *See also* 45 CFR 160.103.

<sup>35</sup> *Supra* note 31, at 4-9.

subpoena only if the notification requirements of the Privacy Rule are met. Those notification requirements require the provider or plan to:

- Notify the person who is the subject of the information about the request, so the person has the opportunity to object to the disclosure; or
- Seek a qualified protective order for the information from the court.<sup>36</sup>

In general, the HIPAA privacy provisions shall preempt any state law that is contrary to its provisions.<sup>37</sup> However, if a state law with regard to its privacy provisions is more stringent, the state can apply to the Secretary of HHS for an exception under certain circumstances.<sup>38</sup>

### III. Effect of Proposed Changes:

#### Section 1 of the bill:

- Creates s. 408.0641, F.S., establishing an exemption from public records for personal identifying information filed under and held in the Clearinghouse for Compassionate and Palliative Care Plans. Such information held and managed by the AHCA or its designee in the clearinghouse is confidential and exempt from s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.
- The AHCA or its designee may disclose confidential and exempt information to the following persons or entities upon request using a verification process to ensure legitimacy of the request and the requestor's identity for patients with a terminal illness and a plan in the clearinghouse:
  - A health care provider as defined in s. 408.07, F.S., who certifies that the information is necessary to provide medical treatment;
  - A patient or legal guardian or designated health care surrogate of a patient; or
  - A health care facility that certifies that the information is necessary to provide medical treatment.

This section of the bill is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

<sup>36</sup> U.S. Department of Health and Human Services, *HIPAA for Individuals, Court Orders and Subpoenas*, <https://www.hhs.gov/hipaa/for-individuals/court-orders-subpoenas/index.html> (last visited Jan. 9, 2018).

<sup>37</sup> *Supra* note 29, at §1178. See also 45 CFR §§160.201-205 (January 2018).

<sup>38</sup> See 45 CFR §160.202- A standard, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law. This general rule applies, except if one or more of the following conditions is met. (a) A determination is made by the Secretary under §160.204 that the provision of State law: (1) Is necessary: (i) To prevent fraud and abuse related to the provision of or payment of health care; (ii) To ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation; (iii) To ensure appropriate State reporting on health care delivery or costs; or (iv) For purposes of serving a compelling need related to public health, safety, or welfare, and, if a standard, requirement, or implementation specification under part 164 of this subchapter is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served, or (2) Has as its principal purpose the regulation or manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law. (b) The provision of state law, including any state procedures established under that state law, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention. (d) The provision of State law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities or individuals.

**Section 2** of the bill provides legislative findings. The bill finds that it is a public necessity to make confidential and exempt from disclosure information held in the clearinghouse which would identify a patient, his or her terminal illness, or the patient's family members. If made publicly available, such personal information would invade the personal privacy of the patient and his or her family. Family medical decisions are a private matter. The Legislature also finds that public disclosure of such information could hinder the efficient administration of the clearinghouse and could reduce participation. Finally, information could be used to solicit, harass, stalk, or intimidate terminally ill patients or their families.

**Section 3** of the bill provides that the bill takes effect on the same date that SB 474, or a similar bill, takes effect.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

###### **Voting Requirement**

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public records or public meetings exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

###### **Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill creates a new public records exemption and includes a public necessity statement.

###### **Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts certain identifying information of patients, the patient's terminal illness, and the patient's family members that is held by the AHCA within the clearinghouse. The public necessity for the exemption provides that it is necessary to protect patient and caregiver information from disclosure to protect their privacy and to protect them from potential harassment and for the efficient and effective administration of the clearinghouse. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

In general, the federal HIPAA privacy provisions shall preempt any state law that is contrary to its provisions. However, if a state law with regard to its privacy provisions is more stringent, the state can apply to the Secretary of HHS for an exception under certain circumstances.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The private sector already has a duty under federal law and regulation to maintain personal identifiable information that would be contained in this clearinghouse as private; however, individuals and entities are permitted to release that information under certain circumstances to specified individuals.

If the AHCA decides to contract for the clearinghouse, there may be ongoing costs responding to requests from third parties for data.

**C. Government Sector Impact:**

The AHCA reports that CS/SB 476 has no fiscal impact.<sup>39</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 408.0641 of the Florida Statutes.

---

<sup>39</sup> E-Mail from Tony Guzzo, Legislative Affairs, Agency for Health Care Administration (Jan. 9, 2018) (on file with the Senate Committee on Health Policy).

**IX. 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 January 16, 2018:**

The CS aligns the public records language with the substantive bill as to who may request information from the clearinghouse for medical treatment to reflect health care providers and adds the substantive bill number.

- B. **Amendments:**

None.



854172

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
	.	
	.	
	.	

---

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

**Senate Amendment**

Delete lines 31 - 69  
and insert:

(a) A health care provider as defined in s. 408.07 who certifies that the information is necessary to provide medical treatment to a patient with a terminal illness who has a plan in the clearinghouse. ~~A physician who certifies that the information is necessary to provide medical treatment to a patient with a terminal illness who has a plan in the~~





854172

11 ~~clearinghouse.~~

12 (b) A patient or the legal guardian or designated health  
13 care surrogate of a patient with a terminal illness who has a  
14 plan in the clearinghouse.

15 (c) A health care facility that certifies that the  
16 information is necessary to provide medical treatment to a  
17 patient with a terminal illness who has a plan in the  
18 clearinghouse.

19 (3) This section is subject to the Open Government Sunset  
20 Review Act in accordance with s. 119.15 and shall stand repealed  
21 on October 2, 2023, unless reviewed and saved from repeal  
22 through reenactment by the Legislature.

23 Section 2. The Legislature finds that it is a public  
24 necessity to make confidential and exempt from disclosure  
25 information held in the Clearinghouse for Compassionate and  
26 Palliative Care Plans which would identify a patient, his or her  
27 terminal illness, or the patient's family members. Such personal  
28 identifying information, if publicly available, could be used to  
29 invade the personal privacy of the patient or his or her family.  
30 The decisions made under a compassionate and palliative care  
31 plan for a terminal condition are a private matter. Furthermore,  
32 the public disclosure of such information could hinder the  
33 effective and efficient administration of the clearinghouse.  
34 Public access to such information could reduce participation in  
35 and minimize the effectiveness of compassionate and palliative  
36 care plans to meet the needs of individuals. Finally, access to  
37 such information could be used to solicit, harass, stalk, or  
38 intimidate terminally ill patients or their families. Therefore,  
39 the Legislature finds that information held in the clearinghouse



854172

40 which would identify a patient who has a plan on file with the  
41 clearinghouse or which contains or reflects the patient's  
42 medical information should be confidential and exempt from  
43 public records requirements.

44       Section 3. This act shall take effect on the same date that  
45 SB 474 or similar legislation takes effect if such legislation  
46 is adopted in the same legislative session or an extension  
47 thereof and becomes a law.

By Senator Brandes

24-00550-18

2018476\_\_

1                   A bill to be entitled  
2           An act relating to public records; creating s.  
3           408.0641, F.S.; creating an exemption from public  
4           records for personal identifying information in  
5           compassionate and palliative care plans filed with the  
6           Clearinghouse for Compassionate and Palliative Care  
7           Plans managed by the Agency for Health Care  
8           Administration or its designee; authorizing the  
9           disclosure of such information to certain entities and  
10          individuals; providing for future legislative review  
11          and repeal of the exemption under the Open Government  
12          Sunset Review Act; providing a statement of public  
13          necessity; providing a contingent effective date.  
14

15 Be It Enacted by the Legislature of the State of Florida:  
16

17           Section 1. Section 408.0641, Florida Statutes, is created  
18           to read:

19           408.0641 Clearinghouse for Compassionate and Palliative  
20           Care Plans; public records exemption.-

21           (1) Personal identifying information held in the  
22           Clearinghouse for Compassionate and Palliative Care Plans  
23           managed by the Agency for Health Care Administration or its  
24           designee under s. 408.064 is confidential and exempt from s.  
25           119.07(1) and s. 24(a), Art. I of the State Constitution.

26           (2) The agency or its designee may disclose such  
27           confidential and exempt information to the following persons or  
28           entities upon request after using a verification process to  
29           ensure the legitimacy of the request and the requestor's

24-00550-18

2018476\_\_

30 identity:

31 (a) A physician who certifies that the information is  
32 necessary to provide medical treatment to a patient with a  
33 terminal illness who has a plan in the clearinghouse.

34 (b) A patient or the legal guardian or designated health  
35 care surrogate of a patient with a terminal illness who has a  
36 plan in the clearinghouse.

37 (c) A health care facility that certifies that the  
38 information is necessary to provide medical treatment to a  
39 patient with a terminal illness who has a plan in the  
40 clearinghouse.

41 (3) This section is subject to the Open Government Sunset  
42 Review Act in accordance with s. 119.15 and shall stand repealed  
43 on October 2, 2023, unless reviewed and saved from repeal  
44 through reenactment by the Legislature.

45 Section 2. The Legislature finds that it is a public  
46 necessity to make confidential and exempt from disclosure  
47 information held in the Clearinghouse for Compassionate and  
48 Palliative Care Plans which would identify a patient, his or her  
49 terminal illness, or the patient's family members. Such personal  
50 identifying information, if publicly available, could be used to  
51 invade the personal privacy of the patient or his or her family.  
52 The decisions made under a compassionate and palliative care  
53 plan for a terminal condition are a private matter. Furthermore,  
54 the public disclosure of such information could hinder the  
55 effective and efficient administration of the clearinghouse.  
56 Public access to such information could reduce participation in  
57 and minimize the effectiveness of compassionate and palliative  
58 care plans to meet the needs of individuals. Finally, access to

24-00550-18

2018476\_\_

59 such information could be used to solicit, harass, stalk, or  
60 intimidate terminally ill patients or their families. Therefore,  
61 the Legislature finds that information held in the clearinghouse  
62 which would identify a patient who has a plan on file with the  
63 clearinghouse or which contains or reflects the patient's  
64 medical information should be confidential and exempt from  
65 public records requirements.

66 Section 3. This act shall take effect on the same date that  
67 SB \_\_\_ or similar legislation takes effect if such legislation  
68 is adopted in the same legislative session or an extension  
69 thereof and becomes a law.



The Florida Senate

## Committee Agenda Request

**To:** Senator Dana D. Young  
Committee on Health Policy

**Subject:** Committee Agenda Request

**Date:** October 26, 2017

---

I respectfully request that **Senate Bill #476**, relating to **Public Records/Compassionate and Palliative Care Plans/Agency for Health Care Administration**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes  
Florida Senate, District 24

**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 764

INTRODUCER: Senators Bean and Mayfield

SUBJECT: Dental Student Loan Repayment Program

DATE: January 12, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	<b>Favorable</b>
2.			AHE	
3.			AP	

---

**I. Summary:**

SB 764 creates the Dental Student Loan Repayment Program (program) for Florida-licensed dentists who practice in specific public health programs located in designated dental health professional shortage areas (HPSAs) or medically underserved areas. Subject to the availability of funds, the Department of Health (DOH) will award funds from the program in an amount not to exceed \$50,000 per eligible dentist per year. A participant is eligible to receive funds for a minimum of one year and a maximum of five years.

The bill defines eligibility for the program and conditions for termination from the program. The Department of Health (DOH) is directed to adopt rules to administer the program.

The DOH has reported a fiscal impact of \$570,941 for Fiscal Year 2018-2019 and \$566,467 for Fiscal Year 2019-2020.

The bill is effective July 1, 2018.

**II. Present Situation:**

The Health Resources and Services Administration or HRSA, a federal agency within the United States Department of Health and Human Services (HHS), is charged with, among other responsibilities, improving health care for individuals who are geographically isolated, or economically or medically vulnerable.<sup>1</sup> Four of the five agency goals focus on access to care

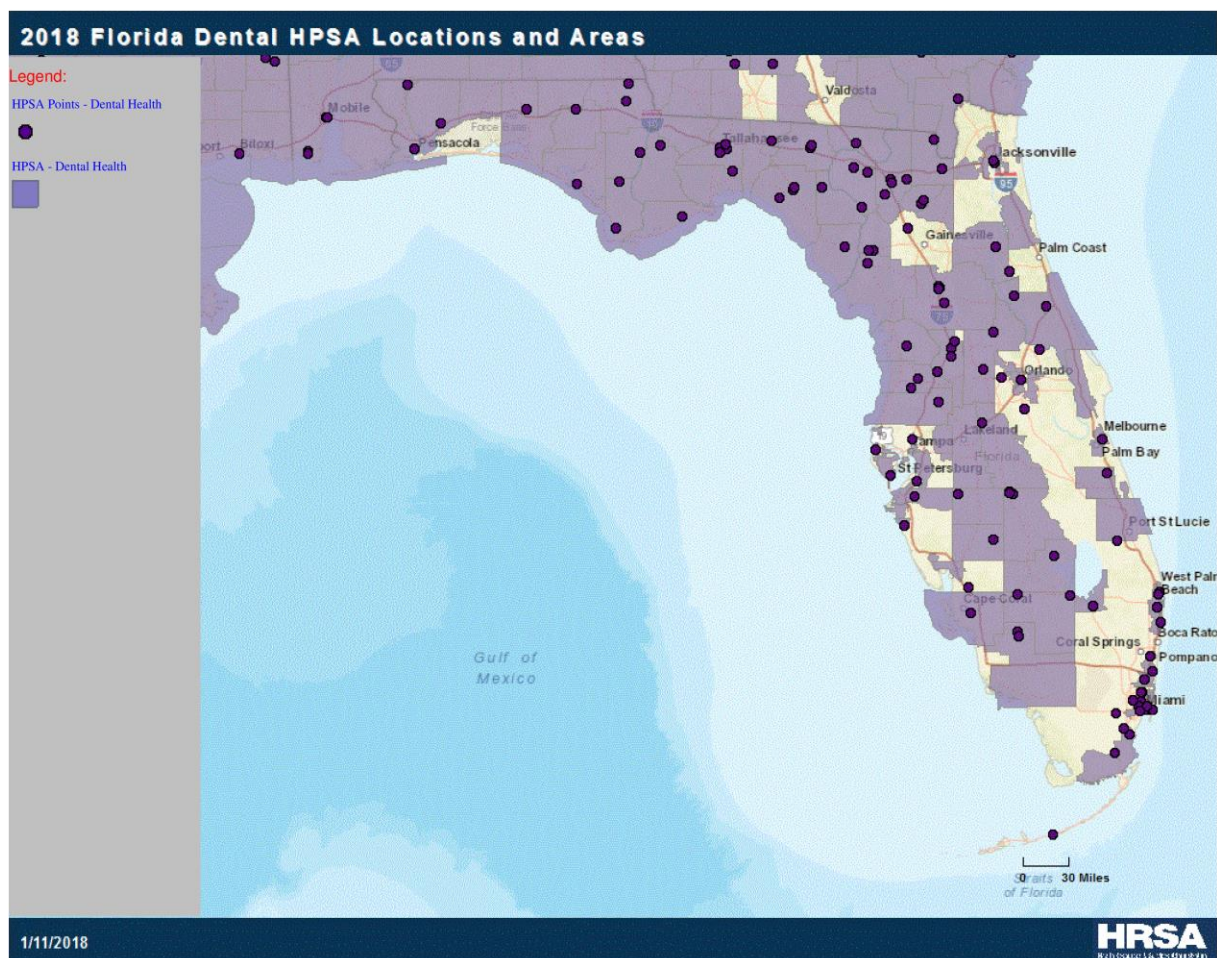
---

<sup>1</sup> U.S. Department of Health and Human Services, HRSA, *About HRSA*, <https://www.hrsa.gov/about/index.html> (last visited Jan. 4, 2018).

through either building a healthy workforce or improvements in accessing quality care and services.<sup>2</sup>

**Health Professional Shortage Areas (HPSAs)**

Health Professional Shortage Areas (HPSAs) are designated by the HRSA according to criteria developed in accordance with section 332 of the Public Health Services Act. HPSA designations are used to identify areas and groups within the United States that are experiencing a shortage of health professionals. An HPSA can be a geographic area, a population group, or a health care facility. These areas have a shortage of health care professionals or have population groups who face specific barriers to health care. The map (*Picture 1*) below shows the locations of the state’s current dental HPSAs as of January 1, 2018.<sup>3</sup>



There are three categories for HPSA designation: (1) primary medical care; (2) dental; and (3) mental health.

<sup>2</sup> *Id.*

<sup>3</sup> Map generated based on information held in the U.S. Dep’t of Health and Human Services, HRSA Data Warehouse, *Dental Health Professional Shortage Areas (HPSAs) Primary Dataset*, <https://datawarehouse.hrsa.gov/Tools/DataPortalResults.aspx> (results last generated on Jan. 11, 2018).



The primary factor used to determine a HPSA designation is the number of health professionals relative to the population with consideration of high need. State Primary Care Offices apply to HRSA for most designations of HPSAs in their states. HRSA will review provider-level data, whether providers are actively engaged in clinical practice, if a provider has any additional practice locations, the number of hours served at each location, the populations served, and the amount of time that a provider spends with specific populations.<sup>4</sup> Primary care and mental health HPSAs can score between 0-25 and dental health can score between 0-26.<sup>5</sup> Three scoring criteria are common across all disciplines HPSA (primary care medical, dental, and mental health):

- The population to provider ratio;
- The percentage of the population below 100 percent of the federal poverty level; and
- The travel time to the nearest source of care outside of the HPSA designation.<sup>6</sup>

The dental scoring system also reviews the water fluoridation status of the areas.

The following chart indicates the percentage of current need that is being met for Florida’s dental HPSA compared to data nationwide.

Health Professional Shortage Areas as of January 1, 2018 <sup>7</sup>						
HPSA Types	Number of Designations <i>(geographic area, population group, or facility)</i>		Population Covered by Designation		Percent of Need Met	
	<i>National</i>	<i>FL</i>	<i>National</i>	<i>FL</i>	<i>National</i>	<i>FL</i>
Dental	5,866	223	62,916,553	5,185,561	35.28%	13.28%

**Medically Underserved Area**

Medically Underserved Areas (MUA) are also designated by the HRSA. These areas are designated using one of three methods and can consist of a whole county, a group of contiguous counties, or census tracts having too few health care providers, high infant mortality, high poverty rates, or a high elderly population.<sup>8</sup> Nationally, there are 4,235 such designated areas, with 128 designated in Florida.<sup>9</sup>

<sup>4</sup> U.S. Dep’t of Health and Human Services, HRSA Health Workforce, *Shortage Designation Application and Scoring Process*, <https://bhw.hrsa.gov/shortage-designation/application-scoring-process> (last visited Jan. 3, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> U.S. Dep’t of Health and Human Services, HRSA, *Designated Health Professional Shortage Areas Statistics – Generated by HRSA Data Warehouse* (as of January 1, 2018) <https://datawarehouse.hrsa.gov/tools/quickReports.aspx> (last visited Jan. 4, 2018).

<sup>8</sup> HHS, *supra* note 4.

<sup>9</sup> U.S. Dep’t of Health and Human Services, HRSA, *Medically Underserved Areas/Populations (MUA/P) – State Summary of Designated MUA/P* (January 5, 2018), pg. 1, <https://datawarehouse.hrsa.gov/topics/shortageareas.aspx> (last visited Jan. 5, 2018).

The first method, the Index of Medical Underservice (IMU), calculates a score based on the ratio of primary medical care physicians per 1,000 in population, percentage of the population with incomes below the federal poverty level, infant mortality rate, and percentage of population aged 65 or older.<sup>10</sup>

The second method, Medically Underserved Populations (MUP), is based on data collected under the MUA process and reviews the ratio of primary care physicians serving the population seeking the designation. A MUP is a group of people who encounter economic or cultural barriers to primary health care services.<sup>11</sup>

The third process, Exceptional MUP Designations, includes those population groups which do not meet the criteria of an IMU but may be considered for designation because of unusual conditions with a request by the governor or another senior executive level official and a local state health official.<sup>12</sup>

### **The Dental Workforce**

The Health Policy Institute (HPI) for the American Dental Association recently updated its estimates on the future supply of dentists and concluded the nation's per capita supply of dentists is projected to increase through 2035.<sup>13</sup> The unadjusted number of dentists per 100,000 population increases from 60.9 in 2015 to 65.7 in 2035.<sup>14</sup> The per capita calculation takes into account only the calculation of total number of dentist available and total population and, as the report cautions, does not consider the location of the providers and access to care issues in particular regions or needs of special populations. This distinction may make a difference between whether there is an adequate supply of dentists on a per capita basis nationally and whether there is a provider shortage in a particular area, region, or to address a specific need. For example, a shortage could be only for participation by dental health providers in public programs such as Medicaid and the Children's Health Insurance Program (CHIP), two programs that serve high numbers of children and families from low and moderate income families. In the same HPI report, dental providers were reviewed in 2016 for their participation in Medicaid and CHIP and the rates ranged from a high of 77.2 percent in Montana to a low of three states in the 15 percent range (California, Maine and New Hampshire).<sup>15</sup> Florida's participation rate is 30 percent; the national average is 38.6 percent.<sup>16</sup> This national average also matches the percentage of dentists who report any patients covered by public assistance:

---

<sup>10</sup> U.S. Department of Health and Human Services, HRSA, *Shortage Designation*, <https://bhwh.hrsa.gov/shortage-designation/muap-process> (last visited Jan. 11, 2018).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Muson, B. and Vujcic, M., *Number of Practicing Dentists per Capita in the United States Will Grow Steadily*, Health Policy Institute, American Dental Association (June 2016), [http://www.ada.org/~media/ADA/Science%20and%20Research/HPI/Files/HPIBrief\\_0616\\_1.pdf?la=en](http://www.ada.org/~media/ADA/Science%20and%20Research/HPI/Files/HPIBrief_0616_1.pdf?la=en) (last visited Jan. 4, 2018).

<sup>14</sup> *Id.* at 2.

<sup>15</sup> , Health Policy Institute, American Dental Association, *Supply and Profile of Dentists – Dentist Profile Snapshot by State 2016- Table 4: Dentist Participation in Medicaid or CHIP* (January 2016), <http://www.ada.org/en/science-research/health-policy-institute/data-center/supply-and-profile-of-dentists> (last visited Jan. 4, 2018).

<sup>16</sup> *Id.*

Percentage of Dentists' Practices that Had Any Patients Covered by Public Assistance <sup>17</sup>		
Type of Provider	2015	2016
<i>National %</i>	<i>% Public Assistance</i>	<i>% Public Assistance</i>
General Practitioner	36.4%	37.3%
Specialists	35.5%	41.4%
All Dentists	36.2%	38.2%

A more recent national study which included Florida dentists looked further out and found a more positive result. Using 2016 population data as a baseline, there were 10,781 listed dentists for a state population of 20.6 million resulting in a per capita calculation of 52.3.<sup>18</sup> The HPI report found Florida's overall dental supply would be expected to increase by the year 2035 to a per capita of 56.9.<sup>19</sup> The calculation assumes that in 2030-2035, 414 dentists would be leaving the workforce, but 598 would be entering during this same time period. The supply number does not review where those dental providers would practice, which lines of business they would participate under, or any special demographic groups they might cover, such as Medicaid.

Most dentists – 77.8 percent – practice in general dentistry.<sup>20</sup> In many rural communities, the county health department may be the primary provider of health care services, including dental care. According to the DOH, Florida's current designated dental HPSAs have only enough dentists to serve 13.28 percent of the population living within them.<sup>21</sup> As of January 1, 2018, HRSA estimated that 1,169 additional dentists were required to meet the state's total need and eliminate the state's shortage.<sup>22</sup>

The American Dental Association (ADA) has also studied this issue and found that while there may be a sufficient number of dentists overall for the state's population or the national population, there may be an inadequate number available for certain populations or geographic areas.<sup>23</sup> Children are acutely affected by the shortage of dentists to serve low income patients.

<sup>17</sup> Health Policy Institute, American Dental Association, *Dental Practice – 2016 Characteristics of Private Dental Practice – Table 4 – Percentage of Dentists' Practices That Had Any Patients Covered by Public Assistance, 1990-2016* (January 2016), <http://www.ada.org/en/science-research/health-policy-institute/data-center/dental-practice> (last visited Jan. 4, 2018).

<sup>18</sup> Health Policy Institute, American Dental Association, *Supply and Profile of Dentists – Dentist Profile Snapshot by State 2016*, <http://www.ada.org/en/science-research/health-policy-institute/data-center/supply-and-profile-of-dentists> (last visited Jan. 4, 2018).

<sup>19</sup> Health Policy Institute, American Dental Association, *Projected Supply of Dentists: Florida*, <http://www.ada.org/~media/ADA/Science%20and%20Research/HPI/ProjectedSupplyofDentists/Florida-Projected-Supply-of-Dentists.pdf?la=en> (last visited Jan. 4, 2018).

<sup>20</sup> *Id.*

<sup>21</sup> U.S. Dep't of Health and Human Services, Bureau of Health Workforce – HRSA, *Designated Health Professional Shortage Areas Statistics* (as of December 31, 2017), [https://ersrs.hrsa.gov/ReportServer?/HGDW\\_Reports/BCD\\_HPSA/BCD\\_HPSA\\_SCR50\\_Qtr\\_Smry\\_HTML&rc:Toolbar=false](https://ersrs.hrsa.gov/ReportServer?/HGDW_Reports/BCD_HPSA/BCD_HPSA_SCR50_Qtr_Smry_HTML&rc:Toolbar=false) (last visited Jan. 11, 2017).

<sup>22</sup> U.S. Dep't of Health and Human Services, *supra* note 7, at 8.

<sup>23</sup> Bradley Munson, B.A., and Marko Vujicic, Ph.D.: Health Policy Institute Research Brief, American Dental Association, *Supply of Dentists in the United States Likely to Grow*, p.2. (October 2014) [http://www.ada.org/~media/ADA/Science%20and%20Research/HPI/Files/HPIBrief\\_1014\\_1.ashx](http://www.ada.org/~media/ADA/Science%20and%20Research/HPI/Files/HPIBrief_1014_1.ashx) (last visited Jan. 11, 2018).

For example in Florida for FFY 2016, 37.6 percent of all Medicaid-enrolled children and 42.8 percent of all CHIP-enrolled children received preventive dental services.<sup>24</sup> For Medicaid, this was an increase from 2012 when only 26 percent of Medicaid-enrolled children received one or more dental care services.<sup>25</sup>

In 2011, the Legislature passed HB 7107<sup>26</sup> creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S. The program has two primary components: Managed Medical Assistance program (MMA) and Long Term Care program. To implement MMA, the law required the AHCA to create an integrated managed care program for the delivery of Medicaid primary and acute care services, including dental. Medicaid recipients who are enrolled in MMA receive their dental services through managed care plans. Although most dental services are designated as a required benefit only for Medicaid recipients under age 21, many of the managed care plans also provide dental services for adults as an enhanced benefit. As the managed care contracts are rebid this Spring, this benefit will be carved out of the MMA managed care contracts and contracted for as a separate benefit by the AHCA.<sup>27</sup>

### **The Cost of Dental Education**

According to a survey of dental school students, the average debt for graduates in 2017 was \$287,337,<sup>28</sup> a 72 percent increase in the last decade.<sup>29</sup> Over 30 percent of the Class of 2016 reported student loan debt in excess of \$300,000.<sup>30</sup> The amount of a graduate's average debt differed based on whether the student attended a public or private school by a significant amount. The average reported by a public school attendee in 2016 was \$238,582 and for a private school attendee the average was \$291,668.<sup>31</sup>

For in-state tuition at a state university, such as the University of Florida, one year's tuition is \$41,720, non-residents pay \$68,202. When housing, books and other costs are added, three or four years of dental school for a DMD degree can result in a total dental school bill ranging from \$148,275 to \$215,835.<sup>32</sup> In comparison, a northern private school's tuition is listed at \$73,364

<sup>24</sup> Brishke, J., Gaskins, J., and Shenkman, B., *Florida KidCare: The Florida KidCare Program Evaluation Calendar Year 2016* (Dec. 1 2017), p. 141,

[http://ahca.myflorida.com/medicaid/Policy\\_and\\_Quality/Quality/performance\\_evaluation/MER/contracts/med147/FL\\_KidCare\\_MED147\\_Deliverable\\_66\\_12-2017\\_Final.pdf](http://ahca.myflorida.com/medicaid/Policy_and_Quality/Quality/performance_evaluation/MER/contracts/med147/FL_KidCare_MED147_Deliverable_66_12-2017_Final.pdf) (last visited Jan. 4, 2018).

<sup>25</sup> U.S. Dep't of Health and Human Services, *supra* note 7, at 8.

<sup>26</sup> See chapter 2011-134, Laws of Fla.

<sup>27</sup> AHCA, Invitation to Negotiate 012-17/18 (Oct. 16, 2017). A copy of the ITN can be downloaded from [http://www.myflorida.com/apps/vbs/vbs\\_www.ad\\_r2.view\\_ad?advertisement\\_key\\_num=137442](http://www.myflorida.com/apps/vbs/vbs_www.ad_r2.view_ad?advertisement_key_num=137442) (last visited Jan. 10, 2018). See also Chapter 2016-109, Laws of Fla.

<sup>28</sup> American Student Dental Education Association, *Dental Student Debt*, <https://www.asdanet.org/index/get-involved/advocate/issues-and-legislative-priorities/Dental-Student-Debt> (last visited Jan. 8, 2018).

<sup>29</sup> American Student Dental Education Association, *Paying for Dental School*, <https://www.asdanet.org/index/get-into-dental-school/before-you-apply/paying-for-dental-school>, (last visited Jan. 8, 2018).

<sup>30</sup> American Dental Education Association, *Education Debt*, [http://www.adea.org/GoDental/Money\\_Matters/Educational\\_Debt.aspx#sthash.rYlqVawm.dpbs](http://www.adea.org/GoDental/Money_Matters/Educational_Debt.aspx#sthash.rYlqVawm.dpbs) (last visited Jan. 8, 2018).

<sup>31</sup> *Id.*

<sup>32</sup> University of Florida, Office of Admissions – College of Dentistry, *Budgets & Costs of Attendance: DMD*, <http://admissions.dental.ufl.edu/financial-aid-2/d-m-d/budgets-cost-of-attendance-d-m-d/> (last visited Jan. 8, 2018).

per year and with other supplies, housing and fees, the total estimated costs over four years for 2017-2018 would be \$450,412.<sup>33</sup>

In 2013, Congress enacted the Bipartisan Student Loan Certainty Act of 2013 (Public Law 113-28) that tied certain student loan interest rates to the 10-year Treasury Note plus 2.05 percent for undergraduates. For graduate and professional student loans, the interest rate is tied to 10-year Treasury Note plus 3.6 percent, but may not exceed 9.5 percent in any given year.<sup>34</sup>

In June 2014, through a Presidential Memorandum, President Barack Obama directed the Secretary of Education to propose final regulations to allow additional students with student loan debt to cap their payments at 10 percent of their income, by December 31, 2015.<sup>35</sup> The Presidential Memorandum called the plan, “*Pay as You Earn Plan*.”<sup>36</sup> President Obama’s memorandum also called for the Secretary to improve communication with vulnerable borrowers to help with loan rehabilitation, to encourage support and awareness of repayment options during tax filing season, and to promote collaboration between students and their families to ensure better borrowing decisions.<sup>37</sup> In 2016, Florida had over 826,000 federal student loan borrowers with 188,613 borrowers enrolled in a *Pay as You Earn* or other income driven payment plans. The state has a total student federal loan debt outstanding of \$23.9 billion.<sup>38</sup>

Loan forgiveness is also one of the top priorities of the American Student Dental Association (ASDA). Listed among the organization’s priorities is for Congress and state legislatures to pass measures that include loan forgiveness, scholarship opportunities, and tax deductions or rebates for students that agree to practice in underserved areas after graduation.<sup>39</sup>

Florida does not have a current state program to address the dental health professional shortage areas or medically underserved areas. According to the DOH, there are 20 vacant positions for dentists in the DOH.<sup>40</sup>

### **Florida Health Services Corps**

In 1992, the Legislature created the Florida Health Services Corps (FHSC), administered by the DOH, to encourage medical professionals to practice in locations that are underserved because of

---

<sup>33</sup> Tufts School of Dental Medicine, *Financial Aid Application Forms and Costs of Attendance for D.M.D. and D.I.S. Programs*, <https://dental.tufts.edu/academics/financial-aid/forms-and-costs-dmd-and-dis-programs> (last visited Jan. 8, 2018).

<sup>34</sup> Bipartisan Student Loan Certainty Act of 2013, Pub. L. No. 113-28, §2, 127 Stat. 506, 506 (2013).

<sup>35</sup> *Id.*

<sup>36</sup> The White House, Office of the Press Secretary, *Presidential Memorandum - Federal Student Loan Repayments* (June 9, 2014) <https://www.whitehouse.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments> (last visited Jan. 8, 2018).

<sup>37</sup> The White House, Office of the Press Secretary, *Presidential Memorandum – Federal Student Loan Repayments* (June 9, 2014) <https://obamawhitehouse.archives.gov/the-press-office/2014/06/09/presidential-memorandum-federal-student-loan-repayments> (last visited Jan. 8, 2018).

<sup>38</sup> Jason Furman, Sandra Black, The White House, Office of Press Secretary, *Six Recent Trends in Student Debt* (April 28, 2016), <https://obamawhitehouse.archives.gov/blog/2016/04/28/six-recent-trends-student-debt> (last visited Jan. 8, 2018).

<sup>39</sup> American Student Dental Education Association, *supra* note 37.

<sup>40</sup> E-Mail from Dennis Ragosta, Office of Legislative Planning, Florida Dept. of Health, (Jan. 11, 2018) (on file with the Senate Committee on Health Policy).

a shortage of qualified professionals.<sup>41</sup> The FHSC was defined<sup>42</sup> as a program that offered scholarships to allopathic, osteopathic, chiropractic, podiatric, dental, physician assistant, and nursing students, and loan repayment assistance and travel and relocation expenses to allopathic and osteopathic residents and physicians, chiropractic physicians, podiatric physicians, nurse practitioners, dentists, and physician assistants, in return for service in a public health care program<sup>43</sup> or in a medically underserved area.<sup>44</sup> Membership in the FHSC could be extended to any health care practitioner who provided uncompensated care to medically indigent patients.<sup>45</sup> All FHSC members were required to enroll in Medicaid and to accept all patients referred by the DOH pursuant to the program agreement.<sup>46</sup> In exchange for this service, an FHSC member was made an agent of the state and granted sovereign immunity under s. 768.28(9), F.S., when providing uncompensated care to medically indigent patients referred for treatment by the DOH.<sup>47</sup>

The statute authorized the DOH to provide loan repayment assistance and travel and relocation reimbursement to allopathic and osteopathic medical residents with primary care specialties during their last two years of residency training or upon completion of residency training, and to physician assistants and nurse practitioners with primary care specialties, in return for an agreement to serve a minimum of two years in the FHSC. During the period of service, the maximum amount of annual financial payments was limited to no more than the annual total of loan repayment assistance and tax subsidies authorized by the National Health Services Corps (NHSC) loan repayment program.<sup>48</sup>

During the 20 years the program was authorized by law, it was funded only three times. A total of \$3,684,000 was appropriated in the 1994-1995 fiscal year, 1995-1996 fiscal year, and 1996-1997 fiscal year for loan assistance payments to all categories of eligible health care practitioners. Of that amount, \$971,664 was directed to 18 dentists for an average award of \$25,570 per year of service in the program.<sup>49</sup> The 2007 Legislature attempted to reinvigorate the program by appropriating \$700,000 to fund loan repayment assistance for dentists only.<sup>50</sup>

---

<sup>41</sup> Chapter 92-33, s. 111, Laws of Fla. (creating s. 381.0302, F.S., effective July 1, 1992).

<sup>42</sup> Section 381.0302(2)(b)1., F.S. (2011).

<sup>43</sup> “Public health program” was defined to include a county health department, a children’s medical services program, a federally funded community health center, a federally funded migrant health center, or other publicly funded or nonprofit health care program designated by the department. Section 381.0302(2)(e), F.S. (2011).

<sup>44</sup> “Medically underserved area” was defined to include: a geographic area, a special population, or a facility that has a shortage of health professionals as defined by federal regulations; a county health department, community health center, or migrant health center; or a geographic area or facility designated by rule of the department that has a shortage of health care practitioners who serve Medicaid and other low-income patients. Section 381.0302(2)(c), F.S. (2011).

<sup>45</sup> “Medically indigent person” was defined as a person who lacks public or private health insurance, is unable to pay for care, and is a member of a family with income at or below 185 percent of the federal poverty level. Section 381.0302(2)(d), F.S. (2011).

<sup>46</sup> Section 381.0302(10), F.S. (2011).

<sup>47</sup> Section 381.0302(11), F.S. (2011).

<sup>48</sup> Section 381.0302(6), F.S. (2011).

<sup>49</sup> E-mail from Karen Lundberg, Florida Dept. of Health, to Joe Anne Hart, Florida Dental Association (Sept. 16, 2005) (on file with the Senate Committee on Health Policy).

<sup>50</sup> Chapter 2007-72, Laws of Fla. The funding was contained in Specific Appropriations 677A of the General Appropriation Act, but later vetoed pursuant to the Governor’s line item veto authority.

However, the appropriation and a related substantive bill were vetoed.<sup>51</sup> The Legislature repealed the program in 2012.<sup>52</sup>

**National Health Service Corps (NHSC)**

The NHSC programs provide scholarships and educational loan repayment to primary care providers<sup>53</sup> who agree to practice in areas that are medically underserved and are located in selected HPSAs. The chart below shows the different loan programs that dental students may be eligible for based on where the participant is placed (HPSA score) and whether the participant provides full (40 hours per week) or part-time (20 hours per week) service.

The NHSC-approved sites are community-based health care facilities that provide comprehensive outpatient, ambulatory, and primary health care services. Eligible dental facilities must be located in a dental HPSA and offer comprehensive primary dental health services. NHSC-approved sites (with the exception of correctional facilities and free clinics) are required to provide services for free or on a sliding fee scale (SFS) or discounted fee schedule for low-income individuals.

Participants may be eligible to continue loan repayment beyond the initial term. If a participant breaches his or her LRP agreement, he or she will be subject to monetary damages, which are the sum of the amount of assistance received by the participant representing any period of obligated service not completed, a penalty, and interest. As of January 2018, there were 49, full-time-equivalent NHSC dentists in Florida in the loan repayment program, all of which are located at federally qualified health centers.<sup>54</sup>

<b>Federal Loan Programs Applicable for Dental Students – National Health Services Corps (NHSC)</b>				
<b>Program Name</b>	<b>Time Commitment</b>	<b>Maximum Amount</b>	<b>Service Commitment Locations</b>	<b>Additional Time</b>
Loan Repayment Program (LRP) <sup>55,56</sup>	2 years	Vary based on where placed Range: \$30,000 - \$50,000 (Full-time) \$15,000- 25,000 – (Part-time)	NHSC approved sites in HPSAs	Option to annually renew after 2 years

<sup>51</sup> *Journal of the Florida Senate*, at 3 (June 12, 2007).

<sup>52</sup> Chapter 2012-184, s. 45, Laws of Fla.

<sup>53</sup> Primary care physicians, nurse practitioners, certified nurse midwives, physician assistants, dentists, dental hygienists, and behavioral and mental health providers, including health service psychologists, licensed clinical social workers, marriage and family therapists, psychiatrist nurse specialists, and licensed professional counselors.

<sup>54</sup> E-Mail from Dennis Ragosta, Office of Legislative Planning, Florida Dept. of Health, (Jan. 11, 2018) (on file with the Senate Committee on Health Policy).

<sup>55</sup> The definition of part-time and full-time vary by discipline. The guidelines for both can be found in the *Fiscal Year 2015 Application and Program Guidance* packet beginning on 19, <http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf> (last viewed Jan. 11, 2018).

<sup>56</sup> U.S. Dep’t. of Health and Human Services, *Loan Repayment Program - Fiscal Year 2017 Application and Program Guidance*, pp. 4-5 (January 2017) <http://www.nhsc.hrsa.gov/loanrepayment/lrpapplicationguidance.pdf> (last viewed Jan. 8, 2018).

<b>Federal Loan Programs Applicable for Dental Students – National Health Services Corps (NHSC)</b>				
<b>Program Name</b>	<b>Time Commitment</b>	<b>Maximum Amount</b>	<b>Service Commitment Locations</b>	<b>Additional Time</b>
Student to Service LRP <sup>57</sup>	Students in last year of school must commit to serve 3 years	Up to \$120,000	At an HPSA of greatest need	Option to annually renew after 3 year commitment to pay off loan remainder
Public Service Loan Forgiveness <sup>58</sup>	120 qualifying on time loan payments	Forgiveness of remainder of qualified federal loan	Qualified public service employment while making 120 loan payments	Remainder of qualified federal loan amounts forgiven at end of 120 payments

All of the NHSC programs require an application process; some require a background checking depending on the setting; and all require that the applicant be:

- A U.S. Citizen or U.S. National;
- Eligible to participate in the Medicare, Medicaid, and the State Children’s Health Insurance Program, as appropriate; and
- Fully trained and licensed to practice in the NHSC-eligible primary care medical, dental, mental/behavioral health discipline for which the applicant seeks approval.

Additionally, the applicant must:

- Have unpaid student loans, taken before application to the NHSC’s Loan Repayment Program to support undergraduate or graduate education and
- Be working at or have an accepted an offer of employment at an NHSC-approved site by the designated date (date determined each year).<sup>59</sup>

The State Loan Repayment Program (SLRP) offers cost-sharing grants to states to operate their own state educational loan repayment programs for primary care providers, including dental professionals, working in HPSAs within the state. The SLRP varies from state to state and may differ in eligible categories of providers, practice sites, length of required service commitment, and the amount of loan repayment assistance offered. However, there are certain statutory requirements SLRP grantees must meet. There is a minimum two-year service commitment with an additional one-year commitment for each year of additional support requested. Any SLRP program participant must practice at an eligible site located in a federally-designated HPSA.

In addition, the SLRP requires a \$1 state match for every \$1 provided under the federal grant. While the SLRP does not limit award amounts, the maximum award amount per provider that the federal government will support through its grant is \$50,000 per year, with a minimum service commitment of two years. Florida does not currently participate in SLRP.

<sup>57</sup> US Dep’t of Health and Human Services, HRSA, *Loan Repayment – NHSC Loan Repayment Program*, <https://www.nhsc.hrsa.gov/loanrepayment/index.html> (last visited Jan. 8, 2018).

<sup>58</sup> *Id.* A qualifying public employer is a government organization at any level (federal, state, local, or tribal), not-for-profit organizations that are tax exempt under Section 501(c)(3) of the Internal Revenue Code, or other types of not-for-profit organizations that provide certain types of qualifying public services.

<sup>59</sup> National Health Services Corps, Loan Repayment Program, *Eligibility*, <https://www.nhsc.hrsa.gov/loanrepayment/eligibility.html> (last visited Jan. 8, 2018).



There are several other federal loan repayment programs that are open to most all borrowers, including dental, that have certain post-graduate working conditions such as a requirement to work as a faculty member at an approved health institution, as a biomedical researcher, as a provider at an Indian health program site, as a commissioned dental officer in the U.S. Public Health Service Commissioned Corps, or with the United States Army or Navy.<sup>60</sup>

### III. Effect of Proposed Changes:

The bill creates the dental student loan repayment program at the DOH. The initiative is conditioned on the availability of funds and is intended to promote access to dental care, encourage dentists to practice in dental health professional shortage areas or medically underserved areas, or serve a medically underserved population. The bill defines several key terms:

- Dental health professional shortage area: A geographic area so designated by the Health Resources and Services Administration of the U.S. Department of Health and Human Services;
- Loan program: The Dental Student Loan Repayment Program.
- Medically underserved area: A designated health professional shortage area that lacks an adequate number of dental health professionals to serve Medicaid and other low income patients; and
- Public health program: A county health department, the Children's Medical Services program, a federally qualified community health center, a federally-funded migrant health center, or other publicly-funded or not-for-profit health care program designated by the DOH.

The DOH is required to establish a dental student loan repayment program to benefit state-licensed dentists who demonstrate active employment in a public health program that serves Medicaid recipients and other low income patients. The employment must be located in a dental health professional shortage area (HPSA) or a medically underserved area (MUA). Compliance with these requirements will be established by rule as determined by the DOH.

The DOH shall award funds from the loan program to repay student dental loans of a dentist who meets these requirements; however, no award may exceed \$50,000 per year, per dentist. A dentist may receive funds for at least one year and up to a maximum of five years. The dentist's period of obligated service begins when the dentist who receives the funds begins his employment.

A dentist is not eligible to receive funds under this bill if:

- The dentist's employment by a public health program is terminated;
- The dentist's practice in a designated health professional shortage area or medically underserved area is terminated;
- The dentist's participation in the Florida Medicaid program is terminated; or
- The dentist knowingly fails to disclose any participation in fraudulent activity.

---

<sup>60</sup> American Dental Education Association, *State and Federal Loan Forgiveness Programs* (November 1, 2017), [www.adea.org/advocacy/state/loan-forgiveness-programs.aspx](http://www.adea.org/advocacy/state/loan-forgiveness-programs.aspx) (last visited Jan. 8, 2018).

The DOH is required to adopt rules to administer the loan program.

The bill is effective July 1, 2018.

**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:

Floridians living in those areas identified as medically underserved with little or no access to dental care could benefit from this initiative. The program could bring additional dental professionals to underserved communities, populations, and facilities. The program could also be a reason that a dental graduate elects to stay in Florida instead of practicing in another state after graduation.

Dentists who qualify for the loan program will benefit from another option to reduce in their student loan debt.

As dentists practice in their public service employment programs, the DOH will be making the dentist's already incurred student loan payments. The DOH notes that during the period that the state funded repayment assistance is in place, underwriters for the student loans will receive guaranteed repayments.<sup>61</sup> The DOH will need to have financial arrangements in place to ensure timely payments to the loan guarantors and arrangements with the dentists who participate in the program to ensure continued eligibility while payments are being made.

---

<sup>61</sup> Id at 5.

**C. Government Sector Impact:**

The DOH estimates the first year fiscal impact of the bill at \$570,941 and the second year impact at \$566,467. The impact includes the cost of 10 grants at \$50,000 each annually, plus administrative costs to operate and conduct outreach related to the program.

<b>Department of Health – Fiscal Impact – SB 764<sup>62</sup></b>		
<b>Item</b>	<b>Year One (2018-2019)</b>	<b>Year Two (2019-2020)</b>
<b>Personnel</b>		
<b>OPS</b>		
Program Analyst	\$36,505	\$36,505
OPS Benefit	\$7,301	\$7,301
<b>Expense</b>		
Standard Expense	\$10,422	\$10,422
Standard Medium Travel	\$9,606	\$9,606
Develop Materials for Student Recruitment	\$3,000	\$3,000
Develop Job Fair Materials for student recruitment	\$1,500	\$1,500
<b>Contracted Services</b>		
Printing education pamphlets for statewide student recruitment	\$2,000	\$2,000
Printing of materials for job fair display for use in student recruitment	\$500	\$500
<b>Special Category/G&amp;A</b>	\$500,000	\$500,000
<b>Student Loan Repayment</b> 10 students @\$50,000 per student		
Human Resources Services	\$107	\$107
<b>Total Estimated Expenses</b>	<b>\$570,941</b>	<b>\$566,467</b>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The DOH counts 224 Health Profession Shortage Areas for dental in its bill analysis. Of these, 111 qualify for the maximum loan repayment of \$50,000 per year for up to two years. These sites must meet National Health Services Corps requirements and follow the provisions of services that do not allow for any type of discrimination for patient selection such as age or the ability to pay.<sup>63</sup>

<sup>62</sup> Florida Department of Health, *Senate Bill 764 Analysis* (Dec. 6, 2017) (on file with the Senate Committee on Health Policy).

<sup>63</sup> Id at 2.

The DOH recommends clarifying lines 72 through 73 relating to the termination for failure to disclose participation in a fraudulent activity, as this language may allow a dentist who unknowingly fails to disclose participation in fraudulent activity or who in fact discloses participation in fraudulent activity to still be eligible to participate in the program. Also, the bill does not provide criteria for the selection of applicants if more dentists apply than available funding.<sup>64</sup>

**VIII. Statutes Affected:**

This bill creates section 381.4019 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.)

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.

---

---

<sup>64</sup> Id at 6.

By Senator Bean

4-00543C-18

2018764\_\_

1                                   A bill to be entitled  
2       An act relating to the Dental Student Loan Repayment  
3       Program; creating s. 381.4019, F.S.; establishing the  
4       Dental Student Loan Repayment Program to support  
5       dentists who practice in public health programs  
6       located in certain underserved areas; providing  
7       definitions; requiring the Department of Health to  
8       establish the loan program; providing for the award of  
9       funds; providing the maximum number of years funds may  
10      be awarded; providing eligibility requirements;  
11      requiring the department to adopt rules; providing an  
12      effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16       Section 1. Section 381.4019, Florida Statutes, is created  
17      to read:

18       381.4019 Dental Student Loan Repayment Program.—Subject to  
19      the availability of funds, the Legislature establishes the  
20      Dental Student Loan Repayment Program to promote access to  
21      dental care by supporting qualified dentists who treat medically  
22      underserved populations in dental health professional shortage  
23      areas or medically underserved areas. The Legislature recognizes  
24      that maintaining good oral health is integral to overall health  
25      status and that the good health of residents in this state is an  
26      important contributing factor in state economic development.  
27      Better health, including better oral health, increases workplace  
28      productivity, reduces the burden of health care costs, and  
29      improves the cognitive development of children.

4-00543C-18

2018764\_\_

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

31 (a) "Dental health professional shortage area" means a  
32 geographic area designated as such by the Health Resources and  
33 Services Administration of the United States Department of  
34 Health and Human Services.

35 (b) "Department" means the Department of Health.

36 (c) "Loan program" means the Dental Student Loan Repayment  
37 Program.

38 (d) "Medically underserved area" means a geographic area,  
39 an area having a special population, or a facility which is  
40 designated by department rule as a health professional shortage  
41 area as defined by federal regulation and which has a shortage  
42 of dental health professionals who serve Medicaid recipients and  
43 other low-income patients.

44 (e) "Public health program" means a county health  
45 department, the Children's Medical Services program, a federally  
46 funded community health center, a federally funded migrant  
47 health center, or other publicly funded or nonprofit health care  
48 program designated by the department.

49 (2) The department shall establish a dental student loan  
50 repayment program to benefit state-licensed dentists who  
51 demonstrate, as required by department rule, active employment  
52 in a public health program that serves Medicaid recipients and  
53 other low-income patients and is located in a dental health  
54 professional shortage area or a medically underserved area.

55 (3) The department shall award funds from the loan program  
56 to repay the student loans of a dentist who meets the  
57 requirements of subsection (2). An award may not exceed \$50,000  
58 per year per eligible dentist.

4-00543C-18

2018764\_\_

59       (4) A participant in the loan program is eligible to  
60 receive funds for at least 1 year, up to a maximum of 5 years.  
61 The period of obligated service begins when the dentist begins  
62 employment as provided in subsection (2).

63       (5) A dentist is not eligible to participate in the loan  
64 program if:

65       (a) The dentist's employment by a public health program is  
66 terminated;

67       (b) The dentist's practice in a designated health  
68 professional shortage area or medically underserved area is  
69 terminated;

70       (c) The dentist's participation in the Florida Medicaid  
71 program is terminated; or

72       (d) The dentist knowingly fails to disclose any  
73 participation in fraudulent activity.

74       (6) The department shall adopt rules to administer the loan  
75 program.

76       Section 2. This act shall take effect July 1, 2018.



The Florida Senate

## Committee Agenda Request

**To:** Senator Dana D. Young, Chair  
Committee on Health Policy

**Subject:** Committee Agenda Request

**Date:** December 2, 2017

---

I respectfully request that **Senate Bill # 764**, relating to Dental Student Loan Repayment Program, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Aaron Bean".

---

Senator Aaron Bean  
Florida Senate, District 4



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/16/18  
Meeting Date

764  
Bill Number (if applicable)

Topic Dental Student Loans

Amendment Barcode (if applicable)

Name Doug Bell

Job Title \_\_\_\_\_

Address 119 S. Monroe  
Street

Phone 205-9000

TLH FL  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Chapter American Academy of Pediatrics

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 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18

Meeting Date

764

Bill Number (if applicable)

Topic Dental Student Loan Repayment Program

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Consultant

Address 113 E. College Ave.

Phone 850-933-5994

Street

Tallahassee

City

FL

State

32301

Zip

Email edward@rsaconsulty11c.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Suncoast Community Health Centers

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 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/16/18

Meeting Date

SB 764

Bill Number (if applicable)

Topic Dental Student Loan Repayment Program Amendment Barcode (if applicable)

Name Joe Anne Hart

Job Title Chief Legislative Officer

Address 118 E. Jefferson Street

Street

Phone (850) 24-1089

Tall, FL 32301

City

State

Zip

Email jahart@floridadental.org

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

Waive Speaking: [X] In Support [ ] Against (The Chair will read this information into the record.)

Representing Florida Dental Association

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

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

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

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)

1/16/18

Meeting Date

SB 764

Bill Number (if applicable)

Topic Pental Student Loan Repayment

Amendment Barcode (if applicable)

Name Anne Swerlick

Job Title health policy analyst

Address 255 Primera Blvd.

Phone 850-524-0602

Street

Lake Mary Fl. 32746

City

State

Zip

Email swerlick@fp.i.institute

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing Florida Policy Institute

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**  
**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 800

INTRODUCER: Senator Braynon

SUBJECT: Infectious Disease Elimination Pilot Programs

DATE: January 12, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	<b>Favorable</b>
2.			AHS	
3.			AP	

---

**I. Summary:**

SB 800 expands the existing Miami-Dade sterile needle and syringe exchange pilot program, creating a state pilot program, and renames the section as the “Florida Statewide Infectious Disease Elimination Act.” The bill authorizes the Department of the Health (DOH) to establish additional pilot sites upon request from eligible entities, provides program requirements, modifies what types of entities are eligible to operate a program, and extends the program termination date to July 1, 2023.

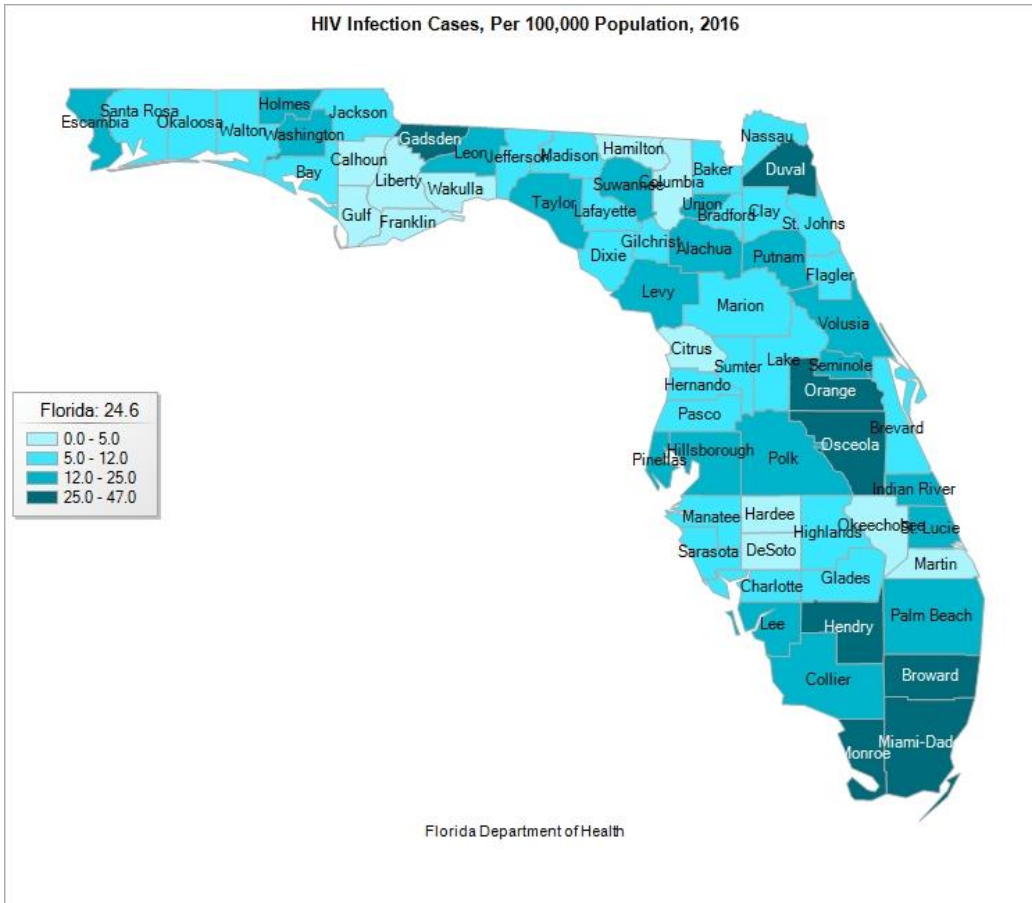
The effective date of the bill is July 1, 2018.

**II. Present Situation:**

Needle and syringe exchange programs (NSEPs) provide sterile needles and syringes in exchange for used needles and syringes to reduce the transmission of human immunodeficiency virus (HIV) and other blood-borne infections associated with the reuse of contaminated needles and syringes by injection-drug-users (IDUs). The map below shows the number of HIV infection cases, per 100,000 population for 2016.<sup>1</sup>

---

<sup>1</sup> Florida Department of Health, HIV Section, FLCharts.com, *Division of Public Health Statistics and Performance Management*, <http://www.flhealthcharts.com/charts/OtherIndicators/NonVitalHIVAIDSViewer.aspx?cid=0471> (last viewed Jan. 11, 2018).



### Intravenous Drug Use in Florida

Of the total individuals living with an HIV infection in Florida, 4,972 individuals were newly diagnosed during 2016.<sup>2</sup> Florida is second in the nation, behind only California, with both the percentage of the national total (12 percent) and the number of newly diagnosed HIV infections in 2016.<sup>3</sup> The vast majority of those infected are exposed through male to male sexual contact (60 percent) while 4 percent are infected through intravenous drug use (IDU).<sup>4</sup> Statistics show Florida’s HIV-infected population is 78 percent male.<sup>5</sup>

The DOH reports that 60 to 90 percent of HIV-infected IDUs are also co-infected with Hepatitis C Virus.<sup>6</sup> Hepatitis C is a liver disease caused by a virus that spreads through contact with

<sup>2</sup> Centers for Disease Control and Prevention, *HIV Surveillance Report, 2015 (most recent available)*, vol. 27, Table 18a., <https://www.cdc.gov/hiv/pdf/library/reports/surveillance/cdc-hiv-surveillance-report-2015-vol-27.pdf> (November 2016) (last visited Jan. 11, 2018).

<sup>3</sup> Kaiser Family Foundation, *The HIV/AIDS Epidemic in the United States: The Basics* (December 2017), <http://files.kff.org/attachment/Fact-Sheet-HIV-AIDS-in-the-United-States-The-Basics>, (last visited Jan. 11, 2018).

<sup>4</sup> Florida Department of Health, *HIV Cases Diagnosed in 2016 by Selected Demographics and Risk Factors in the U.S. and Florida*, [http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/\\_images/County\\_HIV\\_Trends\\_2007-2016pdf.pdf](http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/_images/County_HIV_Trends_2007-2016pdf.pdf) (last visited Jan. 11, 2018).

<sup>5</sup> *Id.*

<sup>6</sup> Florida Department of Health, *Hepatitis, Hepatitis C and HIV Co-Infection*, <http://www.floridahealth.gov/diseases-and-conditions/hepatitis/co-infection.html> (last visited: Jan. 11, 2018).

infected blood and can cause cirrhosis of the liver, liver cancer, and death.<sup>7</sup> The Hepatitis C virus can be acquired through:

- Injection of shared drug equipment;
- A blood transfusion before 1992;
- An occupational needle stick,
- A long-term hemodialysis,
- An infected mother to her infant, and
- Sexual transmission.<sup>8</sup>

In 2016, the majority of Florida counties with high rates of persons living with HIV/AIDS (PLWHA), and with a high IDU-associated risk, were in the southeast or central parts of the state.<sup>9</sup> The chart below displays data from 2016 of the 11 Florida counties with the highest incidence of PLWHA with an IDU-associated risk.<sup>10</sup>

County	Total PLWHA Cases	Total IDU	Percent IDU
Miami-Dade	26,946	2,873	11%
Broward	20,020	2,188	11%
Orange	8,663	1,389	16%
Palm Beach	8,198	1,323	16%
Hillsborough	6,691	1,229	18%
Duval	6,199	981	16%
Pinellas	4,589	830	18%
Lee	2,238	333	15%
Volusia	1,698	410	24%
St. Lucie	1,610	284	18%
Brevard	1,566	307	20%
<b>State Totals</b>	<b>114,608</b>	<b>17,886</b>	<b>16%</b>

### Needle and Syringe Exchange Programs

In the mid-1980s, the National Institute on Drug Abuse (NIDA) undertook a research program to develop, implement, and evaluate the effectiveness of intervention strategies to reduce risk behaviors and prevent the spread of HIV/AIDS, particularly among IDUs, their sexual partners, and offspring. The studies found that comprehensive strategies—in the absence of a vaccine or cure for AIDS—are the most cost effective and reliable approaches to prevent new blood-borne infections. The strategies NIDA recommends are community-based outreach, drug abuse

<sup>7</sup> Florida Dep't of Health, *Hepatitis C Palm Card*, <http://www.floridahealth.gov/diseases-and-conditions/hepatitis/documents/educational-materials/documents/hcv-palmscard.pdf>

<sup>8</sup> *Id.*

<sup>9</sup> Florida Dep't of Health, *HIV Infection Among Those with an Injection Drug Use-Associated Risk, Florida, 2014* (power point slide 18) (revised Jan. 29, 2015), available at <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/documents/hiv-aids-slide-sets/2014/idu-2014.pdf> (last visited Jan. 11, 2018).

<sup>10</sup> Florida Department of Health, *Senate Bill 800 2017 Bill Analysis – SB 800 (Nov. 13, 2017) p. 2*, (on file with the Senate Committee on Health Policy).

treatment, and sterile syringe access programs, including needle and syringe exchange programs (NSEPs). In general, these strategies are referred to as harm reduction.<sup>11</sup>

Needle and syringe exchange programs provide free sterile needles and syringe units and collect used needles and syringes from IDUs to reduce transmission of blood-borne pathogens, including HIV, hepatitis B virus, and HCV. In addition, the programs help to:

- Increase the number of drug users who enter and remain in available treatment programs;
- Disseminate HIV risk reduction information and referrals for HIV testing and counseling and drug treatment;
- Reduce injection frequency and needle-sharing behaviors;
- Reduce the number of contaminated syringes in circulation in a community; and
- Increase the availability of sterile needles, thereby reducing the risk that new infections will spread.<sup>12</sup>

The first sanctioned NSEP in the world began in Amsterdam, the Netherlands, in 1984. The first sanctioned program to operate in North America originated in Tacoma, Washington, in 1988. As of May 2015, there were 228 NSEPs in 35 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Indian Nations.<sup>13</sup>

### ***Miami's Needle and Syringe Exchange Program***

Florida's first legal needle exchange program was approved by the legislature in 2016.<sup>14</sup> The pilot program is limited to Miami-Dade County and must be funded with private funds, grants, and donations. No state, county, or municipal funds may be used to operate the pilot program. The pilot is limited to a single sterile needle and syringe exchange program in the county and must operate from a mobile unit. The legislation requires the University of Miami to offer the exchange of free, clean, unused needles and hypodermic syringes for used needles and hypodermic syringes.<sup>15</sup> The pilot program must provide educational materials, secure the used needles, and collect required data.<sup>16</sup> The pilot program is scheduled to expire on July 1, 2021.

The Miami NSEP costs more than \$500,000 annually and receives funding from private organizations such as the MAC AIDS Fund, Gilead Pharmaceuticals, the Elton John AIDS

---

<sup>11</sup> National Institute of Drug Abuse, National Institutes of Health, U.S. Department of Health and Human Services, *Principles of HIV Prevention in Drug-Using Populations: A Research-Based Guide* (March 2002), available at [http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20\(17\).pdf](http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20(17).pdf) (last visited Jan. 11, 2018).

<sup>12</sup> *Id.*, at 18. See also World Health Organization, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users* (2004) pp. 28–29, available at <http://www.who.int/hiv/pub/idu/pubidu/en/> (last visited Jan. 11, 2018).

<sup>13</sup> North American Syringe Exchange Network, *Directory* (Updated May 2015), available at <https://nasen.org/> (last visited Jan. 11, 2018).

<sup>14</sup> Chapter 2016-68, Laws of Fla. (creating the Miami-Dade Infectious Disease Elimination Act, amending s. 381.0038, F.S., effective July 1, 2016).

<sup>15</sup> Section 381.0038(4), F.S.

<sup>16</sup> Section 381.0038(4)(a), F.S.



Foundation, and the AIDS Healthcare Foundation as well as support from the University of Miami.<sup>17</sup>

Program officials indicate that in the first year, the Miami NSEP has reached more than 500 injection drug users, collected more than 85,000 used needles and reversed at least 235 overdoses.<sup>18</sup> A total of 232 participants have tested HCV positive.<sup>19</sup>

### *Safe Sharps Disposal*

Improperly discarded sharps pose a serious risk for injury and infection to sanitation workers and the community. “Sharps” is a medical term for devices with sharp points or edges that can puncture or cut skin.<sup>20</sup>

Examples of sharps include:

- Needles - hollow needles used to inject drugs (medication) under the skin;
- Syringes - devices used to inject medication into or withdraw fluid from the body;
- Lancets - also called “finger stick” devices - instruments with a short, two-edged blade used to get drops of blood for testing;
- Auto injectors - including epinephrine and insulin pens - syringes pre-filled with fluid medication designed to be self-injected into the body;
- Infusion sets - tubing systems with a needle used to deliver drugs to the body; and
- Connection needles/sets - needles that connect to a tub to transfer fluids in and out of the body.<sup>21</sup>

Used needles and other sharps pose a dangerous risk to people and animals if not properly disposed as they can spread disease and cause injury. The most common infections from such injuries are Hepatitis B (HBV), HCV, and HIV.<sup>22</sup> The FDA’s guidelines for disposal are to never place loose needles or other sharps into household or public trash cans or recycling bins, and to never flush them down toilets.<sup>23</sup> Many Florida counties have their own sharps disposal programs through the county health department.<sup>24</sup>

---

<sup>17</sup> Sammy Mack, “The Most Pro-Life Thing:” *HIV Activists Push to Expand Miami’s Needle Exchange Statewide*, HEALTH NEWS FLORIDA, (Jan. 8, 2018) <http://health.wusf.usf.edu/post/most-pro-life-thing-hiv-activists-push-expand-miamis-needle-exchange-statewide>.

<sup>18</sup> *Id.*

<sup>19</sup> *Supra*, note 10, at 3.

<sup>20</sup> U.S. Food and Drug Administration, *Needles and Other Sharps (Safe Disposal Outside of Health Care Settings)*, (Jan. 27, 2014) available at: <http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/Sharps/> (last visited Jan. 11, 2018).

<sup>21</sup> *Id.*

<sup>22</sup> *Supra*, note 10.

<sup>23</sup> *Id.*

<sup>24</sup> Florida Department of Health, *Environmental Health –Needle Collection Programs*, <http://www.floridahealth.gov/environmental-health/biomedical-waste/needle-collection-programs.html> (last visited Jan. 11, 2018).

### ***Federal Funding for Needle and Syringe Exchange Programs***

On December 23, 2011, President Barack Obama signed the 2012 omnibus spending bill that reinstated a 1988 ban on the use of federal funds for NSEPs, which reversed the 111th Congress's 2009 decision to allow federal funds to be used for NSEPs.<sup>25</sup> However, on December 18, 2015, President Obama signed the Consolidated Appropriations Act, 2016 (Pub. L. 114-113), which modified the restriction on the use of federal funds for syringe services programs (SSPs) for persons who inject drugs to allow the use of federal funds for certain services.<sup>26</sup>

The Department of Health and Human Services defines SSPs as the provision of sterile needles and syringes and other drug preparation equipment and disposal services as well as some or all of the following services:

- Comprehensive sexual and injection risk reduction counselling;
- HIV, viral hepatitis, other sexually transmitted diseases (STDs) and tuberculosis (TB) screening, other STDs and TB prevention care and treatment services, referral and linkage to HIV, viral hepatitis A virus (HAV) and HPV vaccinations; and
- Referral to integrated and coordinated substance abuse disorder, mental health services, physical health care, social services, and recovery support services.<sup>27</sup>

While the federal law continues to prohibit the use of federal funds to purchase sterile needles and syringes, it does allow the use of federal funds by the state or local health department for other needs of the SSPs.<sup>28</sup> In order to receive funds from the DHHS, a state must first consult with the Centers for Disease Control and provide evidence that their jurisdiction is experiencing or at risk for significant increases in hepatitis infections or an HIV outreach due to injection drug use.<sup>29</sup> As of December 2017, 30 states and seven counties have been determined of such a status by the CDC. Florida is not included in that list.<sup>30</sup> Examples of what federal funds may be used for under this determination include:

- Personnel;
- Testing kits for HCV and HIV;
- Syringe disposal services;
- Provision of naloxone;
- Condoms to reduce sexual risk of sexual transmission of HIV, viral hepatitis, and other STDs,
- Communication and outreach activities and
- Educational materials.<sup>31</sup>

---

<sup>25</sup> *Id.*

<sup>26</sup> U.S. Department of Health and Human Services, *Implementation Guidance to Support Certain Components of Syringe Services Programs, 2016*, <https://www.hiv.gov/sites/default/files/hhs-ssp-guidance.pdf> (last visited Jan. 11, 2018).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Centers for Disease Control and Prevention, *CDC Consultation on Determination of Need Requests*, <https://www.cdc.gov/hiv/risk/ssps-jurisdictions.html> (last visited Jan. 11, 2018).

<sup>30</sup> *Id.*

<sup>31</sup> *Supra*, note 25.

## Florida Comprehensive Drug Abuse Prevention and Control Act

In Florida, the term “drug paraphernalia” is defined as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.<sup>32</sup>

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S.

Any person who violates this provision commits a first degree misdemeanor.<sup>33</sup>

It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act, or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates this provision commits a third degree felony.<sup>34</sup>

A court, jury, or other authority, when determining in a criminal case whether an object constitutes drug paraphernalia, must consider specified facts surrounding the connection between the item and the individual arrested for possessing drug paraphernalia. A court or jury is required to consider a number of factors in determining whether an object is drug paraphernalia, such as proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.<sup>35</sup>

### *Federal Law Exemption*

Any person authorized by local, state, or federal law to manufacture, possess, or distribute drug paraphernalia is exempt from the federal drug paraphernalia statute.<sup>36</sup>

---

<sup>32</sup> Section 893.145, F.S.

<sup>33</sup> A first degree misdemeanor is punishable by up to 1-year imprisonment in a county jail, a fine of up to \$1,000, or both. *See* ss. 775.082 and 775.083, F.S.

<sup>34</sup> A third degree felony is punishable by up to 5 years in state prison, a fine not to exceed \$5,000, or both. *See* ss. 775.082 and 775.083, F.S.

<sup>35</sup> Section 893.146, F.S.

<sup>36</sup> 21 U.S.C. § 863(f)(1).

### III. Effect of Proposed Changes:

**Section 1** names the act the “Florida Infectious Disease Elimination Act (IDEA).”

**Section 2** amends s. 381.0038, F.S., which modifies the existing single-county, Miami-Dade sterile needle and syringe exchange pilot program to establish a statewide program through the DOH, rather than the University of Miami. The bill allows the program to be administered either by the DOH or one of the participating, eligible entities. No state, county, or municipal funds may be used to operate the program.

The bill permits a pilot program to continue to be established at a mobile health unit or at one of several new location types:

- A hospital licensed under chapter 395;
- A health care clinic licensed under chapter 400;
- A substance abuse treatment program;
- An HIV or AIDS service organization; or
- Another nonprofit entity designated by the DOH.

Quarterly and annual reports must be submitted to the DOH under the revised pilot program, rather than to the local DOH office in Miami-Dade County. A final report will be due from all programs by August 1, 2023.

The expiration date for all pilot programs is extended to July 1, 2023.

**Section 3** includes a severability clause which provides that if any provision of this act or its application to any person or its circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

SB 800 continues the requirement that all pilot program sites must raise funds from private donations, grants, and other non-government sources. The University of Miami was also required to obtain a Biomedical Waste Operating permit as a sharps collection program in accordance with Chapter 64E-16, Florida Administrative Code, through the DOH's Miami-Dade's Environmental Health office.<sup>37</sup> This expense would be required for any entity that elects to participate in this program.

Private sector health care providers may also see an impact in emergency rooms through a reduction in the treatment of individuals related to drug-related overdoses, earlier linkage to substance abuse and mental health treatment programs, and prevention of mother to child HIV transmissions.<sup>38</sup>

**C. Government Sector Impact:**

The pilot programs may reduce state and local government expenses for the treatment of blood-borne diseases associated with intravenous drug use on those counties or areas that elect to participate in the program. For example, state and local governments currently pay for medical expenditures for some patients with AIDS, such as Medicaid, the AIDS Drug Assistance Program, and the AIDS Insurance Continuation Program. The lifetime cost of HIV treatment is estimated to be \$379,668 in 2010 dollars.<sup>39</sup> The initial market prices of HCV ranged from \$84,000 to \$96,000 in 2014, but had fallen to \$40,000 for Medicaid programs.<sup>40</sup>

The DOH did not provide a specific fiscal impact for the bill, but indicated it was uncertain how the DOH could provide administrative support to receive reports, summarize, and provide state level program update without state funding.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

<sup>37</sup> Department of Health, *Senate Bill 1040 Analysis* (Jan. 29, 2015) (on file with Senate Committee on Fiscal Policy).

<sup>38</sup> Centers for Disease Control and Prevention, *Syringe Services Programs*, <https://www.cdc.gov/hiv/risk/ssps.html> (last visited Jan. 11, 2018).

<sup>39</sup> Centers for Disease Control and Prevention, *HIV Cost-effectiveness*, <https://www.cdc.gov/policy/hst/hi5/cleansyringes/index.html> (last visited Jan. 11, 2018).

<sup>40</sup> *Id.*

**VIII. Statutes Affected:**

This bill substantially amends section 381.0038 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.)

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 Braynon

35-00461-18

2018800\_\_

1                   A bill to be entitled  
 2           An act relating to infectious disease elimination  
 3           pilot programs; providing a short title; amending s.  
 4           381.0038, F.S.; authorizing the Department of Health  
 5           to establish sterile needle and syringe exchange pilot  
 6           programs upon request from eligible entities, rather  
 7           than a single program established in Miami-Dade  
 8           County; specifying who may be designated to operate a  
 9           program; providing for the expiration of all pilot  
 10          programs; providing for severability; providing an  
 11          effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15           Section 1. This act may be cited as the "Florida Infectious  
 16 Disease Elimination Act (IDEA)."

17           Section 2. Subsection (4) of section 381.0038, Florida  
 18 Statutes, is amended to read:

19           381.0038 Education; sterile needle and syringe exchange  
 20 pilot program.—The Department of Health shall establish a  
 21 program to educate the public about the threat of acquired  
 22 immune deficiency syndrome.

23           (4) The department ~~University of Miami and its affiliates~~  
 24 may establish a ~~single~~ sterile needle and syringe exchange pilot  
 25 program upon request from an eligible entity in Miami-Dade  
 26 County. Each pilot program must be administered by the  
 27 department, or the department may designate one of the following  
 28 eligible entities to operate the pilot program ~~may operate~~ at a  
 29 fixed location or through a mobile health unit: a hospital

35-00461-18

2018800\_\_

30 licensed under chapter 395, a health care clinic licensed under  
31 part X of chapter 400, a substance abuse treatment program, an  
32 HIV or AIDS service organization, or another nonprofit entity  
33 designated by the department. Each ~~The~~ pilot program shall offer  
34 the free exchange of clean, unused needles and hypodermic  
35 syringes for used needles and hypodermic syringes as a means to  
36 prevent the transmission of HIV, AIDS, viral hepatitis, or other  
37 blood-borne diseases among intravenous drug users and their  
38 sexual partners and offspring.

39 (a) Each ~~The~~ pilot program must:

40 1. Provide for maximum security of exchange sites and  
41 equipment, including an accounting of the number of needles and  
42 syringes in use, the number of needles and syringes in storage,  
43 safe disposal of returned needles, and any other measure that  
44 may be required to control the use and dispersal of sterile  
45 needles and syringes.

46 2. Operate a one-to-one exchange, whereby the participant  
47 shall receive one sterile needle and syringe unit in exchange  
48 for each used one.

49 3. Make available educational materials and referrals to  
50 education regarding the transmission of HIV, viral hepatitis,  
51 and other blood-borne diseases; provide referrals for drug abuse  
52 prevention and treatment; and provide or refer for HIV and viral  
53 hepatitis screening.

54 (b) The possession, distribution, or exchange of needles or  
55 syringes as part of each ~~the~~ pilot program established under  
56 this subsection is not a violation of any part of chapter 893 or  
57 any other law.

58 (c) A pilot program staff member, volunteer, or participant



35-00461-18

2018800\_\_

59 is not immune from criminal prosecution for:

60 1. The possession of needles or syringes that are not a  
61 part of the pilot program; or

62 2. The redistribution of needles or syringes in any form,  
63 if acting outside the pilot program.

64 (d) Each ~~The~~ pilot program must collect data for quarterly,  
65 annual, and final reporting purposes. The annual report must  
66 include information on the number of participants served, the  
67 number of needles and syringes exchanged and distributed, the  
68 demographic profiles of the participants served, the number of  
69 participants entering drug counseling and treatment; the number  
70 of participants receiving testing for HIV, AIDS, viral  
71 hepatitis, or other blood-borne diseases; and other data  
72 necessary for the pilot program. However, personal identifying  
73 information may not be collected from a participant for any  
74 purpose. Quarterly reports must be submitted to the department  
75 ~~of Health in Miami-Dade County~~ by October 15, January 15, April  
76 15, and July 15 of each year. An annual report must be submitted  
77 to the department ~~of Health~~ by August 1 every year until the  
78 program expires. A final report is due on August 1, 2023 ~~2021~~,  
79 to the department ~~of Health~~ and must describe the performance  
80 and outcomes of the pilot program and include a summary of the  
81 information in the annual reports for all pilot program years.

82 (e) State, county, or municipal funds may not be used to  
83 operate a ~~the~~ pilot program. A ~~The~~ pilot program must ~~shall~~ be  
84 funded through grants and donations from private resources and  
85 funds.

86 (f) All ~~The~~ pilot programs ~~program~~ shall expire July 1,  
87 2023 ~~2021~~.

35-00461-18

2018800\_\_

88           Section 3. If any provision of this act or its application  
89 to any person or circumstance is held invalid, the invalidity  
90 does not affect other provisions or applications of the act  
91 which can be given effect without the invalid provision or  
92 application, and to this end the provisions of this act are  
93 severable.

94           Section 4. This act shall take effect July 1, 2018.



The Florida Senate

## Committee Agenda Request

**To:** Senator Dana D. Young, Chair  
Committee on Health Policy

**Subject:** Committee Agenda Request

**Date:** January 8, 2018

---

I respectfully request that **Senate Bill # 800, Infectious Disease Elimination Pilot Programs**, relating to Citing this act as the "Florida Infectious Disease Elimination Act (IDEA)", authorizing the Department of Health to establish sterile needle and syringe exchange pilot programs upon request from eligible entities, rather than single program established in Miami Dade County, etc, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Oscar Braynon II".

---

Senator Oscar Braynon II  
Florida Senate, District 35

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

SB800

Meeting Date

Bill Number (if applicable)

Topic SB800 IDEA

Amendment Barcode (if applicable)

Name Dr. Scott Kjelson

Job Title Director / Professor NSU / Florida Society at Health System Pharmacy

Address 200 S. Birch Rd Phone 786-3011483

Street

Fort Lauderdale

Email

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Society of Health System 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 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/16/18

Meeting Date

SB 800

Bill Number (if applicable)

Topic Infectious Disease Elimination Pilot Program

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 South Monroe Street Suite 200 Phone 850-205-9000

Street

Tallahassee FL 32301

City

State

Zip

Email aimee.diazlyon@mhdhim.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against (The Chair will read this information into the record.)

Representing The AIDS Institute

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)

January 16<sup>th</sup> 2018  
Meeting Date

800  
Bill Number (if applicable)

Topic IDEA

Amendment Barcode (if applicable)

Name Corinne Bullock

Job Title 2<sup>nd</sup> yr medical student at the University of Miami

Address 1430 Piedmont Dr E

Phone 850-224-6496

Street

Tallahassee

FL

32308

Email Cmb292@med.miami.edu

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing University of Miami

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 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

11/16/18

Meeting Date

800

Bill Number (if applicable)

Topic I.D.E.A.

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title Assistant General Counsel

Address 1430 Piedmont Dr E

Phone 856 224 6496

Street

Tft

City

FL

State

32308

Zip

Email MThomas@flmedical.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18

Meeting Date

800

Bill Number (if applicable)

Topic IDEA

Amendment Barcode (if applicable)

Name Tyler Bartholomew

Job Title 1<sup>st</sup> year PhD student in Prevention Science at UM

Address 1430 Piedmont Dr East

Phone 850-224-6496

Street

Tallahassee

FL

32308

Email tsbb1@miami.edu

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing University of Miami

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 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

01/16 / 2018

Meeting Date

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

800

Bill Number (if applicable)

Topic IDEA

Amendment Barcode (if applicable)

Name Jason Onugha

Job Title MD-MPH Student

Address 1430 Piedmont Dr. E.

Phone 850-224-6496

<sup>Street</sup>  
Wallerhause

Email JKO17@miami.edu

<sub>City</sub> FL <sub>State</sub> 32308 <sub>Zip</sub>

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing University of Miami 3 FMA

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)

1/16/18

Meeting Date

SB 800

Bill Number (if applicable)

Topic Infectious Disease Elimination Pilot Programs

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor

Address 115 S Andrews Ave.

Street

Phone 954-789-9293

Ft. Lauderdale

FL

33301

City

State

Zip

Email dewest@broward.org

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [x] In Support [ ] Against (The Chair will read this information into the record.)

Representing Broward County

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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-16-18  
Meeting Date

808  
Bill Number (if applicable)

Topic IDEA

Amendment Barcode (if applicable)

Name MARTHA DeCASTRO

Job Title VP for Nursing & Clinical Care Policy

Address 306 E. College  
Street

Phone 850 222 9800

Tallahassee FL 32301  
City State Zip

Email martha@fha.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Hospital Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

412-K  
4:00 PM

1-16-2018

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

Meeting Date

SB 800

Bill Number (if applicable)

Topic INFECTIOUS DISEASE ELIMINATION PILOT PROGRAMS

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DRIVE

Phone 878-7364

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Osteopathic Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

January 16, 2018

*Meeting Date*

SB 800

*Bill Number (if applicable)*

Topic Infectious Disease Elimination Pilot Programs

*Amendment Barcode (if applicable)*

Name Jessica Love

Job Title Government Consultant

Address P.O. Box 11189

*Street*

Tallahassee, FL 32302

*City*

*State*

*Zip*

Phone 850-577-9090

Email jessica.love@gray-robinson.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Florida Nurses Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1-16-18

Meeting Date

SB 800

Bill Number (if applicable)

Topic Infectious Disease Elimination

Amendment Barcode (if applicable)

Name MARK FONTAINE

Job Title CEO

Address 2868 Mahan Drive

Phone 878-2196

Street

Tallahassee FL 32308

Email mfontaine@fdaa.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Behavioral Health Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**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 906

INTRODUCER: Health Policy Committee and Senator Young

SUBJECT: Public Records/Health Care Facilities

DATE: January 16, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Fav/CS
2.			GO	
3.			RC	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 906 exempts building plans, blueprints, and other such drawings and diagrams that depict the internal structural layout or structural elements of a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled from the public records law.

The bill provides a statement of public necessity supporting the exemption and establishes an Open Government Sunset Review Act automatic repeal date of October 2, 2023, unless reviewed and saved from repeal by the Legislature.

This bill requires a two-thirds vote if each chamber for passage because it creates a public records exemption.

The provisions of the bill take effect upon becoming law.

**II. Present Situation:**

**Public Records Law**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business

---

<sup>1</sup> FLA. CONST., art. I, s. 24(a).

of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that:

...it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

---

<sup>2</sup> *Id.*

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).



When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>13</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.<sup>14</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>15</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>16</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>17</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>18</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>19</sup> or
- It protects trade or business secrets.<sup>20</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>21</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

---

<sup>13</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>14</sup> *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>15</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

<sup>18</sup> Section 119.15(6)(b)1., F.S.

<sup>19</sup> Section 119.15(6)(b)2., F.S.

<sup>20</sup> Section 119.15(6)(b)3., F.S.

<sup>21</sup> Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?  
If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>22</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.<sup>23</sup>

### **Agency for Health Care Administration (AHCA) Review of Health Care Facility Building Plans**

The Office of Plans and Construction (Office) within the AHCA is primarily responsible for ensuring that hospitals, nursing homes, ambulatory surgical centers, and Intermediate Care Facilities for the Developmentally Disabled are safe, functional, and provide safety-to-life for the patients and residents. The Office reviews and approves facilities' plans and specifications and surveys their construction. These licensed health care facilities must notify the Office in writing before any equipment replacements, renovations, additions, or new facilities are created. Plans and specifications for such activities must be approved before any construction begins. Architects, engineers and other specially trained plans and construction personnel survey facilities under construction and, when necessary, write reports for required corrections to the construction before approval of the project is given.<sup>24</sup>

Schematics, preliminary plans and construction documents received by the Agency and other government agencies for hospitals, ambulatory surgical centers, nursing homes and intermediate care facilities for the developmentally disabled are currently subject to release as public record. These plans include building floor plans, communication systems, medical gas systems, electrical systems, and other physical plant and security details. Recent security threats have been shared by state and federal security and emergency preparedness officials that describe the targeting of health care facilities by terrorists. Because architectural and engineering plans reviewed and held by government agencies include information regarding emergency egress, locking arrangements, critical life safety systems and restricted areas these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities.<sup>25</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 119.071, F.S., to exempt the building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of a health care facility. The bill defines "health care facility" as a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled. This exemption currently exists for an attraction and recreation facility, entertainment or resort complex, industrial complex, retail and services development, office development, and hotel and motel development.

---

<sup>22</sup> FLA. CONST. art. I, s. 24(c).

<sup>23</sup> Section 119.15(7), F.S.

<sup>24</sup> AHCA, Office of Plans and Construction <http://ahca.myflorida.com/MCHQ/Plans/>, (last visited Jan. 10, 2018).

<sup>25</sup> AHCA, *HB 551 Analysis* (Nov. 28, 2017) (on file with the Senate Committee on Health Policy).

The bill also states that s. 119.071(3)(c), F.S., is subject to the Open Government Sunset Review Act and establishes an automatic repeal date of October 2, 2023, unless saved from repeal by the Legislature.

**Section 2** of the bill provides the public necessity statement that is required for all new public records exemptions by art. I, s. 24(c) of the State Constitution. The bill provides that, because the plans and blueprints of health care facilities are held by the AHCA, they are subject to public records laws and may be obtained by criminals and terrorists that wish to exploit any vulnerabilities in the health care facilities' physical plants. These documents should be made exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitutions to ensure the safety of the health care facility's staff, patients, and visitors. The bill states that it is a public necessity to exempt these records from public records laws in order to prevent possible terrorist or criminal actions and to reduce these facilities' exposure to security threats.

**Section 3** provides that the bill takes effect upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

###### **Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

###### **Public Necessity Statement**

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the safety of the health care facility's staff, patients, and visitors, to prevent possible terrorist or criminal actions, and to reduce these facilities' exposure to security threats against health care facilities.

###### **Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts only building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of a health care facility. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

**IX. 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 January 16, 2018:**

The CS rewords the public necessity statement to make grammatical changes and to eliminate a reference to information on emergency generators being made exempt from public records laws.

B. Amendments:

None.



293126

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
	.	
	.	
	.	

---

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

**Senate Amendment**

Delete lines 101 - 115  
and insert:  
drawings, and diagrams of a health care facility should be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to ensure the safety of the health care facility's staff, patients, and visitors. Building plans, blueprints, schematic drawings, diagrams, preliminary plans, and construction documents the Agency for Health Care



293126

11 Administration and other governmental agencies receive which  
12 depict the internal layout or structural elements of hospitals,  
13 ambulatory surgical centers, nursing homes, hospices, and  
14 intermediate care facilities for the developmentally disabled  
15 are currently public records and are subject to release upon  
16 request. The Agency for Health Care Administration reviews the  
17 building plans for proposed health care facility construction to  
18 ensure compliance with building codes and agency rules and  
19 standards in order to protect the public health and safety.  
20 These building plans include diagrams and schematics of building  
21 floor plans, communication systems, medical gas systems,  
22 electrical systems, and other physical plant and security  
23 details depicting the internal layout and structural elements of  
24 the health care facilities.

By Senator Young

18-01051-18

2018906\_\_

1                   A bill to be entitled  
2       An act relating to public records; amending s.  
3       119.071, F.S.; providing an exemption from public  
4       records requirements for building plans, blueprints,  
5       schematic drawings, and diagrams held by an agency  
6       which depict the internal layout or structural  
7       elements of certain health care facilities; providing  
8       for future legislative review and repeal of the  
9       exemption; providing a statement of public necessity;  
10      providing an effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14       Section 1. Paragraph (c) of subsection (3) of section  
15       119.071, Florida Statutes, is amended to read:

16       119.071 General exemptions from inspection or copying of  
17       public records.—

18       (3) SECURITY.—

19       (c)1. Building plans, blueprints, schematic drawings, and  
20       diagrams, including draft, preliminary, and final formats, which  
21       depict the internal layout or structural elements of an  
22       attractions and recreation facility, entertainment or resort  
23       complex, industrial complex, retail and service development,  
24       office development, health care facility, or hotel or motel  
25       development, which records are held by an agency are exempt from  
26       s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

27       2. This exemption applies to any such records held by an  
28       agency before, on, or after the effective date of this act.

29       3. Information made exempt by this paragraph may be

18-01051-18

2018906\_\_

30 disclosed to another governmental entity if disclosure is  
31 necessary for the receiving entity to perform its duties and  
32 responsibilities; to the owner or owners of the structure in  
33 question or the owner's legal representative; or upon a showing  
34 of good cause before a court of competent jurisdiction.

35 4. This paragraph does not apply to comprehensive plans or  
36 site plans, or amendments thereto, which are submitted for  
37 approval or which have been approved under local land  
38 development regulations, local zoning regulations, or  
39 development-of-regional-impact review.

40 5. As used in this paragraph, the term:

41 a. "Attractions and recreation facility" means any sports,  
42 entertainment, amusement, or recreation facility, including, but  
43 not limited to, a sports arena, stadium, racetrack, tourist  
44 attraction, amusement park, or pari-mutuel facility that:

45 (I) For single-performance facilities:

46 (A) Provides single-performance facilities; or

47 (B) Provides more than 10,000 permanent seats for  
48 spectators.

49 (II) For serial-performance facilities:

50 (A) Provides parking spaces for more than 1,000 motor  
51 vehicles; or

52 (B) Provides more than 4,000 permanent seats for  
53 spectators.

54 b. "Entertainment or resort complex" means a theme park  
55 comprised of at least 25 acres of land with permanent  
56 exhibitions and a variety of recreational activities, which has  
57 at least 1 million visitors annually who pay admission fees  
58 thereto, together with any lodging, dining, and recreational



18-01051-18

2018906\_\_

59 facilities located adjacent to, contiguous to, or in close  
60 proximity to the theme park, as long as the owners or operators  
61 of the theme park, or a parent or related company or subsidiary  
62 thereof, has an equity interest in the lodging, dining, or  
63 recreational facilities or is in privity therewith. Close  
64 proximity includes an area within a 5-mile radius of the theme  
65 park complex.

66 c. "Industrial complex" means any industrial,  
67 manufacturing, processing, distribution, warehousing, or  
68 wholesale facility or plant, as well as accessory uses and  
69 structures, under common ownership that:

70 (I) Provides onsite parking for more than 250 motor  
71 vehicles;

72 (II) Encompasses 500,000 square feet or more of gross floor  
73 area; or

74 (III) Occupies a site of 100 acres or more, but excluding  
75 wholesale facilities or plants that primarily serve or deal  
76 onsite with the general public.

77 d. "Retail and service development" means any retail,  
78 service, or wholesale business establishment or group of  
79 establishments which deals primarily with the general public  
80 onsite and is operated under one common property ownership,  
81 development plan, or management that:

82 (I) Encompasses more than 400,000 square feet of gross  
83 floor area; or

84 (II) Provides parking spaces for more than 2,500 motor  
85 vehicles.

86 e. "Office development" means any office building or park  
87 operated under common ownership, development plan, or management

18-01051-18

2018906\_\_

88 that encompasses 300,000 or more square feet of gross floor  
89 area.

90 f. "Health care facility" means a hospital, ambulatory  
91 surgical center, nursing home, hospice, or intermediate care  
92 facility for the developmentally disabled.

93 g. ~~f.~~ "Hotel or motel development" means any hotel or motel  
94 development that accommodates 350 or more units.

95 6. This paragraph is subject to the Open Government Sunset  
96 Review Act in accordance with s. 119.15 and shall stand repealed  
97 on October 2, 2023, unless reviewed and saved from repeal  
98 through reenactment by the Legislature.

99 Section 2. The Legislature finds that it is a public  
100 necessity that the building plans, blueprints, schematic  
101 drawings, and diagrams of a health care facility should remain  
102 confidential to ensure the safety of the health care facility's  
103 staff, patients, and visitors. The Agency for Health Care  
104 Administration reviews the building plans of proposed health  
105 care facility construction to ensure compliance with health care  
106 rules, codes, and standards in order to protect the public  
107 health and safety. Schematics, preliminary plans, and  
108 construction documents received by the agency and other  
109 governmental agencies for hospitals, ambulatory surgical  
110 centers, nursing homes, hospices, and intermediate care  
111 facilities for the developmentally disabled are currently  
112 subject to release as public records and subject to release upon  
113 request. These plans include building floor plans, communication  
114 systems, medical gas systems, electrical systems, emergency  
115 generators, and other physical plant and security details.  
116 Recent security threats have been shared by state and federal

18-01051-18

2018906\_\_

117 security and emergency preparedness officials which describe the  
118 targeting of health care facilities by terrorists. Because  
119 architectural and engineering plans reviewed and held by  
120 governmental agencies include information regarding emergency  
121 egress, locking arrangements, critical life safety systems, and  
122 restricted areas, these plans could be used by criminals or  
123 terrorists to examine the physical plant for vulnerabilities.  
124 Information contained in these documents could aid in the  
125 planning of, training for, and execution of criminal actions  
126 including infant abduction, cybercrime, arson, and terrorism.  
127 Consequently, the Legislature finds that the public records  
128 exemption created by this act is a public necessity to reduce  
129 exposure to security threats and protect the public.

130 Section 3. This act shall take effect upon becoming a law.

**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 1134

INTRODUCER: Health Policy Committee; Senator Rouson and others

SUBJECT: Department of Health Responsibilities Related to the Medical Use of Marijuana

DATE: January 17, 2018

REVISED: \_\_\_\_\_

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

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1334 amends Department of Health (DOH) responsibilities under s. 381.986, F.S., relating to the medical use of marijuana. The bill:

- Requires the DOH to adopt rules that allow qualified patients to change qualified physicians while remaining registered with the Medical Marijuana Use Registry.
- Eliminates the requirement that the applicant for the one Medical Marijuana Treatment Center (MMTC) license designated to be issued to a recognized class member of *Pigford v. Glickman*<sup>1</sup> or *In Re Black Farmers Litig.*,<sup>2</sup> and that is a member of the Black Farmers and Agriculturalists Association-Florida Chapter (BFAA-FC) be a member of the BFAA-FC.
- Requires that all applicants for the one Recognized Class Member License be registered to do business in Florida for five consecutive years before applying for the license.
- Strikes an obsolete date by which such license was to be issued.

The effective date of the bill is July 1, 2018.

---

<sup>1</sup> 185 F.R.D. 82 (D.D.C. 1999).

<sup>2</sup> 856 F. Supp. 2d 1 (D.D.C. 2011).

## II. Present Situation:

On November 4, 2016, Amendment 2 was voted into law and established article X, section 29 of the State Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- MMTCs, their agents, and employees for actions or conduct under the amendment and in compliance with DOH rules.

### Physician Certifications

The Legislature passed Chapter 2017-232, L.O.F., during the 2017 Special Session A to implement Amendment 2. Included in the many provisions of the law, the law established a system allowing qualified physicians who have successfully completed the required training and examination to issue physician certifications to qualified patients. Prior to issuing a physician certification the bill requires that each qualified physician check the Medical Marijuana Use Registry to ensure that the patient does not have an active physician certification from another physician.<sup>3</sup> The law also requires that a physician deactivate his or her patient's registration on the Medical Marijuana Use Registry when the physician no longer recommends the medical use of marijuana for the patient.<sup>4</sup> However, the law does not include any provisions that allow a qualified patient to deactivate his or her own registration or remove a physician relationship from the registry. As established, a qualified physician may prevent a qualified patient from switching to a different qualified physician for treatment with medical marijuana by refusing to deactivate the physician certification for that qualified patient.

### Medical Marijuana Treatment Centers

The law also requires the DOH to license a number of MMTCs including:

- All previously licensed Dispensing Organizations that were licensed under the Compassionate Medical Cannabis Act.<sup>5</sup>
- Ten additional MMTCs, as follows:
  - By August 1, 2017, any denied dispensing organization applicant whose application was scored by DOH and had one or more administrative or legal challenges pending as of January 1, 2017, or had a final ranking within one point of the highest final ranking applicant in its region, and proves to the DOH that it has the infrastructure and ability to begin cultivating marijuana within 30 days after registration as an MMTC;

---

<sup>3</sup> Section 381.986(4)(a)6., F.S.

<sup>4</sup> Section 381.986(4)(a)7.c., F.S.

<sup>5</sup> The Compassionate Medical Cannabis Act (Act) was the precursor to the full-strength medical marijuana program established by Amendment 2 and ch. 2017-232, L.O.F. The Act allowed the use of low-THC cannabis to treat cancer and epilepsy disorders and the use of full-strength medical cannabis for the treatment of terminal patients. The Act required the DOH to license five dispensing organizations to grow, process, and dispense low-THC and medical cannabis and three additional dispensing organizations upon the registration of 250,000 active qualified patients in the compassionate use registry. The Act required one of the three additional dispensing organizations to be owned and operated by a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association. See s. 381.986(5)(c), F.S. (2016).

- By October 3, 2017, one license to an applicant that is a recognized class member of *Pigford v. Glickman* or *In Re Black Farmers Litig.*, and that is a member of the BFAA-FC. These applicants are exempt from the requirement to be a registered business in Florida for five consecutive years prior to applying and the requirement to possess a valid certificate of registration as a nursery issued by the Department of Agriculture and Consumer Services; and
- By October 3, 2017, all remaining of the ten licenses.
- Four additional licenses each time the medical marijuana use registry reaches 100,000 patients.<sup>6</sup>

On September 22, 2017, Columbus Smith (Smith) filed a lawsuit challenging the requirement that a Recognized Class Member License applicant be a member of the BFAA-FC. Smith is a recognized class member of *Pigford v. Glickman*, or *In Re Black Farmers Litig.*, but is not a member of the Florida Black Farmers and Agriculturalists Association. According to Smith he was denied membership in the BFAA-FC. Smith also sought an injunction to enjoin DOH from awarding a Recognized Class Member License which the court granted on January 9, 2018, preventing the DOH from issuing the Recognized Class Member License. The DOH has delayed issuing any of the additional MMTC licenses that it was required to grant by October 3, 2017, due to this lawsuit.<sup>7, 8</sup>

### III. Effect of Proposed Changes:

CS/SB 1334 amends the DOH responsibilities under s. 381.986, F.S. The bill:

- Requires the DOH to adopt rules to establish a process for qualified patients to change qualified physicians while remaining registered with the Medical Marijuana Use Registry. The system may not allow a qualified patient to exceed statutory limits on the supply of marijuana.<sup>9</sup>
- Eliminates the requirement that the applicant for the one MMTC license designated to be issued to a recognized class member of *Pigford v. Glickman*<sup>10</sup> or *In Re Black Farmers Litig.*,<sup>11</sup> and that is a member of the BFAA-FC be a member of the BFAA-FC.
- Requires that all applicants for the Recognized Class Member License be registered to do business in Florida for five consecutive years before applying for the license by eliminating the exemption from this requirement. This change will ensure that any applicant for this license will be a Florida based applicant despite the elimination of the requirement that the applicant be a member of the BFAA-FC.
- Strikes an obsolete date by which such license was to be issued.

---

<sup>6</sup> Section 381.986(8)(a), F.S.

<sup>7</sup> *Smith v. Florida Department of Health*, case number 17-CA-1972, in the Circuit Court for the Second Judicial Circuit of Florida.

<sup>8</sup> Letter from Christian Bax to Chair Dana Young, (September 29, 2017) (on file with the Senate Committee on Health Policy).

<sup>9</sup> Section 381.986(4)(c), F.S., restricts a qualified physician from certifying a patient for more than three 70-day supplies of marijuana and 381.986(8)(e)13.b., F.S., restricts an MMTC from dispensing more than a 70-day supply to a qualified patient or caregiver. The effects of these provisions require that the patient or caregiver must return to an MMTC for a refill at least every 70 days and return to the physician for recertification at a minimum every 210 days.

<sup>10</sup> 185 F.R.D. 82 (D.D.C. 1999).

<sup>11</sup> 856 F. Supp. 2d 1 (D.D.C. 2011).

The effective date of the bill is July 1, 2018.

**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 1134 may have an indeterminate positive fiscal impact on an applicant for licensure as an MMTC that is a recognized class member of *Pigford v. Glickman* or *In Re Black Farmers Litig.*, but that is not a member of the BFAA-FC if the applicant is chosen to receive a license to operate as an MMTC.

The bill may have an indeterminate negative fiscal impact on an applicant for licensure as an MMTC that is a recognized class member of *Pigford v. Glickman* or *In Re Black Farmers Litig.*, and that is a member of the BFAA-FC if such applicant would have been chosen to receive the Recognized Class Member License to operate as an MMTC under current law but is not chosen to receive such license due to changes made by the bill.

The bill may have an indeterminate negative fiscal impact on Recognized Class Member License applicants that have not been registered businesses in Florida for the past five consecutive years and that, consequently, no longer qualify as an MMTC applicant due to changes made by the bill.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 381.986 of the Florida Statutes.

**IX. 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 January 16, 2018:**

The CS:

- Requires the DOH to adopt rules that allow qualified patients to change qualified physicians while remaining registered with the Medical Marijuana Use Registry. The process may not allow a qualified patient to exceed statutory limits on the supply of marijuana.
- Requires all applicants for the Recognized Class Member License to be registered to do business in Florida for five consecutive years before applying for the license.

- B. **Amendments:**

None.





606862

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with directory and title amendments)**

Between lines 15 and 16

insert:

(4) PHYSICIAN CERTIFICATION.—

(h) The department, the Board of Medicine, and the Board of Osteopathic Medicine may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection. Rules adopted pursuant to this subsection must include a process by which a patient may change qualified physicians while retaining an active



606862

11 registration on the medical marijuana use registry. This process  
12 must include safeguards to ensure that any new physician  
13 certification issued to the patient after changing physicians  
14 does not combine with any existing patient certification to  
15 allow the patient to possess more than the 70-day supply limits.

16  
17 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

18 And the directory clause is amended as follows:

19 Delete lines 13 - 14

20 and insert:

21 Section 1. Paragraph (h) of subsection (4) and paragraph  
22 (a) of subsection (8) of section 381.986, Florida Statutes, are  
23 amended to read:

24  
25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete lines 1 - 2

28 and insert:

29 An act relating to Department of Health  
30 responsibilities related to medical marijuana;  
31 amending s. 381.986, F.S.; requiring the Department of  
32 Health to adopt rules to allow qualified patients to  
33 change qualified physicians; deleting an



459848

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
	.	
	.	
	.	

---

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

**Senate Amendment**

Delete line 62  
and insert:  
requirement of subparagraph (b)2 ~~requirements of subparagraphs~~  
~~(b)1. and 2.~~

By Senator Rouson

19-01232-18

20181134\_\_

1                   A bill to be entitled  
2       An act relating to medical marijuana treatment center  
3       licensure; amending s. 381.986, F.S.; deleting an  
4       obsolete date; revising a requirement that the  
5       Department of Health license one applicant who is a  
6       member of a certain class to exclude a requirement  
7       that the applicant also be a member of the Black  
8       Farmers and Agriculturalist Association-Florida  
9       Chapter; providing an effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13       Section 1. Paragraph (a) of subsection (8) of section  
14       381.986, Florida Statutes, is amended to read:

15       381.986 Medical use of marijuana.—

16       (8) MEDICAL MARIJUANA TREATMENT CENTERS.—

17       (a) The department shall license medical marijuana  
18       treatment centers to ensure reasonable statewide accessibility  
19       and availability as necessary for qualified patients registered  
20       in the medical marijuana use registry and who are issued a  
21       physician certification under this section.

22       1. As soon as practicable, but no later than July 3, 2017,  
23       the department shall license as a medical marijuana treatment  
24       center any entity that holds an active, unrestricted license to  
25       cultivate, process, transport, and dispense low-THC cannabis,  
26       medical cannabis, and cannabis delivery devices, under former s.  
27       381.986, Florida Statutes 2016, before July 1, 2017, and which  
28       meets the requirements of this section. In addition to the  
29       authority granted under this section, these entities are

19-01232-18

20181134\_\_

30 authorized to dispense low-THC cannabis, medical cannabis, and  
31 cannabis delivery devices ordered pursuant to former s. 381.986,  
32 Florida Statutes 2016, which were entered into the compassionate  
33 use registry before July 1, 2017, and are authorized to begin  
34 dispensing marijuana under this section on July 3, 2017. The  
35 department may grant variances from the representations made in  
36 such an entity's original application for approval under former  
37 s. 381.986, Florida Statutes 2014, pursuant to paragraph (e).

38 2. The department shall license as medical marijuana  
39 treatment centers 10 applicants that meet the requirements of  
40 this section, under the following parameters:

41 a. As soon as practicable, but no later than August 1,  
42 2017, the department shall license any applicant whose  
43 application was reviewed, evaluated, and scored by the  
44 department and which was denied a dispensing organization  
45 license by the department under former s. 381.986, Florida  
46 Statutes 2014; which had one or more administrative or judicial  
47 challenges pending as of January 1, 2017, or had a final ranking  
48 within one point of the highest final ranking in its region  
49 under former s. 381.986, Florida Statutes 2014; which meets the  
50 requirements of this section; and which provides documentation  
51 to the department that it has the existing infrastructure and  
52 technical and technological ability to begin cultivating  
53 marijuana within 30 days after registration as a medical  
54 marijuana treatment center.

55 b. As soon as practicable, ~~but no later than October 3,~~  
56 ~~2017,~~ the department shall license one applicant that is a  
57 recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82  
58 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1

19-01232-18

20181134\_\_

59 (~~D.D.C. 2011) and is a member of the Black Farmers and~~  
60 ~~Agriculturalists Association Florida Chapter.~~ An applicant  
61 licensed under this sub-subparagraph is exempt from the  
62 requirements of subparagraphs (b)1. and 2.

63 c. As soon as practicable, but no later than October 3,  
64 2017, the department shall license applicants that meet the  
65 requirements of this section in sufficient numbers to result in  
66 10 total licenses issued under this subparagraph, while  
67 accounting for the number of licenses issued under sub-  
68 subparagraphs a. and b.

69 3. For up to two of the licenses issued under subparagraph  
70 2., the department shall give preference to applicants that  
71 demonstrate in their applications that they own one or more  
72 facilities that are, or were, used for the canning,  
73 concentrating, or otherwise processing of citrus fruit or citrus  
74 molasses and will use or convert the facility or facilities for  
75 the processing of marijuana.

76 4. Within 6 months after the registration of 100,000 active  
77 qualified patients in the medical marijuana use registry, the  
78 department shall license four additional medical marijuana  
79 treatment centers that meet the requirements of this section.  
80 Thereafter, the department shall license four medical marijuana  
81 treatment centers within 6 months after the registration of each  
82 additional 100,000 active qualified patients in the medical  
83 marijuana use registry that meet the requirements of this  
84 section.

85 5. Dispensing facilities are subject to the following  
86 requirements:

87 a. A medical marijuana treatment center may not establish

19-01232-18

20181134\_\_

88 or operate more than a statewide maximum of 25 dispensing  
89 facilities, unless the medical marijuana use registry reaches a  
90 total of 100,000 active registered qualified patients. When the  
91 medical marijuana use registry reaches 100,000 active registered  
92 qualified patients, and then upon each further instance of the  
93 total active registered qualified patients increasing by  
94 100,000, the statewide maximum number of dispensing facilities  
95 that each licensed medical marijuana treatment center may  
96 establish and operate increases by five.

97 b. A medical marijuana treatment center may not establish  
98 more than the maximum number of dispensing facilities allowed in  
99 each of the Northwest, Northeast, Central, Southwest, and  
100 Southeast Regions. The department shall determine a medical  
101 marijuana treatment center's maximum number of dispensing  
102 facilities allowed in each region by calculating the percentage  
103 of the total statewide population contained within that region  
104 and multiplying that percentage by the medical marijuana  
105 treatment center's statewide maximum number of dispensing  
106 facilities established under sub-subparagraph a., rounded to the  
107 nearest whole number. The department shall ensure that such  
108 rounding does not cause a medical marijuana treatment center's  
109 total number of statewide dispensing facilities to exceed its  
110 statewide maximum. The department shall initially calculate the  
111 maximum number of dispensing facilities allowed in each region  
112 for each medical marijuana treatment center using county  
113 population estimates from the Florida Estimates of Population  
114 2016, as published by the Office of Economic and Demographic  
115 Research, and shall perform recalculations following the  
116 official release of county population data resulting from each

19-01232-18

20181134\_\_

117 United States Decennial Census. For the purposes of this  
118 subparagraph:

119 (I) The Northwest Region consists of Bay, Calhoun,  
120 Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson,  
121 Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla,  
122 Walton, and Washington Counties.

123 (II) The Northeast Region consists of Alachua, Baker,  
124 Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist,  
125 Hamilton, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns,  
126 Suwannee, and Union Counties.

127 (III) The Central Region consists of Brevard, Citrus,  
128 Hardee, Hernando, Indian River, Lake, Orange, Osceola, Pasco,  
129 Pinellas, Polk, Seminole, St. Lucie, Sumter, and Volusia  
130 Counties.

131 (IV) The Southwest Region consists of Charlotte, Collier,  
132 DeSoto, Glades, Hendry, Highlands, Hillsborough, Lee, Manatee,  
133 Okeechobee, and Sarasota Counties.

134 (V) The Southeast Region consists of Broward, Miami-Dade,  
135 Martin, Monroe, and Palm Beach Counties.

136 c. If a medical marijuana treatment center establishes a  
137 number of dispensing facilities within a region that is less  
138 than the number allowed for that region under sub-subparagraph  
139 b., the medical marijuana treatment center may sell one or more  
140 of its unused dispensing facility slots to other licensed  
141 medical marijuana treatment centers. For each dispensing  
142 facility slot that a medical marijuana treatment center sells,  
143 that medical marijuana treatment center's statewide maximum  
144 number of dispensing facilities, as determined under sub-  
145 subparagraph a., is reduced by one. The statewide maximum number



19-01232-18

20181134\_\_

146 of dispensing facilities for a medical marijuana treatment  
147 center that purchases an unused dispensing facility slot is  
148 increased by one per slot purchased. Additionally, the sale of a  
149 dispensing facility slot shall reduce the seller's regional  
150 maximum and increase the purchaser's regional maximum number of  
151 dispensing facilities, as determined in sub-subparagraph b., by  
152 one for that region. For any slot purchased under this sub-  
153 subparagraph, the regional restriction applied to that slot's  
154 location under sub-subparagraph b. before the purchase shall  
155 remain in effect following the purchase. A medical marijuana  
156 treatment center that sells or purchases a dispensing facility  
157 slot must notify the department within 3 days of sale.

158 d. This subparagraph shall expire on April 1, 2020.

159  
160 If this subparagraph or its application to any person or  
161 circumstance is held invalid, the invalidity does not affect  
162 other provisions or applications of this act which can be given  
163 effect without the invalid provision or application, and to this  
164 end, the provisions of this subparagraph are severable.

165 Section 2. This act shall take effect July 1, 2018.



The Florida Senate

## Committee Agenda Request

**To:** Senator Dana Young, Chair  
Health Policy

**Subject:** Committee Agenda Request

**Date:** November 9, 2017

---

I respectfully request that **Senate Bill # 1134**, relating to Medical Marijuana Treatment Center Licensure, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Darryl Rouson".

---

Senator Darryl Rouson  
Florida Senate, District 19

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/16/18

Meeting Date

1134

Bill Number (if applicable)

606862

Amendment Barcode (if applicable)

by Chair Young

Topic Medical Cannabis

Name Ron Watson

Job Title Lobbyist

Address 3738 Menden Way

Street

Tallahassee

City

FL

State

32309

Zip

Phone 850 567-1202

Email watson.strategy@comcast.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Society of Cannabis Physicians

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/16/2017  
Meeting Date

SB 1134

Bill Number (if applicable)

606862

Amendment Barcode (if applicable)

Topic MEDICAL CANNABIS LICENSING

Name GARY STEIN

Job Title Political Director

Address 7035 BOLT LINDEN LOOP

Phone (513) 305-8280

Street  
City Wesley Chapel, FL State Zip 33545

Email GSTEINMAN@ME.COM

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing CENTRAL FLORIDA NORML

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)

1/16/2017

Meeting Date

SB 1134

Bill Number (if applicable)

Topic MEDICINE CANNABIS PHYSICIAN SWITCHING

Amendment Barcode (if applicable)

Name GARY STEIN

Job Title POLITICAL DIRECTOR

Address 7035 BELT LANE LOOP

Phone (513) 305-8280

Street

Wesley Chapel FL 33595

City

State

Zip

Email GSTEINMPN@ME.COM

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

Waive Speaking: [ ] In Support [ ] Against (The Chair will read this information into the record.)

Representing CENTRAL FL. NORML

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

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

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/18

Meeting Date

1134

Bill Number (if applicable)

Topic Medical Cannabis

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Menden Way

Phone 850 567-1202

Tallahassee FL 32309

City State Zip

Email watson.strategies@comcast.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing AHMed 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.**