

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Bean, Chair
Senator Sobel, Vice Chair

MEETING DATE: Tuesday, April 9, 2013

TIME: 1:30 —3:30 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 818 Garcia (Compare CS/H 671)	Pharmacy Technicians; Increasing the number of pharmacy technicians which a licensed pharmacist may supervise, etc. HP 04/02/2013 Not Considered HP 04/09/2013 Favorable RI RC	Favorable Yeas 5 Nays 4
2	SB 1368 Ring (Similar CS/H 1161)	Clinical, Counseling, and Psychotherapy Services; Requiring registered interns to remain under supervision while maintaining registered intern status; revising the requirements for a clinical social worker license, a marriage and family therapist license, and a mental health counselor license; revising a provision providing that a psychotherapist who commits sexual misconduct with a client or former client commits a felony of the third degree; providing a presumption of good faith for the actions of a court-appointed mental health professional who develops a parenting plan recommendation, etc. HP 03/20/2013 Not Considered HP 04/02/2013 Not Considered HP 04/09/2013 Fav/CS CJ CF AP	Fav/CS Yeas 9 Nays 0
3	SB 1358 Flores (Similar H 791)	Audits of Pharmacy Records; Revising requirements for the audit of Medicaid-related pharmacy records; requiring that audits of third-party payor and third-party administrator records of pharmacy permittees be conducted in specified manners; prohibiting certain accounting practices used for calculating the recoupment of claims; providing procedures for review and appeal of third-party payor and third-party administrator audits, etc. HP 04/02/2013 Not Considered HP 04/09/2013 Favorable AHS AP	Favorable Yeas 9 Nays 0

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Health Policy

Tuesday, April 9, 2013, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 662 Hays (Identical H 605, Compare H 483, S 1662)	Workers' Compensation; Revising requirements for determining the amount of a reimbursement for repackaged or relabeled prescription medication, etc. BI 03/20/2013 Favorable HP 04/09/2013 Favorable AP	Favorable Yeas 7 Nays 2
5	CS/SB 648 Banking and Insurance / Hukill (Similar CS/CS/H 675)	Health Insurance Marketing Materials; Authorizing a health insurer to immediately begin using long-term care insurance advertising material under certain circumstances, etc. BI 03/20/2013 Fav/CS HP 04/09/2013 Favorable	Favorable Yeas 8 Nays 1
6	SB 894 Braynon (Similar CS/H 241)	Community Health Workers; Specifying the duties and activities of community health workers; creating the Community Health Worker Task Force within a state college or university; requiring the Department of Health to provide administrative support and services; requiring the task force to submit a report to the Governor and Legislature by a specified date, etc. HP 04/09/2013 Fav/CS ED CA RC	Fav/CS Yeas 9 Nays 0
7	CS/SB 1384 Judiciary / Galvano (Compare H 869)	Nursing Home Litigation; Providing that a claim for punitive damages may not be brought unless there is a showing of admissible evidence proffered by the parties which provides a reasonable basis for recovery of punitive damages when certain criteria are applied; requiring the trier of fact to find by clear and convincing evidence that a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constituted gross negligence and contributed to the loss, damages, or injury suffered by the claimant before punitive damages may be awarded, etc. JU 04/01/2013 Fav/CS HP 04/09/2013 Not Considered RC	Not Considered

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Health Policy

Tuesday, April 9, 2013, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 1724 Children, Families, and Elder Affairs / Garcia (Compare CS/CS/H 1109)	Transitional Living Facilities; Requiring the licensure of transitional living facilities; providing requirements for transitional living facilities relating to client admission, transfer, and discharge; requiring a comprehensive treatment plan to be developed for each client; providing requirements for the screening of potential employees and monitoring of employees for the protection of clients; providing requirements for the use of physical restraints and chemical restraint medication on clients, etc. CF 04/01/2013 Fav/CS HP 04/09/2013 Fav/CS AHS AP	Fav/CS Yeas 9 Nays 0
9	SB 1112 Garcia (Similar CS/H 1021)	Background Screening; Authorizing the Department of Highway Safety and Motor Vehicles to share photographs or digital images of driver licenses with the Agency for Health Care Administration; requiring that a photograph be submitted of the potential employee taken at the time the fingerprints are processed; requiring an employer to register and initiate criminal background checks through the Care Provider Background Screening Clearinghouse before submission of the electronic fingerprints, etc. HP 04/09/2013 Fav/CS TR CJ	Fav/CS Yeas 9 Nays 0
10	CS/CS/SB 500 Community Affairs / Regulated Industries / Clemens (Similar CS/CS/H 7005)	Massage Practice; Requiring an application to be denied upon specified findings; prohibiting the operation of a massage establishment during specified times; prohibiting the use of a massage establishment as a principal domicile unless the establishment is zoned for residential use under a local ordinance; authorizing a county or municipality to waive the restriction on operating hours of a massage establishment in certain instances; declaring that a massage establishment operating in violation of specified statutes is a nuisance that may be abated or enjoined, etc. RI 03/14/2013 Fav/CS CA 04/02/2013 Fav/CS HP 04/09/2013 Fav/CS AP	Fav/CS Yeas 9 Nays 0

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Health Policy

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 808 Margolis (Compare CS/H 735)	Needle and Syringe Exchange Program; Authorizing the Department of Health to establish a needle and syringe exchange program; providing that the distribution of needles and syringes under the program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; providing conditions under which a program staff member or participant may be prosecuted, etc. HP 04/09/2013 Fav/CS CJ AHS AP	Fav/CS Yeas 9 Nays 0
12	SB 1636 Flores (Compare H 395, CS/CS/CS/H 1129, S 1056)	Infants Born Alive; Providing that an infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as any other child born alive in the course of natural birth; requiring health care practitioners to preserve the life and health of such an infant born alive, if possible; providing for the transport and admittance of an infant born alive to a hospital; providing a presumption that the infant has been surrendered; providing for certain medical and social services for the infant, etc. HP 04/09/2013 Fav/CS JU AP	Fav/CS Yeas 9 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: SB 818

INTRODUCER: Senator Garcia

SUBJECT: Pharmacy Technicians

DATE: March 28, 2013

REVISED: _____

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

I. Summary:

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

This bill substantially amends section 465.014 of the Florida Statutes:

II. Present Situation:

Pharmacists

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

¹ Section 465.003(10), F.S.

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

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

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

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

Pharmacy Technicians

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

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

Pharmacy technicians are prohibited from performing the following acts:⁴

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

² Section 465.003(13), F.S.

³ Rule, 64B16-27.420, F.A.C.

⁴ *Id.*

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

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

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

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

Pharmacist Supervision

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

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

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

⁵ 64B16-26.351 FAC

⁶ Section 456.014(5), F.S.

⁷ Section 456.014, F.S.

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

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

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

III. Effect of Proposed Changes:

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ Rule 64B16-27.410, FAC.

⁹ DOH Bill Analysis for SB 818, dated February 17, 2013, on file with the Senate Health Policy Committee.

¹⁰ National Association of Chain Drug Stores, "Standardized Pharmacy Technician Education and Training," May 2009 Available at: [http://www.nabp.net/events/assets/AnnualMtgTechTrainStd\(Nicholson\).pdf](http://www.nabp.net/events/assets/AnnualMtgTechTrainStd(Nicholson).pdf) (last visited March 28, 2013).

¹¹ Indiana changed their ratio July 2, 2012. See Indiana Code, 25-26-13-18. See also, Idaho Board of Pharmacy Rule 251, Pharmacy Technicians.

¹² See National Association of Boards of Pharmacy: Kansas News: Pharmacy Technician Ratio (2006), Minnesota Board of Pharmacy (2000), Idaho State Board of Pharmacy News (2009), available at: <<http://www.nabp.net/news/kansas-news-pharmacy-technician-ratio>> (last visited March 28, 2013).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

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

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

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

None.

B. Amendments:

None.

By Senator Garcia

38-01075-13

2013818__

1 A bill to be entitled
2 An act relating to pharmacy technicians; amending s.
3 465.014, F.S.; increasing the number of pharmacy
4 technicians which a licensed pharmacist may supervise;
5 deleting a provision to conform to changes made by the
6 act; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (1) of section 465.014, Florida
11 Statutes, is amended to read:

12 465.014 Pharmacy technician.—

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

38-01075-13

2013818__

30 ~~licensed pharmacist may supervise more than one but not more~~
31 ~~than three pharmacy technicians.~~

32 Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

4/9/13

Meeting Date

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

Topic PHARMACY TECHNICIANS

Bill Number 5B 818
(if applicable)

Name JIM POWERS

Amendment Barcode _____
(if applicable)

Job Title PHARMACEUTICAL CONSULTANT

Address 1349 OLD VILLAGE ROAD
Street

Phone 830-422-0079

THELASSER FL. 32812
City State Zip

E-mail THEPOWERS@NETANY.COM

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA INDEPENDENT PHARMACY NETWORK

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Technician Ratio

Bill Number SB 818
(if applicable)

Name MARK PERCIFEZ

Amendment Barcode _____
(if applicable)

Job Title PHARMACIST

Address 7022 BAYON WEST AVE
Street

Phone 727-365-1212

PINELLAS PARK FL 33782
City State Zip

E-mail MARKPERC@TAMPABAY.FL.GOV

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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4-9-13

Meeting Date

Topic Technician Ratio

Bill Number SB 818
(if applicable)

Name Audrey Mills

Amendment Barcode _____
(if applicable)

Job Title Pharmacist

Address 4220 Manatee Ave W

Phone 941-725-0978

Street

Bradenton FL 34205

City

State

Zip

E-mail ATJMUFRph@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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4/9/13

Meeting Date

Topic SB 818 Technician Ration

Bill Number SB 818
(if applicable)

Name Sarah Frame

Amendment Barcode _____
(if applicable)

Job Title Pharmacist

Address 2657 Crystal Cir

Phone 727-692-2753

Street

Dunedin FL 34698

City

State

Zip

E-mail sframe76@hotmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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4/9/13

Meeting Date

Topic PHARMACY TECH BILL

Bill Number SB 818
(if applicable)

Name DAN LUCE

Amendment Barcode _____
(if applicable)

Job Title NATIONAL DIRECTOR, PHARMACY AFFAIRS

Address W330 N 675 HASSLINGER DR

Phone 847 942-6570

Street

NASHOTAN

City

WI

State

53058

Zip

E-mail dan.luce@walmart.com

Speaking: ☒ For ☐ Against ☐ Information

Representing WALGREENS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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4-19-13

Meeting Date

Topic PHARMACIST / TECHNICIAN RATIO

Bill Number SB 818
(if applicable)

Name PRESTON McDONALD

Amendment Barcode _____
(if applicable)

Job Title PHARMACIST

Address 5740 WESTMONT ROAD
Street

Phone 250-982-9087

MILTON FL 32583
City State Zip

E-mail MCPHARM@MCH&I.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing PHARMACISTS | PATIENTS | PHARMACY PROFESSION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

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4/9/13

Meeting Date

Topic 8 Tech Ratio Bill // Pharmacy

Name Dr. Jon Hickman

Job Title Pharmacist

Address 2009 West Tennessee St.
Tallahassee, FL 32312
City State Zip

Bill Number 818
(if applicable)

Amendment Barcode _____
(if applicable)

Phone _____

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Walgreens

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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4-9-13

Meeting Date

Topic Tech Ratio

Bill Number SB 818
(if applicable)

Name Jennifer Cleman

Amendment Barcode _____
(if applicable)

Job Title Pharmacy Manager, Pharmacist

Address 571 Bay Street

Phone 727-534-7343

Palm Harbor FL 34683
City State Zip

E-mail jenclemans@hotmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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4-9-2013

Meeting Date

Topic Pharmacy Tech Ratio

Bill Number 818
(if applicable)

Name Kristin Novicki

Amendment Barcode _____
(if applicable)

Job Title Pharmacist

Address 8534 NW 37th Ct.

Phone 561-213-0017

Street

Cooper City FL. 33024

City

State

Zip

E-mail Keupolla@hotmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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4/9/13

Meeting Date

Topic Pharmacy Technician Ratio

Bill Number 818
(if applicable)

Name Ryan Nowicki

Amendment Barcode _____
(if applicable)

Job Title Pharmacist

Address 8534 NW 37th Ct

Phone 239 281 6405

Street

Cooper City FL 33024

City

State

Zip

E-mail Ryynaw@msn.com

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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Meeting Date _____

Topic Pharmacy Technician Ratio

Bill Number 818
(if applicable)

Name Chris Christopoulos

Amendment Barcode _____
(if applicable)

Job Title Pharmacist

Address 1406 Forde Ave

Phone 727-560-2088

Street
Tarpon Springs, FL 34689
City State Zip

E-mail christoschristopoulos@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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Meeting Date

Topic Pharmacy Tech

Bill Number 818
(if applicable)

Name Melissa Joiner

Amendment Barcode _____
(if applicable)

Job Title Director of Gov't Affairs

Address _____

Phone 850-570-0269

Street

Tallahassee

City

State

Zip

E-mail Melissa@frf.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

APPEARANCE RECORD

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

4/9/2013*Meeting Date*

Topic _____

Bill Number 818
*(if applicable)*Name BRIAN PITTSAmendment Barcode _____
*(if applicable)*Job Title TRUSTEEAddress 1119 NEWTON AVNUE SOUTHPhone 727-897-9291*Street*SAINT PETERSBURG FLORIDA 33705
*City State Zip*E-mail JUSTICE2JESUS@YAHOO.COMSpeaking: ☒ For ☐ Against ☒ InformationRepresenting JUSTICE-2-JESUSAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Pharmacy Technicians

Bill Number SB 818
(if applicable)

Name Joy Ryan

Amendment Barcode _____
(if applicable)

Job Title _____

Address 204 S. Monroe St.
Street

Phone 681-6710

City _____ State _____ Zip _____

E-mail joy@blanklaw.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Prime Therapeutics

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/9/2013

Meeting Date

Topic Pharmacy Technician

Name Bill Mincy

Job Title _____

Address 2648 Bantay Bay Drive

Street

Tallahassee FL 32309

City

State

Zip

Bill Number SB 818
(if applicable)

Amendment Barcode _____
(if applicable)

Phone 850-322-7740

E-mail bill.mincy@ppsonline.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Independent Pharmacy Owners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/9/2013

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

Meeting Date

Topic Rx Test Bill

Bill Number 818
(if applicable)

Name Michael Ayo He

Amendment Barcode _____
(if applicable)

Job Title SR Director Gen. Admin

Address 7528 West Broad St.

Phone 804 3374806

Street Richmond State VA Zip 23294

E-mail Michael.AyoHe@crs.state.va.us

Speaking: ☐ For ☒ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/9/2013

Meeting Date

Topic Pharmacy Technician Ratio

Bill Number SB 818
(if applicable)

Name Bob Parrado

Amendment Barcode _____
(if applicable)

Job Title PhARMACIST

Address 7922-Flowerfield Dr

Phone 813-361-0491

Street

TAMPA

City

FL

State

33615

Zip

E-mail bobparrado1@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing PHARMACISTS IN FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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4-9-13

Meeting Date

Topic Pharmacist - To Pharmacy Tech ratio

Bill Number SB 818
(if applicable)

Name Greg Toole

Amendment Barcode _____
(if applicable)

Job Title Pharmacist - Pharmacy Owner

Address 757 N. Edgewood Ave

Phone 904-388-0514

Street

Jacksonville FL 32254

E-mail gtoole@bellsouth.net

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Representing O'Steen's Pharmacy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/9/13
Meeting Date

Topic Pharmacy Tech Ratio

Bill Number SB 818
(if applicable)

Name George Malone

Amendment Barcode _____
(if applicable)

Job Title Pharmacist

Address 16017 Bella Woods Dr
Tampa FL 33647
City State Zip

Phone 813 494 0438

E-mail gdenolam@mac.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Self / FSH P

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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4/9/13

Meeting Date

Topic Pharmacy Technical Supervision

Bill Number SB 818
(if applicable)

Name Larry Gonzalez

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 223 S. Gadsden ST
Street

Phone 850-570-6307

Tallahassee, FL 32301
City State Zip

E-mail lgonzalez@earthlink.net

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Society of Health System Pharmacists

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic SB 818 - Pharmacy Tech Ratio Bill Number SB 818
Name Bernadette Brown Amendment Barcode _____ (if applicable)
Job Title Director of Pharmacy
Address 5370 Pembroke Pl Phone 445-8982
Tallahassee FL 32309 E-mail bernadette.brown
City State Zip @fmh.org

Speaking: ☐ For ☒ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

Meeting Date

Topic ~~DESD~~ Technician Ratio

Bill Number SB 8/8
(if applicable)

Name Pamela White

Amendment Barcode _____
(if applicable)

Job Title Chief operating officer

Address _____
Street

Phone _____

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)



April 8, 2013

Senate Health Policy Committee

404 South Monroe Street

Tallahassee, Florida

Senator Aaron Bean, Chair

Senator Eleanor Sobel, Vice Chair

Senator Oscar Braynon

Senator Anitere Flores

Senator Bill Galvano

Senator Rene Garcia

Senator Denise Grimsley

Senator Arthenia L. Joyner

Senator Jeff Brandes

Re: SB818 Pharmacy Technician Ratio

Dear Members of the Senate Health Policy Committee

Placed on your committee agenda is Senate Bill 818 which revises the number of technicians that a pharmacist is permitted to supervise. This bill, if signed into law would increase the number pharmacy technicians that pharmacists may supervise to 6. A pharmacist could supervise even more under guidelines to be written by the Florida Board of Pharmacy. Currently a pharmacist may supervise up to 3 technicians. Pharmacists may also supervise one student pharmacist (intern) and as many pharmacy technician students that can fit in the pharmacy. Please be aware that SB818 is **opposed** by the **Florida Pharmacy Association (FPA)**. It is likewise **opposed** by the **Florida Society of Health Systems Pharmacists (FSHP)**. Our two organizations represent "front-line" pharmacists and technicians in the State who have overwhelmingly raised patient safety concerns about the proposed bill. These are the pharmacists that actually dispense your prescriptions and not the special interest groups solely interested in the bottom line. We have been made aware that the **Board of Pharmacy** in a recent meeting in St. Petersburg, Florida revised its previous position on the issue of technician expansion and have **withdrawn their support** for this bill.

The four leading states with the highest number of community pharmacy prescriptions filled in 2011 were Florida, California, New York, and Texas. It is presumed that the number of prescriptions dispensed in hospitals would be equally as active. California has a 1:1 technician

to pharmacist ratio, New York and Texas have a 2:1 ratio and Florida is currently the highest at 3:1. The table below compares the ratios and prescription volumes for each of the four leading states.

State	# of Community Pharmacy Rx's Filled	Ratio
California	393,885,063	1:1 or 2:1
New York	253,796,344	2:1
Florida	235,306,094	3:1
Texas	234,485,214	2:1

SB818 would increase the technician to pharmacist ratio, which would expand the number of individuals that a pharmacist will likely have to supervise. This expansion may cause a pharmacy's prescription volume to increase but will also increase the number of prescriptions that the same one pharmacist must ensure are accurate and safe.

SB818 removes a significant amount of authority for the Board of Pharmacy to regulate pharmacies with a history of not properly supervising the work of its pharmacy technicians. The bill would allow up to 6 technicians without Board of Pharmacy approval.

SB818 presumes that all pharmacies have in place a proper system of accountability and oversight of its staff. Some pharmacies have been disciplined for not having a licensed pharmacist on duty. Under this bill the Board of Pharmacy will not have any authority to proactively restrict the number of technicians in pharmacies with a history of sanctions related to poor supervision. Pharmacies involved in high risk specialty services, such as sterile compounding, would be free to have as many technicians as the law would allow. The Board of Pharmacy will only be able to address these issues after problems have surfaced and patients have been harmed.

Many pharmacies serve as training sites for student pharmacists (interns) seeking to build their professional skills under the guidance of a pharmacist preceptor. These pharmacists who have volunteered their time to serve as mentors for students in training programs may find it difficult if not impossible to properly monitor six or more technicians, a number of technician students in training and at the same time ensure the proper development of student pharmacist practice skills and competencies.

Current Florida laws allow pharmacists to supervise up to 3 technicians, one student pharmacist and an unlimited number of pharmacy technician students. The Board is currently revising its rules to allow pharmacists to supervise more than 1 student pharmacist to help provide additional training sites that are needed for our state's 6 pharmacy schools.

It has been suggested that the proposed bill is a “permissive” bill simply *allowing* a pharmacist to determine how many technicians to supervise. It has also been suggested that if a pharmacist is unable to supervise 6 technicians they don’t have to or are free to seek other employment. We hope that the legislature clearly understands that our state’s pharmacists do not and can never advocate for a pharmacist to abandon patients that they are caring for. It is important to understand that while some pharmacist managers have authority to determine what resources and staffing is needed for the safe operation of a pharmacy, many are not empowered to make or implement any of those management or supervisory decisions. They simply must find a way to adjust to what they have been given to work with regardless of their concerns. **The reality is that the pharmacist will be “mandated” to supervise whatever number of technicians the institution or corporation decides upon.** The Health Policy Committee must be made aware that everything that a pharmacy technician does in today’s fast paced pharmacy environment rests squarely on the shoulders of the pharmacist on duty and no one else. These pharmacists must make many hundreds of health related decisions and manage complex patient prescription drug therapies that in many cases determine whether a patient has good or bad health outcomes. Over the years our industry has implemented considerable quality improvement programs to minimize errors and it is producing positive results however this bill could reverse these gains.

We have heard in debate on this issue that if a pharmacist is unable to stand the heat in the kitchen that they should simply get out. Florida pharmacists say if the kitchen is too hot then this is an unsafe environment and the kitchen may catch fire.

In surveys we have received overwhelming feedback from pharmacy stakeholders with concerns on the direction that this bill is taking. The vast majority feel that there would be patient safety concerns and unavoidable patient harm if the pharmacist to technician ratio were to be increased from 1:3 to 1:6. These are the health care providers who are on the front line of patient care and know through actual experience what their limits are. Let it be very clear that the Florida Pharmacy Association (FPA), the Florida Society of Health-System Pharmacists (FSHP), and Florida Independent Pharmacy Network (FIPN) **oppose** SB818 and its companion HB671.

Thank you for allowing us to provide comment and to share with you our concerns,

With kindest regards,

Goar Alvarez, Pharm.D.
President FPA

Constance Hogrefe, Pharm.D.
President FSHP

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/SB 1368

INTRODUCER: Health Policy Committee and Senator Ring

SUBJECT: Clinical, Counseling, and Psychotherapy Services

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	Fav/CS
2.			CJ	
3.			CF	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1368 updates and revises ch. 491, F.S., which regulates clinical social workers, marriage and family therapists, and mental health counselors. The bill:

- Requires registered interns to remain under supervision.
- Limits intern registration to 5 years, without renewal. Licenses for interns registered before July 1, 2016, expire 60 months after the date of issuance and cannot be renewed.
- Prohibits a person who has held a provisional license from applying for an intern registration in the same profession, and conversely, prohibits a person who has held an intern registration from applying for a provisional license in the same profession. It also ensures that interns could not continually re-register without completing all requirements.
- Revises the requirements for licensure as a clinical social worker, marriage and family therapist, or mental health counselor.
- Provides for future repeal of dual licensure as a marriage and family therapist and a clinical social worker, mental health counselor, advanced registered nurse practitioner, or psychologist.

- Eases requirements for an applicant seeking a license or certification by endorsement by eliminating the requirement that the applicant have actively engaged in the profession during 3 of the last 5 years immediately preceding application.
- Corrects disciplinary jurisdiction of the Department of Health (DOH) and the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (Board) over certain professionals.
- Removes the qualifier that sexual misconduct with a former client is a felony of the third degree *when the professional relationship was terminated primarily for the purpose of engaging in sexual contact*.
- Prohibits a person from using the title “mental health counselor coach” without a valid mental health counselor license.
- Requires the use of applicable professional titles by mental health professionals regulated under the chapter on social media and other specified advertising materials.
- Creates a presumption of good faith for the actions of a court-appointed mental health professional who develops a parenting plan recommendation; prohibits anonymous complaints; provides prerequisites for a parent to bring a suit against a mental health professional; and provides for fees and court costs incurred in legal matters.

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

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

II. Present Situation:

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

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

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

¹ The Department has jurisdiction with respect to the regulation of certified master social workers. See s. 491.015, F.S.

² See s. 491.003(7), F.S.

The practice of marriage and family therapy is the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems, including the context of marital formation and dissolution, and is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and techniques. The practice of marriage and family therapy includes methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. The practice of marriage and family therapy includes, but is not limited to, marriage and family therapy, psychotherapy, including behavioral family therapy, hypnotherapy, and sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.³

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

Internships

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

Currently, an intern may renew his or her license every biennium, with no time limit, by payment of a renewal fee. No continuing education is required for interns. There are 2,708 clinical social work interns, 726 marriage and family therapy interns, and 3,394 mental health counseling

³ See s. 491.003(8), F.S.

⁴ See s. 491.003(9), F.S.

⁵ S. 491.0045, F.S.

interns. Of this total, 697 interns have been renewing their registered intern license for over 10 years, and 151 of them have been renewing since the inception of this law in 1998.⁶

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

Provisional License

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

Licensure Requirements

Clinical Social Work:

- An applicant seeking a Clinical Social Work license must submit the application, pay the appropriate fee, and have received a doctoral degree in social work from an accredited graduate school of social work .
- The applicant's graduate program must have emphasized direct clinical patient or client health care services and include specific coursework related to the field. Each applicant must have had no less than 2 years of specific clinical experience under a qualified supervisor.
- The applicant must also pass a theory and practice examination provided by the DOH and demonstrate knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Marriage and Family Therapy:

- An applicant seeking a Marriage and Family Therapy license must submit the application, pay the appropriate fee, and have at least a master's degree with major emphasis in marriage and family therapy, or a closely related field, and have completed all of the specific semester hour requirements.
- The required master's degree must be from an accredited institution of higher education. The applicant must have had no less than 2 years of specific clinical experience under a qualified supervisor.
- The applicant must pass a theory and practice examination provided by the DOH and demonstrate knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

Mental Health Counseling:

- An applicant seeking a Mental Health Counseling license must submit the application, pay the appropriate fee, and have at least a master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related

⁶ DOH Bill Analysis for SB 1368, dated March 4, 2013, on file with the Senate Health Policy Committee.

⁷ *Id.*

⁸ Section 491.0046, F.S.

Educational Programs. The education and training must be received in an accredited institution of higher education recognized by the Commission on Recognition of Postsecondary Accreditation.

- The applicant must have had no less than 2 years of specific clinical experience in mental health counseling, post masters, and under a specific qualified supervisor.
- The applicant must pass a theory and practice examination provided by the DOH and demonstrate knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling⁹

Dual Licensure

The Board is authorized¹⁰ to issue a dual license as a marriage and family therapist if the the applicant:

- Holds a valid, active license as a psychologist, a clinical social worker, mental health counselor, or is a certified advanced registered nurse practitioner.
- Has held a valid, active license for at least 3 years.
- Has passed the examination provided by the DOH for marriage and family therapy.

Promotional Materials

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

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

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

⁹ Section 491.005, F.S.

¹⁰ Section 491.0057, F.S.

¹¹ Section 491.0149, F.S.

Parenting Plan Recommendation

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

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

III. Effect of Proposed Changes:

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

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

Section 2 amends s. 491.0045, F.S., to require registered interns to remain under supervision and limit intern registration to 5 years. Licenses for interns registered before July 1, 2016, expire 60 months after the date of issuance and cannot be renewed. A person who has held a provisional

license may not apply for an intern registration in the same profession. It also ensures that interns may not continually re-register without completing all requirements.

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

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

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

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

The bill amends subsection (4) relating to licensure of mental health counselors to update the licensure examinations and course subjects. Coursework in legal, ethical, and professional standards issues in the practice of mental health counseling replaces counseling in community settings. The bill reduces the hours of university-sponsored supervised clinical practicum, internship, or field experience from 1,000 to 700 hours which must include at least 280 hours of direct client services. This will make the requirement for all graduates the same regardless of whether they have graduated from a Council for Accreditation of Counseling and Related Educational Programs (CACREP) or non-CACREP approved program.¹²

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

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

Section 6 amends s. 491.006, F.S., to ease requirements for an applicant seeking a license or certification by endorsement by eliminating the requirement that the applicant have actively

¹² *Supra* note 7.

¹³ *Id.*

practiced the profession for which licensure is sought in another state for 3 of the last 5 years immediately preceding licensure.

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

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

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

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

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

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

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Although CS/SB 1368 provides a period of time for interns and applicants to complete full licensure requirements, some interns and applicants may be adversely affected by the changes in the bill.

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

C. Government Sector Impact:

The Board will experience a decrease in renewal funds from the 2,000 interns who have been licensed over 5 years and will be required to relinquish their intern license. However, these interns may complete their requirements and become fully licensed, therefore the fiscal impact is expected to be minimal. Any additional workload from the bill can be handled within existing resources.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

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

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Health Policy on April 9, 2013:**

The CS makes the following changes:

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

¹⁴ *Id.*

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

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2013	.	
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The Committee on Health Policy (Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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

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

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



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~~(c) Three members for terms of 4 years each.~~

~~(3)(4)~~ As the terms of the ~~initial~~ members expire, the Governor shall appoint successors for terms of 4 years; and those members shall serve until their successors are appointed.

~~(4)(5)~~ The board shall adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ to implement and enforce the provisions of this chapter.

~~(5)(6)~~ All applicable provisions of chapter 456 relating to activities of regulatory boards shall apply to the board.

~~(6)(7)~~ The board shall maintain its official headquarters in the City of Tallahassee.

Section 2. Section 491.0045, Florida Statutes, is amended to read:

491.0045 Intern registration; requirements.—

(1) ~~Effective January 1, 1998,~~ An individual who has not satisfied ~~intends to practice in Florida to satisfy the~~ postgraduate or post-master's level experience requirements, as specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register as an intern in the profession for which he or she is seeking licensure before ~~prior to~~ commencing the post-master's experience requirement. ~~or~~ An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, must register as an intern in the profession for which he or she is seeking licensure before ~~prior to~~ commencing the practicum, internship, or field experience.

(2) The department shall register as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern each applicant who the board certifies



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has:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed \$200, as set by board rule;

(b)1. Completed the education requirements as specified in s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which he or she is applying for licensure, if needed; and

2. Submitted an acceptable supervision plan, as determined by the board, for meeting the practicum, internship, or field work required for licensure that was not satisfied in his or her graduate program.

(c) Identified a qualified supervisor.

(3) An individual registered under this section must remain under supervision while practicing under registered intern status until he or she is in receipt of a license or a letter from the department stating that he or she is licensed to practice the profession for which he or she applied.

~~(4) An individual who has applied for intern registration on or before December 31, 2001, and has satisfied the education requirements of s. 491.005 that are in effect through December 31, 2000, will have met the educational requirements for licensure for the profession for which he or she has applied.~~

~~(4)(5) Individuals who have commenced the experience requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c) but failed to register as required by subsection (1) shall register with the department before January 1, 2000. Individuals who fail to comply with this section ~~subsection~~ shall not be granted a license under this chapter, and any time spent by the individual completing the experience requirement as specified in~~



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s. 491.005(1)(c), (3)(c), or (4)(c) before ~~prior to~~ registering as an intern shall not count toward completion of the ~~such~~ requirement.

(5) Intern registration shall be valid for 5 years. Any subsequent intern registration must result from applying for and meeting the requirements adopted by the board by rule.

(6) A registered intern license issued before July 1, 2013, shall expire 60 months after the date it was issued and may not be renewed or reissued. Any subsequent intern registration shall be issued at the discretion of the board.

(7) A person who has held a provisional license issued by the board may not apply for an intern registration in the same profession.

Section 3. Paragraph (c) of subsection (2) of section 491.0046, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

491.0046 Provisional license; requirements.—

(2) The department shall issue a provisional clinical social worker license, provisional marriage and family therapist license, or provisional mental health counselor license to each applicant who the board certifies has:

(c) Has met the following minimum coursework requirements:

1. For clinical social work, a minimum of 15 semester hours or 22 quarter hours of the coursework required by s.

491.005(1)(b)2.b.

2. For marriage and family therapy, 10 of the courses required by s. 491.005(3)(b)1.a. ~~491.005(3)(b)1.a.-e.~~, as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in



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the area of marriage and family systems, theories, or techniques.

3. For mental health counseling, a minimum of seven of the courses required under s. 491.005(4)(b)1.a. ~~491.005(b)1.a.-e.~~

(5) A person who has held an intern registration issued by the board may not apply for a provisional license in the same profession.

Section 4. Section 491.005, Florida Statutes, is amended to read:

491.005 Licensure by examination.—

(1) CLINICAL SOCIAL WORK.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual per applicant cost to the department for purchase of the examination from the American Association of State Social Worker's Boards or a similar national organization, the department shall issue a license as a clinical social worker to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid the appropriate fee.

(b)1. Has received a doctoral degree in social work from a graduate school of social work which at the time the applicant graduated was accredited by an accrediting agency recognized by the United States Department of Education or has received a master's degree in social work from a graduate school of social work which at the time the applicant graduated:

a. Was accredited by the Council on Social Work Education;

b. Was accredited by the Canadian Association of Schools of Social Work; or

c. Has been determined to have been a program equivalent to



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programs approved by the Council on Social Work Education by the Foreign Equivalency Determination Service of the Council on Social Work Education. An applicant who graduated from a program at a university or college outside of the United States or Canada must present documentation of the equivalency determination from the council in order to qualify.

2. The applicant's graduate program must have emphasized direct clinical patient or client health care services, including, but not limited to, coursework in clinical social work, psychiatric social work, medical social work, social casework, psychotherapy, or group therapy. The applicant's graduate program must have included all of the following coursework:

a. A supervised field placement which was part of the applicant's advanced concentration in direct practice, during which the applicant provided clinical services directly to clients.

b. Completion of 24 semester hours or 32 quarter hours in theory of human behavior and practice methods as courses in clinically oriented services, including a minimum of one course in psychopathology, and no more than one course in research, taken in a school of social work accredited or approved pursuant to subparagraph 1.

3. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

(c) Has had at least ~~not less than~~ 2 years of clinical



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social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant to s. 491.0045 before ~~prior to~~ commencing practice. If the applicant's graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b)2., the supervised experience requirement must take place after the applicant has completed a minimum of 15 semester hours or 22 quarter hours of the coursework required. A doctoral internship may be applied toward the clinical social work experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. A registered intern may not engage in his or her own independent private practice. ~~The experience requirement may be met by work performed on or off the premises of the supervising clinical social worker or the equivalent, provided the off-premises work is not the independent private practice rendering of clinical social work that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.~~

(d) Has passed a theory and practice examination provided by the department for this purpose.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of



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clinical social work, marriage and family therapy, and mental health counseling.

(2) CLINICAL SOCIAL WORK.—

(a) Notwithstanding the provisions of paragraph (1)(b), coursework which was taken at a baccalaureate level shall not be considered toward completion of education requirements for licensure unless an official of the graduate program certifies in writing on the graduate school's stationery that a specific course, which students enrolled in the same graduate program were ordinarily required to complete at the graduate level, was waived or exempted based on completion of a similar course at the baccalaureate level. If this condition is met, the board shall apply the baccalaureate course named toward the education requirements.

(b) An applicant from a master's or doctoral program in social work which did not emphasize direct patient or client services may complete the clinical curriculum content requirement by returning to a graduate program accredited by the Council on Social Work Education or the Canadian Association of Schools of Social Work, or to a clinical social work graduate program with comparable standards, in order to complete the education requirements for examination. However, a maximum of 6 semester or 9 quarter hours of the clinical curriculum content requirement may be completed by credit awarded for independent study coursework as defined by board rule.

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual cost to the department for the purchase of the examination from the Association of Marital and



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Family Therapy Regulatory Board, or its successor ~~similar national organization~~, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid the appropriate fee.

(b)1. Has a minimum of a master's degree from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, from a mental health counseling program with a marriage and family track from a university in this state accredited by the Council for Accreditation of Counseling and Related Educational Programs, from a program accepted by the board as meeting these coursework requirements ~~with major emphasis in marriage and family therapy~~, or a program in a closely related field as determined by the board, and has completed all of the following requirements:

a. Sixty ~~Thirty-six~~ semester hours or 80 ~~48~~ quarter hours ~~of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework~~ course credits in each of the following ~~nine~~ areas: dynamics of marriage and family systems; marriage therapy and counseling theory and techniques; family therapy and counseling theory and techniques; individual human development theories throughout the life cycle; personality theory or general counseling theory and techniques; psychopathology; human sexuality theory and counseling techniques; psychosocial theory; ~~and~~ substance abuse theory and counseling techniques; legal, ethical, and professional standards issues in the practice of marriage and family therapy; individual evaluation, assessment, and testing;



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and behavioral research which focuses on the interpretation and application of research data as it applies to clinical practice.

~~Courses in research, evaluation, appraisal, assessment, or testing theories and procedures; thesis or dissertation work; or practicums, internships, or fieldwork may not be applied toward this requirement.~~

b. A minimum of one graduate-level course of 3 semester hours or 4 quarter hours in legal, ethical, and professional standards issues in the practice of marriage and family therapy or a course determined by the board to be equivalent.

c. A minimum of one graduate-level course of 3 semester hours or 4 quarter hours in diagnosis, appraisal, assessment, and testing for individual or interpersonal disorder or dysfunction; and a minimum of one 3-semester-hour or 4-quarter-hour graduate-level course in behavioral research which focuses on the interpretation and application of research data as it applies to clinical practice. Credit for thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

d. A minimum of one supervised clinical practicum, internship, or field experience in a marriage and family counseling setting, during which the student provided 400 ~~180~~ direct client contact hours of marriage and family therapy services under the supervision of an individual who met the requirements for supervision under paragraph (c). This requirement may be met by a supervised practice experience which took place outside the academic arena, but which is certified as equivalent to a graduate-level practicum or internship program which required a minimum of 400 ~~180~~ direct client contact hours



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of marriage and family therapy services currently offered within an academic program of a college or university accredited by an accrediting agency approved by the United States Department of Education, or an institution which is publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada or a training institution accredited by the Commission on Accreditation for Marriage and Family Therapy Education ~~recognized by the United States Department of Education~~. Certification shall be required from an official of such college, university, or training institution.

2. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

The required master's degree must have been received in an institution of higher education which at the time the applicant graduated was: fully accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation; publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada; or an institution of higher education located outside the United States and Canada, which at the time the applicant was enrolled and at the time the applicant graduated maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation. Such foreign



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education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The burden of establishing that the requirements of this provision have been met shall be upon the applicant, and the board shall require documentation, such as, but not limited to, an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. An applicant with a master's degree from a program which did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education or the Council for Accreditation of Counseling and Related Educational Programs ~~recognized by the United States Department of Education.~~

(c) Has had at least ~~not less than~~ 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before ~~prior to~~ commencing practice. If a graduate has a master's degree with a major emphasis in marriage and family therapy or a closely related



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field that did not include all the coursework required under sub-subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-c.~~, credit for the post-master's level clinical experience shall not commence until the applicant has completed coursework in at least a minimum of 10 of the areas courses required under sub-subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-c.~~, as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 3 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, to include the following categories of cases: unmarried dyads, married couples, separating and divorcing couples, and family groups including children. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. A registered intern may not engage in his or her own independent private practice ~~The clinical experience requirement may be met by work performed on or off the premises of the supervising marriage and family therapist or the equivalent, provided the off-premises work is not the independent private practice rendering of marriage and family therapy services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.~~

(d) Has passed a theory and practice examination designated provided by the board ~~department~~ for this purpose.

(e) Has demonstrated, ~~in a manner designated by rule of the~~



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~~board,~~ knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling as determined by the board.

(f) For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure shall not exceed those stated in this subsection. This paragraph expires July 1, 2020.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual per applicant cost to the department for purchase of the National Clinical Mental Health Counselor Examination ~~from the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors or a similar national organization,~~ an examination managed by the National Board of Certified Counselors or its successor, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid the appropriate fee.

(b)1. Has a minimum of an earned master's degree from a mental health counseling program accredited by the Council for ~~the~~ Accreditation of Counseling and Related Educational Programs that consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse. If the master's degree is earned from a program related to the practice of mental health counseling that is not accredited by the Council for ~~the~~ Accreditation of Counseling and Related Educational



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Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; ~~counseling in community settings; and substance abuse;~~ and legal, ethical, and professional standards issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

b. ~~A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in legal, ethical, and professional standards issues in the practice of mental health counseling, which includes goals, objectives, and practices of professional counseling organizations, codes of ethics, legal considerations, standards of preparation, certifications and licensing, and the role identity and professional obligations of mental health counselors. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.~~

e. The equivalent, as determined by the board, of at least 700 ~~1,000~~ hours of university-sponsored supervised clinical practicum, internship, or field experience that includes at



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least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education which at the time the applicant graduated was: fully accredited by a regional accrediting body recognized by the Council for Higher Education or its successor ~~Commission on Recognition of Postsecondary Accreditation~~; publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada; or an institution of higher education located outside the United States and Canada, which at the time the applicant was enrolled and at the time the applicant graduated maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Council for Higher Education or its successor ~~Commission on Recognition of Postsecondary Accreditation~~. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train



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students to practice as mental health counselors. The burden of establishing that the requirements of this provision have been met shall be upon the applicant, and the board shall require documentation, such as, but not limited to, an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. Effective July 1, 2020, an applicant must have a master's degree accredited by the Council for Accreditation of Counseling and Related Educational Programs consisting of at least 60 semester hours or 80 quarter hours to apply for licensure under this subsection. The applicant's graduate program must have emphasized the common core curricular experience to include at least 3 semester hours or 4 quarter hours of coursework specifically addressing the diagnostic process, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(c) Has had at least ~~not less than~~ 2 years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before ~~prior~~ ~~to~~ commencing practice. If a graduate has a master's degree in with a major related to the practice of mental health counseling or a closely related field that did not include all the coursework required under sub-subparagraph (b)1.a. ~~sub-~~



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~~subparagraphs (b)1.a.-b., credit for the post-master's level clinical experience shall not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-b., as determined by the board, one of which must be a course in psychopathology or abnormal psychology.~~ A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. No registered intern may engage in his or her own independent practice ~~The clinical experience requirement may be met by work performed on or off the premises of the supervising mental health counselor or the equivalent, provided the off-premises work is not the independent private practice rendering of services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.~~~~

(d) Has passed a theory and practice examination designated ~~provided by the department for this purpose.~~

(e) Has demonstrated, ~~in a manner designated by rule of the board,~~ knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling as determined by the board.

~~(5) INTERNSHIP. An individual who is registered as an intern and has satisfied all of the educational requirements for the profession for which the applicant seeks licensure shall be certified as having met the educational requirements for licensure under this section.~~

(5)(6) RULES.-The board may adopt rules necessary to



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implement any education or experience requirement of this section for licensure as a clinical social worker, marriage and family therapist, or mental health counselor.

Section 5. Section 491.0057, Florida Statutes, is amended to read:

491.0057 Dual licensure as a marriage and family therapist.—

(1) The department shall license as a marriage and family therapist a ~~any~~ person who demonstrates to the board that he or she:

(a) ~~(1)~~ Holds a valid, active license as a psychologist under chapter 490 or as a clinical social worker or mental health counselor under this chapter, or is certified under s. 464.012 as an advanced registered nurse practitioner who has been determined by the Board of Nursing as a specialist in psychiatric mental health.

(b) ~~(2)~~ Has held a valid, active license for at least 3 years.

(c) ~~(3)~~ Has passed the examination provided by the department for marriage and family therapy.

(2) This section is repealed July 1, 2020.

Section 6. Subsection (1) of section 491.006, Florida Statutes, is amended to read:

491.006 Licensure or certification by endorsement.—

(1) The department shall license or grant a certificate to a person in a profession regulated by this chapter who, upon applying to the department and remitting the appropriate fee, demonstrates to the board that he or she:

(a) Has demonstrated, ~~in a manner designated by rule of the~~



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~~board,~~ knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling as defined by rule of the board.

(b)1. Holds an active valid license to practice in the profession for which the applicant seeks licensure ~~and has actively practiced the profession for which licensure is applied in another state for 3 of the last 5 years immediately preceding licensure.~~

2. Meets the education requirements of this chapter for the profession for which licensure is applied or has demonstrated proof of substantially equivalent education as defined by rule of the board.

3. Has passed the licensure examination designated by the board or has passed a substantially equivalent licensing examination in another state for the profession which the applicant seeks licensure ~~a substantially equivalent licensing examination in another state or has passed the licensure examination in this state in the profession for which the applicant seeks licensure.~~

4. Holds a license in good standing, is not under investigation for an act that would constitute a violation of this chapter, and has not been found to have committed any act that would constitute a violation of this chapter. ~~The fees paid by any applicant for certification as a master social worker under this section are nonrefundable.~~

Section 7. Subsections (2) and (3) of section 491.007, Florida Statutes, are amended to read:

491.007 Renewal of license, registration, or certificate.—

(2) Each applicant for renewal shall present satisfactory



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evidence that, in the period since the license or certificate was issued, the applicant has completed continuing education requirements set by rule of the board or department. The board may not require ~~Not~~ more than 25 classroom hours of continuing education per year ~~shall be required. A certified master social worker is exempt from the continuing education requirements for the first renewal of the certificate.~~

~~(3) The board or department shall prescribe by rule a method for the biennial renewal of an intern registration at a fee set by rule, not to exceed \$100.~~

Section 8. Paragraph (c) of subsection (1) and subsection (2) of section 491.009, Florida Statutes, are amended to read:
491.009 Discipline.—

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

(c) Being convicted or found guilty of, or entering ~~regardless of adjudication, or having entered~~ a plea of nolo contendere to, a crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession, regardless of adjudication. ~~However, in the case of a plea of nolo contendere, the board shall allow the person who is the subject of the disciplinary proceeding to present evidence in mitigation relevant to the underlying charges and circumstances surrounding the plea.~~

(2) The board ~~department~~, or, in the case of certified master social workers ~~psychologists~~, the department ~~board~~, may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of



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subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

Section 9. Subsection (1) of section 491.0112, Florida Statutes, is amended to read:

491.0112 Sexual misconduct by a psychotherapist; penalties.—

(1) Any psychotherapist who commits sexual misconduct with a client, or former client ~~when the professional relationship was terminated primarily for the purpose of engaging in sexual contact,~~ commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083; however, a second or subsequent offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Paragraphs (c) and (n) of subsection (1) of section 491.012, Florida Statutes, are amended to read:

491.012 Violations; penalty; injunction.—

(1) It is unlawful and a violation of this chapter for any person to:

(c) Use the following titles or any combination thereof, unless she or he holds a valid, active license as a mental health counselor issued pursuant to this chapter:

1. "Licensed mental health counselor."
2. "Mental health counselor."
3. "Mental health therapist."
4. "Mental health consultant."
5. "Mental health counselor coach."

(n) ~~Effective October 1, 2000,~~ Practice juvenile sexual offender therapy in this state, as the practice is defined in s. 491.0144, for compensation, unless the person holds an active



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license issued under this chapter and meets the requirements to practice juvenile sexual offender therapy. An unlicensed person may be employed by a program operated by or under contract with the Department of Juvenile Justice or the Department of Children and Families ~~Family Services~~ if the program employs a professional who is licensed under chapter 458, chapter 459, s. 490.0145, or s. 491.0144 who manages or supervises the treatment services.

Section 11. Section 491.0145, Florida Statutes, is amended to read:

491.0145 Certified master social worker.—

(1) The department may certify an applicant for a designation as a certified master social worker upon the following conditions:

(a) ~~(1)~~ The applicant completes an application to be provided by the department and pays a nonrefundable fee not to exceed \$250 to be established by rule of the department. The completed application must be received by the department at least 60 days before the date of the examination in order for the applicant to qualify to take the scheduled exam.

(b) ~~(2)~~ The applicant submits proof satisfactory to the department that the applicant has received a doctoral degree in social work, or a master's degree with a major emphasis or specialty in clinical practice or administration, including, but not limited to, agency administration and supervision, program planning and evaluation, staff development, research, community organization, community services, social planning, and human service advocacy. Doctoral degrees must have been received from a graduate school of social work which at the time the applicant



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was enrolled and graduated was accredited by an accrediting agency approved by the United States Department of Education. Master's degrees must have been received from a graduate school of social work which at the time the applicant was enrolled and graduated was accredited by the Council on Social Work Education or the Canadian Association of Schools of Social Work or by one that meets comparable standards.

(c) ~~(3)~~ The applicant has had at least 3 years' experience, as defined by rule, including, but not limited to, clinical services or administrative activities as defined in paragraph (b) ~~subsection (2)~~, 2 years of which must be at the post-master's level under the supervision of a person who meets the education and experience requirements for certification as a certified master social worker, as defined by rule, or licensure as a clinical social worker under this chapter. A doctoral internship may be applied toward the supervision requirement.

(d) ~~(4)~~ Any person who holds a master's degree in social work from an institution ~~institutions~~ outside the United States may apply to the department for certification if the academic training in social work has been evaluated as equivalent to a degree from a school accredited by the Council on Social Work Education. Any such person shall submit a copy of the academic training from the Foreign Equivalency Determination Service of the Council on Social Work Education.

(e) ~~(5)~~ The applicant has passed an examination required by the department for this purpose. The nonrefundable fee for such examination may not exceed \$250 as set by department rule.

(2) A certified master social worker is exempt from the continuing education requirements for the first renewal of the



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certificate.

~~(3)(6) Nothing in This chapter does not shall be construed~~
to authorize a certified master social worker to provide
clinical social work services.

Section 12. Section 491.0149, Florida Statutes, is amended
to read:

491.0149 Display of license; use of professional title ~~on~~
~~promotional materials.~~

(1)(a) A person licensed under this chapter as a clinical
social worker, marriage and family therapist, or mental health
counselor, or certified as a master social worker shall
conspicuously display the valid license issued by the department
or a true copy thereof at each location at which the licensee
practices his or her profession.

(b)1. A licensed clinical social worker shall include the
words "licensed clinical social worker" or the letters "LCSW" on
all promotional materials, including cards, brochures,
stationery, advertisements, ~~and~~ signs, and social media, naming
the licensee.

2. A licensed marriage and family therapist shall include
the words "licensed marriage and family therapist" or the
letters "LMFT" on all promotional materials, including cards,
brochures, stationery, advertisements, ~~and~~ signs, and social
media, naming the licensee.

3. A licensed mental health counselor shall include the
words "licensed mental health counselor" or the letters "LMHC"
on all promotional materials, including cards, brochures,
stationery, advertisements, ~~and~~ signs, and social media, naming
the licensee.



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(2) (a) A person registered under this chapter as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern shall conspicuously display the valid registration issued by the department or a true copy thereof at each location at which the registered intern is completing the experience requirements.

(b) A registered clinical social worker intern shall include the words "registered clinical social worker intern," a registered marriage and family therapist intern shall include the words "registered marriage and family therapist intern," and a registered mental health counselor intern shall include the words "registered mental health counselor intern" on all records, reports, and promotional materials, including cards, brochures, stationery, advertisements, ~~and~~ signs, and social media, naming the registered intern.

(3) (a) A person provisionally licensed under this chapter as a provisional clinical social worker licensee, provisional marriage and family therapist licensee, or provisional mental health counselor licensee shall conspicuously display the valid provisional license issued by the department or a true copy thereof at each location at which the provisional licensee is providing services.

(b) A provisional clinical social worker licensee shall include the words "provisional clinical social worker licensee," a provisional marriage and family therapist licensee shall include the words "provisional marriage and family therapist licensee," and a provisional mental health counselor licensee shall include the words "provisional mental health counselor licensee" on all promotional materials, including cards,



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brochures, stationery, advertisements, ~~and~~ signs, and social media, naming the provisional licensee.

Section 13. Section 491.017, Florida Statutes, is created to read:

491.017 Parenting plan recommendation; presumption of good faith; prerequisite to parent's filing suit; award of fees, costs, reimbursement.-

(1) A mental health professional licensed under this chapter who has been appointed by the court to develop a parenting plan recommendation in a dissolution of marriage, a case of domestic violence, or a paternity matter involving the relationship of a child and a parent, including time-sharing of children, is presumed to be acting in good faith if the mental health professional's recommendation has been reached under standards that a reasonable mental health professional would use to develop a parenting plan recommendation.

(2) An administrative complaint against a court-appointed mental health professional which relates to a parenting plan recommendation developed by the mental health professional may not be filed anonymously. The individual who files an administrative complaint must include in the complaint his or her name, address, and telephone number.

(3) A parent who desires to file a legal action against a court-appointed mental health professional who has acted in good faith in developing a parenting plan recommendation must petition the judge who presided over the dissolution of marriage, case of domestic violence, or paternity matter involving the relationship of a child and a parent, including time-sharing of children, to appoint another mental health



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professional. Upon the parent's showing of good cause, the court shall appoint another mental health professional. The court shall determine who is responsible for all court costs and attorney fees associated with making such an appointment.

(4) If a legal action, whether it be a civil action, a criminal action, or an administrative proceeding, is filed against a court-appointed mental health professional in a dissolution of marriage, case of domestic violence, or paternity matter involving the relationship of a child and a parent, including time-sharing of children, the claimant is responsible for all reasonable costs and reasonable attorney fees associated with the action for both parties if the mental health professional is held not liable. If the mental health professional is held liable in civil court, the mental health professional must pay all reasonable costs and reasonable attorney fees for the claimant.

Section 14. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to clinical, counseling, and
psychotherapy services; amending s. 491.004, F.S.;
deleting an obsolete provision; conforming provisions;
amending s. 491.0045, F.S.; requiring registered
interns to remain under supervision while maintaining
registered intern status; providing for noncompliance;



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providing for the expiration of intern registrations and registered intern licenses; prohibiting specified persons from applying for an intern registration; amending s. 491.0046, F.S.; correcting cross-references; prohibiting specified persons from applying for a provisional license; amending s. 491.005, F.S.; revising the requirements for a clinical social worker license, a marriage and family therapist license, and a mental health counselor license; deleting a provision requiring certain registered interns to be certified as having met specified licensure requirements; amending s. 491.0057, F.S.; providing for future repeal of provisions providing for dual licensure as a marriage and family therapist; amending s. 491.006, F.S.; revising requirements of licensure or certification by endorsement; amending s. 491.007, F.S.; deleting a provision providing certified master social workers a limited exemption from continuing education requirements; deleting a provision requiring the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling to establish a procedure for the biennial renewal of intern registrations; amending s. 491.009, F.S.; revising acts constituting grounds for the denial of a license or disciplinary action; authorizing the board and the Department of Health to deny licensure or impose specified penalties against an applicant or licensee for certain violations; amending s. 491.0112, F.S.; revising a



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



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LEGISLATIVE ACTION

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

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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

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

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



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~~(c) Three members for terms of 4 years each.~~

~~(3)(4)~~ As the terms of the ~~initial~~ members expire, the Governor shall appoint successors for terms of 4 years; and those members shall serve until their successors are appointed.

~~(4)(5)~~ The board shall adopt rules ~~pursuant to ss. 120.536(1) and 120.54~~ to implement and enforce the provisions of this chapter.

~~(5)(6)~~ All applicable provisions of chapter 456 relating to activities of regulatory boards shall apply to the board.

~~(6)(7)~~ The board shall maintain its official headquarters in the City of Tallahassee.

Section 2. Section 491.0045, Florida Statutes, is amended to read:

491.0045 Intern registration; requirements.—

(1) ~~Effective January 1, 1998,~~ An individual who has not satisfied ~~intends to practice in Florida to satisfy the~~ postgraduate or post-master's level experience requirements, as specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register as an intern in the profession for which he or she is seeking licensure before ~~prior to~~ commencing the post-master's experience requirement. ~~or~~ An individual who intends to satisfy part of the required graduate-level practicum, internship, or field experience, outside the academic arena for any profession, must register as an intern in the profession for which he or she is seeking licensure before ~~prior to~~ commencing the practicum, internship, or field experience.

(2) The department shall register as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern each applicant who the board certifies



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has:

(a) Completed the application form and remitted a nonrefundable application fee not to exceed \$200, as set by board rule;

(b)1. Completed the education requirements as specified in s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which he or she is applying for licensure, if needed; and

2. Submitted an acceptable supervision plan, as determined by the board, for meeting the practicum, internship, or field work required for licensure that was not satisfied in his or her graduate program.

(c) Identified a qualified supervisor.

(3) An individual registered under this section must remain under supervision while practicing under registered intern status until he or she is in receipt of a license or a letter from the department stating that he or she is licensed to practice the profession for which he or she applied.

~~(4) An individual who has applied for intern registration on or before December 31, 2001, and has satisfied the education requirements of s. 491.005 that are in effect through December 31, 2000, will have met the educational requirements for licensure for the profession for which he or she has applied.~~

~~(4)(5) Individuals who have commenced the experience requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c) but failed to register as required by subsection (1) shall register with the department before January 1, 2000. Individuals who fail to comply with this section ~~subsection~~ shall not be granted a license under this chapter, and any time spent by the individual completing the experience requirement as specified in~~



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s. 491.005(1)(c), (3)(c), or (4)(c) before ~~prior to~~ registering as an intern shall not count toward completion of the ~~such~~ requirement.

(5) Intern registration shall be valid for 5 years. Any subsequent intern registration shall be as a result of applying for and meeting all requirements imposed on an applicant for initial registration.

(6) A registered intern license issued before July 1, 2016, shall expire 60 months after the date it was issued and may not be renewed or reissued. Any subsequent intern registration shall be issued at the discretion of the board.

(7) A person who has held a provisional license issued by the board may not apply for an intern registration in the same profession.

Section 3. Paragraph (c) of subsection (2) of section 491.0046, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

491.0046 Provisional license; requirements.—

(2) The department shall issue a provisional clinical social worker license, provisional marriage and family therapist license, or provisional mental health counselor license to each applicant who the board certifies has:

(c) Has met the following minimum coursework requirements:

1. For clinical social work, a minimum of 15 semester hours or 22 quarter hours of the coursework required by s. 491.005(1)(b)2.b.

2. For marriage and family therapy, 10 of the courses required by s. 491.005(3)(b)1.a. ~~491.005(3)(b)1.a.-c.~~, as determined by the board, and at least 6 semester hours or 9



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quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques.

3. For mental health counseling, a minimum of seven of the courses required under s. 491.005(4)(b)1.a. ~~491.005(b)1.a.-c.~~

(5) A person who has held an intern registration issued by the board may not apply for a provisional license in the same profession.

Section 4. Section 491.005, Florida Statutes, is amended to read:

491.005 Licensure by examination.—

(1) CLINICAL SOCIAL WORK.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual per applicant cost to the department for purchase of the examination from the American Association of State Social Worker's Boards or a similar national organization, the department shall issue a license as a clinical social worker to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid the appropriate fee.

(b)1. Has received a doctoral degree in social work from a graduate school of social work which at the time the applicant graduated was accredited by an accrediting agency recognized by the United States Department of Education or has received a master's degree in social work from a graduate school of social work which at the time the applicant graduated:

a. Was accredited by the Council on Social Work Education;

b. Was accredited by the Canadian Association of Schools of Social Work; or



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c. Has been determined to have been a program equivalent to programs approved by the Council on Social Work Education by the Foreign Equivalency Determination Service of the Council on Social Work Education. An applicant who graduated from a program at a university or college outside of the United States or Canada must present documentation of the equivalency determination from the council in order to qualify.

2. The applicant's graduate program must have emphasized direct clinical patient or client health care services, including, but not limited to, coursework in clinical social work, psychiatric social work, medical social work, social casework, psychotherapy, or group therapy. The applicant's graduate program must have included all of the following coursework:

a. A supervised field placement which was part of the applicant's advanced concentration in direct practice, during which the applicant provided clinical services directly to clients.

b. Completion of 24 semester hours or 32 quarter hours in theory of human behavior and practice methods as courses in clinically oriented services, including a minimum of one course in psychopathology, and no more than one course in research, taken in a school of social work accredited or approved pursuant to subparagraph 1.

3. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.



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(c) Has had at least ~~not less than~~ 2 years of clinical social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant to s. 491.0045 before ~~prior to~~ commencing practice. If the applicant's graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b)2., the supervised experience requirement must take place after the applicant has completed a minimum of 15 semester hours or 22 quarter hours of the coursework required. A doctoral internship may be applied toward the clinical social work experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. A registered intern may not engage in his or her own independent private practice. ~~The experience requirement may be met by work performed on or off the premises of the supervising clinical social worker or the equivalent, provided the off-premises work is not the independent private practice rendering of clinical social work that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.~~

(d) Has passed a theory and practice examination provided by the department for this purpose.

(e) Has demonstrated, in a manner designated by rule of the



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board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(2) CLINICAL SOCIAL WORK.—

(a) Notwithstanding the provisions of paragraph (1)(b), coursework which was taken at a baccalaureate level shall not be considered toward completion of education requirements for licensure unless an official of the graduate program certifies in writing on the graduate school's stationery that a specific course, which students enrolled in the same graduate program were ordinarily required to complete at the graduate level, was waived or exempted based on completion of a similar course at the baccalaureate level. If this condition is met, the board shall apply the baccalaureate course named toward the education requirements.

(b) An applicant from a master's or doctoral program in social work which did not emphasize direct patient or client services may complete the clinical curriculum content requirement by returning to a graduate program accredited by the Council on Social Work Education or the Canadian Association of Schools of Social Work, or to a clinical social work graduate program with comparable standards, in order to complete the education requirements for examination. However, a maximum of 6 semester or 9 quarter hours of the clinical curriculum content requirement may be completed by credit awarded for independent study coursework as defined by board rule.

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual cost to the department for the



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purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or its successor ~~similar national organization~~, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid the appropriate fee.

(b)1. Has a minimum of a master's degree from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, from a mental health counseling program with a marriage and family track from a university in this state accredited by the Council for the Accreditation of Counseling and Related Educational Programs, from a program accepted by the board as meeting these coursework requirements ~~with major emphasis in marriage and family therapy~~, or a program in a closely related field as determined by the board, and has completed all of the following requirements:

a. Sixty ~~Thirty-six~~ semester hours or 80 ~~48~~ quarter hours ~~of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework~~ course credits in each of the following ~~nine~~ areas: dynamics of marriage and family systems; marriage therapy and counseling theory and techniques; family therapy and counseling theory and techniques; individual human development theories throughout the life cycle; personality theory or general counseling theory and techniques; psychopathology; human sexuality theory and counseling techniques; psychosocial theory; ~~and~~ substance abuse theory and counseling techniques; legal, ethical, and professional standards issues in the practice of marriage and



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family therapy; individual evaluation, assessment, and testing;
and behavioral research which focuses on the interpretation and
application of research data as it applies to clinical practice.

~~Courses in research, evaluation, appraisal, assessment, or~~
~~testing theories and procedures; thesis or dissertation work; or~~
~~practicums, internships, or fieldwork may not be applied toward~~
~~this requirement.~~

~~b. A minimum of one graduate-level course of 3 semester~~
~~hours or 4 quarter hours in legal, ethical, and professional~~
~~standards issues in the practice of marriage and family therapy~~
~~or a course determined by the board to be equivalent.~~

~~c. A minimum of one graduate-level course of 3 semester~~
~~hours or 4 quarter hours in diagnosis, appraisal, assessment,~~
~~and testing for individual or interpersonal disorder or~~
~~dysfunction; and a minimum of one 3-semester-hour or 4-quarter-~~
~~hour graduate-level course in behavioral research which focuses~~
~~on the interpretation and application of research data as it~~
~~applies to clinical practice. Credit for thesis or dissertation~~
~~work, practicums, internships, or fieldwork may not be applied~~
~~toward this requirement.~~

~~d.~~ A minimum of one supervised clinical practicum,
internship, or field experience in a marriage and family
counseling setting, during which the student provided 400 ~~180~~
direct client contact hours of marriage and family therapy
services under the supervision of an individual who met the
requirements for supervision under paragraph (c). This
requirement may be met by a supervised practice experience which
took place outside the academic arena, but which is certified as
equivalent to a graduate-level practicum or internship program



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which required a minimum of 400 ~~180~~ direct client contact hours of marriage and family therapy services currently offered within an academic program of a college or university accredited by an accrediting agency approved by the United States Department of Education, or an institution which is publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada or a training institution accredited by the Commission on Accreditation for Marriage and Family Therapy Education ~~recognized by the United States Department of Education~~. Certification shall be required from an official of such college, university, or training institution.

2. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

The required master's degree must have been received in an institution of higher education which at the time the applicant graduated was: fully accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation; publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada; or an institution of higher education located outside the United States and Canada, which at the time the applicant was enrolled and at the time the applicant graduated maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Commission on



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Recognition of Postsecondary Accreditation. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country in which it is located as an institution or program to train students to practice as professional marriage and family therapists or psychotherapists. The burden of establishing that the requirements of this provision have been met shall be upon the applicant, and the board shall require documentation, such as, but not limited to, an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. An applicant with a master's degree from a program which did not emphasize marriage and family therapy may complete the coursework requirement in a training institution fully accredited by the Commission on Accreditation for Marriage and Family Therapy Education or the Council for Accreditation of Counseling and Related Educational Programs ~~recognized by the United States Department of Education.~~

(c) Has had at least ~~not less than~~ 2 years of clinical experience during which 50 percent of the applicant's clients were receiving marriage and family therapy services, which must be at the post-master's level under the supervision of a licensed marriage and family therapist with at least 5 years of experience, or the equivalent, who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before ~~prior to~~ commencing practice. If a graduate has a master's degree with a major



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emphasis in marriage and family therapy or a closely related field that did not include all the coursework required under sub-subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-e.~~, credit for the post-master's level clinical experience shall not commence until the applicant has completed coursework in at least a minimum of 10 of the areas ~~courses~~ required under sub-subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-e.~~, as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques. Within the 2 3 years of required experience, the applicant shall provide direct individual, group, or family therapy and counseling, to include the following categories of cases: unmarried dyads, married couples, separating and divorcing couples, and family groups including children. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. A registered intern may not engage in his or her own independent private practice ~~The clinical experience requirement may be met by work performed on or off the premises of the supervising marriage and family therapist or the equivalent, provided the off-premises work is not the independent private practice rendering of marriage and family therapy services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.~~

(d) Has passed a theory and practice examination designated ~~provided by the~~ board ~~department~~ for this purpose.



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(e) Has demonstrated, ~~in a manner designated by rule of the board,~~ knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling as determined by the board.

(f) For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure shall not exceed those stated in this subsection. This paragraph expires July 1, 2020.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual per applicant cost to the department for purchase of the National Clinical Mental Health Counselor Examination ~~from the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors or a similar national organization,~~ an examination managed by the National Board of Certified Counselors or its successor, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid the appropriate fee.

(b)1. Has a minimum of an earned master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs that consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse. If the master's degree is earned from a program related to the practice of mental health counseling that is not accredited by the Council



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for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; ~~counseling in community settings; and substance abuse; and legal, ethical, and professional standards~~ issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

~~b. A minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in legal, ethical, and professional standards issues in the practice of mental health counseling, which includes goals, objectives, and practices of professional counseling organizations, codes of ethics, legal considerations, standards of preparation, certifications and licensing, and the role identity and professional obligations of mental health counselors. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.~~

~~e.~~ The equivalent, as determined by the board, of at least 700 ~~1,000~~ hours of university-sponsored supervised clinical



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practicum, internship, or field experience that includes at least 280 hours of direct client services, as required in the accrediting standards of the Council for Accreditation of Counseling and Related Educational Programs for mental health counseling programs. This experience may not be used to satisfy the post-master's clinical experience requirement.

2. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

Education and training in mental health counseling must have been received in an institution of higher education which at the time the applicant graduated was: fully accredited by a regional accrediting body recognized by the Council for Higher Education or its successor ~~Commission on Recognition of Postsecondary Accreditation~~; publicly recognized as a member in good standing with the Association of Universities and Colleges of Canada; or an institution of higher education located outside the United States and Canada, which at the time the applicant was enrolled and at the time the applicant graduated maintained a standard of training substantially equivalent to the standards of training of those institutions in the United States which are accredited by a regional accrediting body recognized by the Council for Higher Education or its successor ~~Commission on Recognition of Postsecondary Accreditation~~. Such foreign education and training must have been received in an institution or program of higher education officially recognized by the government of the country



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in which it is located as an institution or program to train students to practice as mental health counselors. The burden of establishing that the requirements of this provision have been met shall be upon the applicant, and the board shall require documentation, such as, but not limited to, an evaluation by a foreign equivalency determination service, as evidence that the applicant's graduate degree program and education were equivalent to an accredited program in this country. Effective July 1, 2020, an applicant must have a master's degree accredited by the Council for Accreditation of Counseling and Related Educational Programs consisting of at least 60 semester hours or 80 quarter hours to apply for licensure under this subsection. The applicant's graduate program must have emphasized the common core curricular experience to include at least 3 semester hours or 4 quarter hours of coursework specifically addressing the diagnostic process, including differential diagnosis and the use of the current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(c) Has had at least ~~not less than~~ 2 years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before ~~prior~~ ~~to~~ commencing practice. If a graduate has a master's degree in ~~with a major related to the practice of~~ mental health counseling or a closely related field that did not include all the



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coursework required under sub-subparagraph (b)1.a. sub-
subparagraphs (b)1.a.-b., credit for the post-master's level
clinical experience shall not commence until the applicant has
completed a minimum of seven of the courses required under sub-
subparagraph (b)1.a. sub-subparagraphs (b)1.a.-b., as determined
by the board, one of which must be a course in psychopathology
or abnormal psychology. A doctoral internship may be applied
toward the clinical experience requirement. A licensed mental
health professional must be on the premises when clinical
services are provided by a registered intern in a private
practice setting. No registered intern may engage in his or her
own independent private practice ~~The clinical experience~~
~~requirement may be met by work performed on or off the premises~~
~~of the supervising mental health counselor or the equivalent,~~
~~provided the off-premises work is not the independent private~~
~~practice rendering of services that does not have a licensed~~
~~mental health professional, as determined by the board, on the~~
~~premises at the same time the intern is providing services.~~

(d) Has passed a theory and practice examination designated
~~provided~~ by the department ~~for this purpose.~~

(e) Has demonstrated, ~~in a manner designated by rule of the~~
~~board,~~ knowledge of the laws and rules governing the practice of
clinical social work, marriage and family therapy, and mental
health counseling as determined by the board.

~~(5) INTERNSHIP. An individual who is registered as an~~
~~intern and has satisfied all of the educational requirements for~~
~~the profession for which the applicant seeks licensure shall be~~
~~certified as having met the educational requirements for~~
~~licensure under this section.~~



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(5)~~(6)~~ RULES.—The board may adopt rules necessary to implement any education or experience requirement of this section for licensure as a clinical social worker, marriage and family therapist, or mental health counselor.

Section 5. Section 491.0057, Florida Statutes, is amended to read:

491.0057 Dual licensure as a marriage and family therapist.—

(1) The department shall license as a marriage and family therapist a ~~any~~ person who demonstrates to the board that he or she:

(a)~~(1)~~ Holds a valid, active license as a psychologist under chapter 490 or as a clinical social worker or mental health counselor under this chapter, or is certified under s. 464.012 as an advanced registered nurse practitioner who has been determined by the Board of Nursing as a specialist in psychiatric mental health.

(b)~~(2)~~ Has held a valid, active license for at least 3 years.

(c)~~(3)~~ Has passed the examination provided by the department for marriage and family therapy.

(2) This section is repealed July 1, 2020.

Section 6. Subsection (1) of section 491.006, Florida Statutes, is amended to read:

491.006 Licensure or certification by endorsement.—

(1) The department shall license or grant a certificate to a person in a profession regulated by this chapter who, upon applying to the department and remitting the appropriate fee, demonstrates to the board that he or she:



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(a) Has demonstrated, ~~in a manner designated by rule of the board,~~ knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling as defined by rule of the board.

(b)1. Holds an active valid license to practice in the profession for which the applicant seeks licensure ~~and has actively practiced the profession for which licensure is applied in another state for 3 of the last 5 years immediately preceding licensure.~~

2. Meets the education requirements of this chapter for the profession for which licensure is applied or has demonstrated proof of substantially equivalent education as defined by rule of the board.

3. Has passed the licensure examination designated by the board or has passed a substantially equivalent licensing examination in another state for the profession which the applicant seeks licensure ~~a substantially equivalent licensing examination in another state or has passed the licensure examination in this state in the profession for which the applicant seeks licensure.~~

4. Holds a license in good standing, is not under investigation for an act that would constitute a violation of this chapter, and has not been found to have committed any act that would constitute a violation of this chapter. ~~The fees paid by any applicant for certification as a master social worker under this section are nonrefundable.~~

Section 7. Subsections (2) and (3) of section 491.007, Florida Statutes, are amended to read:

491.007 Renewal of license, registration, or certificate.—



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(2) Each applicant for renewal shall present satisfactory evidence that, in the period since the license or certificate was issued, the applicant has completed continuing education requirements set by rule of the board or department. The board may not require ~~Not~~ more than 25 classroom hours of continuing education per year ~~shall be required. A certified master social worker is exempt from the continuing education requirements for the first renewal of the certificate.~~

~~(3) The board or department shall prescribe by rule a method for the biennial renewal of an intern registration at a fee set by rule, not to exceed \$100.~~

Section 8. Paragraph (c) of subsection (1) and subsection (2) of section 491.009, Florida Statutes, are amended to read:
491.009 Discipline.—

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

(c) Being convicted or found guilty of, or entering ~~regardless of adjudication, or having entered~~ a plea of nolo contendere to, a crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession, regardless of adjudication. ~~However, in the case of a plea of nolo contendere, the board shall allow the person who is the subject of the disciplinary proceeding to present evidence in mitigation relevant to the underlying charges and circumstances surrounding the plea.~~

(2) The board ~~department~~, or, in the case of certified ~~master social workers~~ psychologists, the department ~~board~~, may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure



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or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

Section 9. Subsection (1) of section 491.0112, Florida Statutes, is amended to read:

491.0112 Sexual misconduct by a psychotherapist; penalties.—

(1) Any psychotherapist who commits sexual misconduct with a client, or former client ~~when the professional relationship was terminated primarily for the purpose of engaging in sexual contact,~~ commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083; however, a second or subsequent offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Paragraphs (c) and (n) of subsection (1) of section 491.012, Florida Statutes, are amended to read:

491.012 Violations; penalty; injunction.—

(1) It is unlawful and a violation of this chapter for any person to:

(c) Use the following titles or any combination thereof, unless she or he holds a valid, active license as a mental health counselor issued pursuant to this chapter:

1. "Licensed mental health counselor."
2. "Mental health counselor."
3. "Mental health therapist."
4. "Mental health consultant."
5. "Mental health counselor coach."

(n) ~~Effective October 1, 2000,~~ Practice juvenile sexual offender therapy in this state, as the practice is defined in s.



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491.0144, for compensation, unless the person holds an active license issued under this chapter and meets the requirements to practice juvenile sexual offender therapy. An unlicensed person may be employed by a program operated by or under contract with the Department of Juvenile Justice or the Department of Children and Families ~~Family Services~~ if the program employs a professional who is licensed under chapter 458, chapter 459, s. 490.0145, or s. 491.0144 who manages or supervises the treatment services.

Section 11. Section 491.0145, Florida Statutes, is amended to read:

491.0145 Certified master social worker.—

(1) The department may certify an applicant for a designation as a certified master social worker upon the following conditions:

(a)~~(1)~~ The applicant completes an application to be provided by the department and pays a nonrefundable fee not to exceed \$250 to be established by rule of the department. The completed application must be received by the department at least 60 days before the date of the examination in order for the applicant to qualify to take the scheduled exam.

(b)~~(2)~~ The applicant submits proof satisfactory to the department that the applicant has received a doctoral degree in social work, or a master's degree with a major emphasis or specialty in clinical practice or administration, including, but not limited to, agency administration and supervision, program planning and evaluation, staff development, research, community organization, community services, social planning, and human service advocacy. Doctoral degrees must have been received from



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a graduate school of social work which at the time the applicant was enrolled and graduated was accredited by an accrediting agency approved by the United States Department of Education. Master's degrees must have been received from a graduate school of social work which at the time the applicant was enrolled and graduated was accredited by the Council on Social Work Education or the Canadian Association of Schools of Social Work or by one that meets comparable standards.

(c)~~(3)~~ The applicant has had at least 3 years' experience, as defined by rule, including, but not limited to, clinical services or administrative activities as defined in paragraph (b) ~~subsection (2)~~, 2 years of which must be at the post-master's level under the supervision of a person who meets the education and experience requirements for certification as a certified master social worker, as defined by rule, or licensure as a clinical social worker under this chapter. A doctoral internship may be applied toward the supervision requirement.

(d)~~(4)~~ Any person who holds a master's degree in social work from an institution ~~institutions~~ outside the United States may apply to the department for certification if the academic training in social work has been evaluated as equivalent to a degree from a school accredited by the Council on Social Work Education. Any such person shall submit a copy of the academic training from the Foreign Equivalency Determination Service of the Council on Social Work Education.

(e)~~(5)~~ The applicant has passed an examination required by the department for this purpose. The nonrefundable fee for such examination may not exceed \$250 as set by department rule.

(2) A certified master social worker is exempt from the



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continuing education requirements for the first renewal of the certificate.

~~(3)(6) Nothing in This chapter does not shall be construed to authorize a certified master social worker to provide clinical social work services.~~

Section 12. Section 491.0149, Florida Statutes, is amended to read:

491.0149 Display of license; use of professional title ~~on promotional materials.~~

(1)(a) A person licensed under this chapter as a clinical social worker, marriage and family therapist, or mental health counselor, or certified as a master social worker shall conspicuously display the valid license issued by the department or a true copy thereof at each location at which the licensee practices his or her profession.

(b)1. A licensed clinical social worker shall include the words "licensed clinical social worker" or the letters "LCSW" on all promotional materials, including cards, brochures, stationery, advertisements, ~~and~~ signs, and social media, naming the licensee.

2. A licensed marriage and family therapist shall include the words "licensed marriage and family therapist" or the letters "LMFT" on all promotional materials, including cards, brochures, stationery, advertisements, ~~and~~ signs, and social media, naming the licensee.

3. A licensed mental health counselor shall include the words "licensed mental health counselor" or the letters "LMHC" on all promotional materials, including cards, brochures, stationery, advertisements, ~~and~~ signs, and social media, naming



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the licensee.

(2)(a) A person registered under this chapter as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern shall conspicuously display the valid registration issued by the department or a true copy thereof at each location at which the registered intern is completing the experience requirements.

(b) A registered clinical social worker intern shall include the words "registered clinical social worker intern," a registered marriage and family therapist intern shall include the words "registered marriage and family therapist intern," and a registered mental health counselor intern shall include the words "registered mental health counselor intern" on all records, reports, and promotional materials, including cards, brochures, stationery, advertisements, and signs, and social media, naming the registered intern.

(3)(a) A person provisionally licensed under this chapter as a provisional clinical social worker licensee, provisional marriage and family therapist licensee, or provisional mental health counselor licensee shall conspicuously display the valid provisional license issued by the department or a true copy thereof at each location at which the provisional licensee is providing services.

(b) A provisional clinical social worker licensee shall include the words "provisional clinical social worker licensee," a provisional marriage and family therapist licensee shall include the words "provisional marriage and family therapist licensee," and a provisional mental health counselor licensee shall include the words "provisional mental health counselor



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licensee" on all promotional materials, including cards, brochures, stationery, advertisements, ~~and~~ signs, and social media, naming the provisional licensee.

Section 13. Section 491.017, Florida Statutes, is created to read:

491.017 Parenting plan recommendation; presumption of good faith; prerequisite to parent's filing suit; award of fees, costs, reimbursement.—

(1) A mental health professional licensed under this chapter who has been appointed by the court to develop a parenting plan recommendation in a dissolution of marriage, a case of domestic violence, or a paternity matter involving the relationship of a child and a parent, including time-sharing of children, is presumed to be acting in good faith if the mental health professional's recommendation has been reached under standards that a reasonable mental health professional would use to develop a parenting plan recommendation.

(2) An administrative complaint against a court-appointed mental health professional which relates to a parenting plan recommendation developed by the mental health professional may not be filed anonymously. The individual who files an administrative complaint must include in the complaint his or her name, address, and telephone number.

(3) A parent who desires to file a legal action against a court-appointed mental health professional who has acted in good faith in developing a parenting plan recommendation must petition the judge who presided over the dissolution of marriage, case of domestic violence, or paternity matter involving the relationship of a child and a parent, including



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time-sharing of children, to appoint another mental health professional. Upon the parent's showing of good cause, the court shall appoint another mental health professional. The court shall determine who is responsible for all court costs and attorney fees associated with making such an appointment.

(4) If a legal action, whether it be a civil action, a criminal action, or an administrative proceeding, is filed against a court-appointed mental health professional in a dissolution of marriage, case of domestic violence, or paternity matter involving the relationship of a child and a parent, including time-sharing of children, the claimant is responsible for all reasonable costs and reasonable attorney fees associated with the action for both parties if the mental health professional is held not liable. If the mental health professional is held liable in civil court, the mental health professional must pay all reasonable costs and reasonable attorney fees for the claimant.

Section 14. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to clinical, counseling, and
psychotherapy services; amending s. 491.004, F.S.;
deleting an obsolete provision; conforming provisions;
amending s. 491.0045, F.S.; requiring registered
interns to remain under supervision while maintaining



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registered intern status; providing for noncompliance;
providing for the expiration of intern registrations
and registered intern licenses; prohibiting specified
persons from applying for an intern registration;
amending s. 491.0046, F.S.; correcting cross-
references; prohibiting specified persons from
applying for a provisional license; amending s.
491.005, F.S.; revising the requirements for a
clinical social worker license, a marriage and family
therapist license, and a mental health counselor
license; deleting a provision requiring certain
registered interns to be certified as having met
specified licensure requirements; amending s.
491.0057, F.S.; providing for future repeal of
provisions providing for dual licensure as a marriage
and family therapist; amending s. 491.006, F.S.;
revising requirements of licensure or certification by
endorsement; amending s. 491.007, F.S.; deleting a
provision providing certified master social workers a
limited exemption from continuing education
requirements; deleting a provision requiring the Board
of Clinical Social Work, Marriage and Family Therapy,
and Mental Health Counseling to establish a procedure
for the biennial renewal of intern registrations;
amending s. 491.009, F.S.; revising acts constituting
grounds for the denial of a license or disciplinary
action; authorizing the board and the Department of
Health to deny licensure or impose specified penalties
against an applicant or licensee for certain



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violations; amending s. 491.0112, F.S.; revising a provision providing that a psychotherapist who commits sexual misconduct with a client or former client commits a felony of the third degree; amending s. 491.012, F.S.; prohibiting a person from using the title "mental health counselor coach" without a valid mental health counselor license; deleting an obsolete provision; amending s. 491.0145, F.S.; providing certified master social workers a limited exemption from continuing education requirements; amending s. 491.0149, F.S.; requiring the use of applicable professional titles by licensees, provisional licensees, and registrants on social media and other specified materials; creating s. 491.017, F.S.; providing a presumption of good faith for the actions of a court-appointed mental health professional who develops a parenting plan recommendation; prohibiting anonymous complaints; providing prerequisites for a parent to bring a suit against a mental health professional; providing for the awarding of attorney fees and court costs; providing an effective date.

By Senator Ring

29-01120-13

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

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for the biennial renewal of intern registrations;
amending s. 491.009, F.S.; revising acts constituting
grounds for the denial of a license or disciplinary
action; authorizing the board and the Department of
Health to deny licensure or impose specified penalties
against an applicant or licensee for certain
violations; amending s. 491.0112, F.S.; revising a
provision providing that a psychotherapist who commits
sexual misconduct with a client or former client
commits a felony of the third degree; amending s.
491.012, F.S.; prohibiting a person from using the
title "mental health counselor coach" without a valid
mental health counselor license; deleting an obsolete
provision; amending s. 491.0145, F.S.; providing
certified master social workers a limited exemption
from continuing education requirements; amending s.
491.0149, F.S.; requiring the use of applicable
professional titles by licensees, provisional
licensees, and registrants on social media and other
specified materials; creating s. 491.017, F.S.;
providing a presumption of good faith for the actions
of a court-appointed mental health professional who
develops a parenting plan recommendation; prohibiting
anonymous complaints; providing prerequisites for a
parent to bring a suit against a mental health
professional; providing for the awarding of attorney
fees and court costs; providing an effective date.

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

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59
60 Section 1. Subsections (3) through (7) of section 491.004,
61 Florida Statutes, are amended to read:

62 491.004 Board of Clinical Social Work, Marriage and Family
63 Therapy, and Mental Health Counseling.—

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

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

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

68 ~~(c) Three members for terms of 4 years each.~~

69 (3)~~(4)~~ As the terms of the ~~initial~~ members expire, the
70 Governor shall appoint successors for terms of 4 years; and
71 those members shall serve until their successors are appointed.

72 (4)~~(5)~~ The board shall adopt rules ~~pursuant to ss.~~
73 ~~120.536(1) and 120.54~~ to implement and enforce the provisions of
74 this chapter.

75 (5)~~(6)~~ All applicable provisions of chapter 456 relating to
76 activities of regulatory boards shall apply to the board.

77 (6)~~(7)~~ The board shall maintain its official headquarters
78 in the City of Tallahassee.

79 Section 2. Section 491.0045, Florida Statutes, is amended
80 to read:

81 491.0045 Intern registration; requirements.—

82 (1) ~~Effective January 1, 1998, An individual who has not~~
83 satisfied ~~intends to practice in Florida to satisfy~~ the
84 postgraduate or post-master's level experience requirements, as
85 specified in s. 491.005(1)(c), (3)(c), or (4)(c), must register
86 as an intern in the profession for which he or she is seeking
87 licensure before ~~prior to~~ commencing the post-master's

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88 experience requirement. ~~or~~ An individual who intends to satisfy
89 part of the required graduate-level practicum, internship, or
90 field experience, outside the academic arena for any profession,
91 must register as an intern in the profession for which he or she
92 is seeking licensure before ~~prior to~~ commencing the practicum,
93 internship, or field experience.

94 (2) The department shall register as a clinical social
95 worker intern, marriage and family therapist intern, or mental
96 health counselor intern each applicant who the board certifies
97 has:

98 (a) Completed the application form and remitted a
99 nonrefundable application fee not to exceed \$200, as set by
100 board rule;

101 (b)1. Completed the education requirements as specified in
102 s. 491.005(1)(c), (3)(c), or (4)(c) for the profession for which
103 he or she is applying for licensure, if needed; and

104 2. Submitted an acceptable supervision plan, as determined
105 by the board, for meeting the practicum, internship, or field
106 work required for licensure that was not satisfied in his or her
107 graduate program.

108 (c) Identified a qualified supervisor.

109 (3) An individual registered under this section must remain
110 under supervision while practicing under registered intern
111 status ~~until he or she is in receipt of a license or a letter~~
112 ~~from the department stating that he or she is licensed to~~
113 ~~practice the profession for which he or she applied.~~

114 ~~(4) An individual who has applied for intern registration~~
115 ~~on or before December 31, 2001, and has satisfied the education~~
116 ~~requirements of s. 491.005 that are in effect through December~~

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117 ~~31, 2000, will have met the educational requirements for~~
118 ~~licensure for the profession for which he or she has applied.~~

119 ~~(4)(5) Individuals who have commenced the experience~~
120 ~~requirement as specified in s. 491.005(1)(c), (3)(c), or (4)(c)~~
121 ~~but failed to register as required by subsection (1) shall~~
122 ~~register with the department before January 1, 2000. Individuals~~
123 ~~who fail to comply with this section subsection shall not be~~
124 ~~granted a license under this chapter, and any time spent by the~~
125 ~~individual completing the experience requirement as specified in~~
126 ~~s. 491.005(1)(c), (3)(c), or (4)(c) before prior to registering~~
127 ~~as an intern shall not count toward completion of the such~~
128 ~~requirement.~~

129 (5) Intern registration shall be valid for 5 years. Any
130 subsequent intern registration shall be as a result of applying
131 for and meeting all requirements imposed on an applicant for
132 initial registration.

133 (6) A registered intern license issued before July 1, 2013,
134 shall expire 60 months after the date it was issued and may not
135 be renewed or reissued. Any subsequent intern registration shall
136 be issued at the discretion of the board.

137 (7) A person who has held a provisional license issued by
138 the board may not apply for an intern registration in the same
139 profession.

140 Section 3. Paragraph (c) of subsection (2) of section
141 491.0046, Florida Statutes, is amended, and subsection (5) is
142 added to that section, to read:

143 491.0046 Provisional license; requirements.—

144 (2) The department shall issue a provisional clinical
145 social worker license, provisional marriage and family therapist

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license, or provisional mental health counselor license to each applicant who the board certifies has:

(c) Has met the following minimum coursework requirements:

1. For clinical social work, a minimum of 15 semester hours or 22 quarter hours of the coursework required by s.

491.005(1)(b)2.b.

2. For marriage and family therapy, 10 of the courses required by s. 491.005(3)(b)1.a. ~~491.005(3)(b)1.a.-c.~~, as determined by the board, and at least 6 semester hours or 9 quarter hours of the course credits must have been completed in the area of marriage and family systems, theories, or techniques.

3. For mental health counseling, a minimum of seven of the courses required under s. 491.005(4)(b)1.a. ~~491.005(b)1.a.-c.~~

(5) A person who has held an intern registration issued by the board may not apply for a provisional license in the same profession.

Section 4. Section 491.005, Florida Statutes, is amended to read:

491.005 Licensure by examination.—

(1) CLINICAL SOCIAL WORK.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual per applicant cost to the department for purchase of the examination from the American Association of State Social Worker's Boards or a similar national organization, the department shall issue a license as a clinical social worker to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid the appropriate fee.

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175 (b)1. Has received a doctoral degree in social work from a
176 graduate school of social work which at the time the applicant
177 graduated was accredited by an accrediting agency recognized by
178 the United States Department of Education or has received a
179 master's degree in social work from a graduate school of social
180 work which at the time the applicant graduated:

181 a. Was accredited by the Council on Social Work Education;

182 b. Was accredited by the Canadian Association of Schools of
183 Social Work; or

184 c. Has been determined to have been a program equivalent to
185 programs approved by the Council on Social Work Education by the
186 Foreign Equivalency Determination Service of the Council on
187 Social Work Education. An applicant who graduated from a program
188 at a university or college outside of the United States or
189 Canada must present documentation of the equivalency
190 determination from the council in order to qualify.

191 2. The applicant's graduate program must have emphasized
192 direct clinical patient or client health care services,
193 including, but not limited to, coursework in clinical social
194 work, psychiatric social work, medical social work, social
195 casework, psychotherapy, or group therapy. The applicant's
196 graduate program must have included all of the following
197 coursework:

198 a. A supervised field placement which was part of the
199 applicant's advanced concentration in direct practice, during
200 which the applicant provided clinical services directly to
201 clients.

202 b. Completion of 24 semester hours or 32 quarter hours in
203 theory of human behavior and practice methods as courses in

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clinically oriented services, including a minimum of one course in psychopathology, and no more than one course in research, taken in a school of social work accredited or approved pursuant to subparagraph 1.

3. If the course title which appears on the applicant's transcript does not clearly identify the content of the coursework, the applicant shall be required to provide additional documentation, including, but not limited to, a syllabus or catalog description published for the course.

(c) Has had at least ~~not less than~~ 2 years of clinical social work experience, which took place subsequent to completion of a graduate degree in social work at an institution meeting the accreditation requirements of this section, under the supervision of a licensed clinical social worker or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy clinical experience requirements must register pursuant to s. 491.0045 before ~~prior to~~ commencing practice. If the applicant's graduate program was not a program which emphasized direct clinical patient or client health care services as described in subparagraph (b)2., the supervised experience requirement must take place after the applicant has completed a minimum of 15 semester hours or 22 quarter hours of the coursework required. A doctoral internship may be applied toward the clinical social work experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. A registered intern may not engage in his or her own independent private practice. ~~The experience requirement~~

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~~may be met by work performed on or off the premises of the supervising clinical social worker or the equivalent, provided the off-premises work is not the independent private practice rendering of clinical social work that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.~~

(d) Has passed a theory and practice examination provided by the department for this purpose.

(e) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling.

(2) CLINICAL SOCIAL WORK.—

(a) Notwithstanding the provisions of paragraph (1)(b), coursework which was taken at a baccalaureate level shall not be considered toward completion of education requirements for licensure unless an official of the graduate program certifies in writing on the graduate school's stationery that a specific course, which students enrolled in the same graduate program were ordinarily required to complete at the graduate level, was waived or exempted based on completion of a similar course at the baccalaureate level. If this condition is met, the board shall apply the baccalaureate course named toward the education requirements.

(b) An applicant from a master's or doctoral program in social work which did not emphasize direct patient or client services may complete the clinical curriculum content requirement by returning to a graduate program accredited by the Council on Social Work Education or the Canadian Association of

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Schools of Social Work, or to a clinical social work graduate program with comparable standards, in order to complete the education requirements for examination. However, a maximum of 6 semester or 9 quarter hours of the clinical curriculum content requirement may be completed by credit awarded for independent study coursework as defined by board rule.

(3) MARRIAGE AND FAMILY THERAPY.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual cost to the department for the purchase of the examination from the Association of Marital and Family Therapy Regulatory Board, or its successor ~~similar national organization~~, the department shall issue a license as a marriage and family therapist to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid the appropriate fee.

(b)1. Has a minimum of a master's degree from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, from a mental health counseling program with a marriage and family track from a university in this state accredited by the Council for the Accreditation of Counseling and Related Educational Programs, from a program accepted by the board as meeting these coursework requirements ~~with major emphasis in marriage and family therapy~~, or a program in a closely related field as determined by the board, and has completed all of the following requirements:

a. Sixty ~~Thirty-six~~ semester hours or 80 ~~48~~ quarter hours ~~of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework~~

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291 ~~course credits in each of the following nine areas: dynamics of~~
292 ~~marriage and family systems; marriage therapy and counseling~~
293 ~~theory and techniques; family therapy and counseling theory and~~
294 ~~techniques; individual human development theories throughout the~~
295 ~~life cycle; personality theory or general counseling theory and~~
296 ~~techniques; psychopathology; human sexuality theory and~~
297 ~~counseling techniques; psychosocial theory; and substance abuse~~
298 ~~theory and counseling techniques; legal, ethical, and~~
299 professional standards issues in the practice of marriage and
300 family therapy; individual evaluation, assessment, and testing;
301 and behavioral research which focuses on the interpretation and
302 application of research data as it applies to clinical practice.
303 ~~Courses in research, evaluation, appraisal, assessment, or~~
304 ~~testing theories and procedures; thesis or dissertation work; or~~
305 ~~practicums, internships, or fieldwork may not be applied toward~~
306 ~~this requirement.~~

307 b. A minimum of one graduate-level course of 3 semester
308 hours or 4 quarter hours in legal, ethical, and professional
309 standards issues in the practice of marriage and family therapy
310 or a course determined by the board to be equivalent.

311 c. A minimum of one graduate-level course of 3 semester
312 hours or 4 quarter hours in diagnosis, appraisal, assessment,
313 and testing for individual or interpersonal disorder or
314 dysfunction; and a minimum of one 3-semester-hour or 4-quarter-
315 hour graduate-level course in behavioral research which focuses
316 on the interpretation and application of research data as it
317 applies to clinical practice. Credit for thesis or dissertation
318 work, practicums, internships, or fieldwork may not be applied
319 toward this requirement.

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320 d. A minimum of one supervised clinical practicum,
321 internship, or field experience in a marriage and family
322 counseling setting, during which the student provided 400 ~~180~~
323 direct client contact hours of marriage and family therapy
324 services under the supervision of an individual who met the
325 requirements for supervision under paragraph (c). This
326 requirement may be met by a supervised practice experience which
327 took place outside the academic arena, but which is certified as
328 equivalent to a graduate-level practicum or internship program
329 which required a minimum of 400 ~~180~~ direct client contact hours
330 of marriage and family therapy services currently offered within
331 an academic program of a college or university accredited by an
332 accrediting agency approved by the United States Department of
333 Education, or an institution which is publicly recognized as a
334 member in good standing with the Association of Universities and
335 Colleges of Canada or a training institution accredited by the
336 Commission on Accreditation for Marriage and Family Therapy
337 Education ~~recognized by the United States Department of~~
338 ~~Education~~. Certification shall be required from an official of
339 such college, university, or training institution.

340 2. If the course title which appears on the applicant's
341 transcript does not clearly identify the content of the
342 coursework, the applicant shall be required to provide
343 additional documentation, including, but not limited to, a
344 syllabus or catalog description published for the course.

345
346 The required master's degree must have been received in an
347 institution of higher education which at the time the applicant
348 graduated was: fully accredited by a regional accrediting body

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

376 (c) Has had at least ~~not less than~~ 2 years of clinical
377 experience during which 50 percent of the applicant's clients

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

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~~of the supervising marriage and family therapist or the equivalent, provided the off-premises work is not the independent private practice rendering of marriage and family therapy services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.~~

(d) Has passed a theory and practice examination designated ~~provided~~ by the board ~~department~~ for this purpose.

(e) Has demonstrated, ~~in a manner designated by rule of the board,~~ knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling as determined by the board.

(f) For the purposes of dual licensure, the department shall license as a marriage and family therapist any person who meets the requirements of s. 491.0057. Fees for dual licensure shall not exceed those stated in this subsection. This paragraph expires July 1, 2020.

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual per applicant cost to the department for purchase of the National Clinical Mental Health Counselor Examination ~~from the Professional Examination Service for the National Academy of Certified Clinical Mental Health Counselors or a similar national organization,~~ an examination managed by the National Board of Certified Counselors or its successor, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

(a) Has submitted an ~~made~~ application ~~therefor~~ and paid the appropriate fee.

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(b)1. Has a minimum of an earned master's degree from a mental health counseling program accredited by the Council for the Accreditation of Counseling and Related Educational Programs that consists of at least 60 semester hours or 80 quarter hours of clinical and didactic instruction, including a course in human sexuality and a course in substance abuse. If the master's degree is earned from a program related to the practice of mental health counseling that is not accredited by the Council for the Accreditation of Counseling and Related Educational Programs, then the coursework and practicum, internship, or fieldwork must consist of at least 60 semester hours or 80 quarter hours and meet the following requirements:

a. Thirty-three semester hours or 44 quarter hours of graduate coursework, which must include a minimum of 3 semester hours or 4 quarter hours of graduate-level coursework in each of the following 11 content areas: counseling theories and practice; human growth and development; diagnosis and treatment of psychopathology; human sexuality; group theories and practice; individual evaluation and assessment; career and lifestyle assessment; research and program evaluation; social and cultural foundations; ~~counseling in community settings; and substance abuse; and legal, ethical, and professional standards~~ issues in the practice of mental health counseling. Courses in research, thesis or dissertation work, practicums, internships, or fieldwork may not be applied toward this requirement.

b. The applicant's graduate program must have emphasized the common core curricular experience to include at least 3 semester hours or 4 quarter hours of coursework specifically addressing the diagnostic process, including differential

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diagnosis and the use of the current diagnostic tools, such as
the current edition of the Diagnostic and Statistical Manual of
Mental Disorders ~~A minimum of 3 semester hours or 4 quarter~~
~~hours of graduate-level coursework in legal, ethical, and~~
~~professional standards issues in the practice of mental health~~
~~counseling, which includes goals, objectives, and practices of~~
~~professional counseling organizations, codes of ethics, legal~~
~~considerations, standards of preparation, certifications and~~
~~licensing, and the role identity and professional obligations of~~
~~mental health counselors. Courses in research, thesis or~~
~~dissertation work, practicums, internships, or fieldwork may not~~
~~be applied toward this requirement.~~

c. The equivalent, as determined by the board, of at least
700 ~~1,000~~ hours of university-sponsored supervised clinical
practicum, internship, or field experience that includes at
least 280 hours of direct client services, as required in the
accrediting standards of the Council for Accreditation of
Counseling and Related Educational Programs for mental health
counseling programs. This experience may not be used to satisfy
the post-master's clinical experience requirement.

2. If the course title which appears on the applicant's
transcript does not clearly identify the content of the
coursework, the applicant shall be required to provide
additional documentation, including, but not limited to, a
syllabus or catalog description published for the course.

Education and training in mental health counseling must have
been received in an institution of higher education which at the
time the applicant graduated was: fully accredited by a regional

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

521 (c) Has had at least ~~not less than~~ 2 years of clinical
522 experience in mental health counseling, which must be at the

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post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before ~~prior to~~ commencing practice. If a graduate has a master's degree in ~~with a major related to the practice of~~ mental health counseling or a closely related field that did not include all the coursework required under sub-subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-b.,~~ credit for the post-master's level clinical experience shall not commence until the applicant has completed a minimum of seven of the courses required under sub-subparagraph (b)1.a. ~~sub-subparagraphs (b)1.a.-b.,~~ as determined by the board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. No registered intern may engage in his or her own independent practice ~~The clinical experience requirement may be met by work performed on or off the premises of the supervising mental health counselor or the equivalent, provided the off-premises work is not the independent private practice rendering of services that does not have a licensed mental health professional, as determined by the board, on the premises at the same time the intern is providing services.~~

(d) Has passed a theory and practice examination designated ~~provided~~ by the department ~~for this purpose.~~

(e) Has demonstrated, ~~in a manner designated by rule of the~~

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board, knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling as determined by the board.

~~(5) INTERNSHIP. An individual who is registered as an intern and has satisfied all of the educational requirements for the profession for which the applicant seeks licensure shall be certified as having met the educational requirements for licensure under this section.~~

(5) ~~(6)~~ RULES.—The board may adopt rules necessary to implement any education or experience requirement of this section for licensure as a clinical social worker, marriage and family therapist, or mental health counselor.

Section 5. Section 491.0057, Florida Statutes, is amended to read:

491.0057 Dual licensure as a marriage and family therapist.—

(1) The department shall license as a marriage and family therapist a ~~any~~ person who demonstrates to the board that he or she:

(a) ~~(1)~~ Holds a valid, active license as a psychologist under chapter 490 or as a clinical social worker or mental health counselor under this chapter, or is certified under s. 464.012 as an advanced registered nurse practitioner who has been determined by the Board of Nursing as a specialist in psychiatric mental health.

(b) ~~(2)~~ Has held a valid, active license for at least 3 years.

(c) ~~(3)~~ Has passed the examination provided by the department for marriage and family therapy.

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(2) This section is repealed July 1, 2020.

Section 6. Subsection (1) of section 491.006, Florida Statutes, is amended to read:

491.006 Licensure or certification by endorsement.—

(1) The department shall license or grant a certificate to a person in a profession regulated by this chapter who, upon applying to the department and remitting the appropriate fee, demonstrates to the board that he or she:

(a) Has demonstrated, ~~in a manner designated by rule of the board,~~ knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling as defined by rule of the board.

(b)1. Holds an active valid license to practice in the profession for which the applicant seeks licensure ~~and has actively practiced the profession for which licensure is applied in another state for 3 of the last 5 years immediately preceding licensure.~~

2. Meets the education requirements of this chapter for the profession for which licensure is applied or has demonstrated proof of substantially equivalent education as defined by rule of the board.

3. Has passed the licensure examination designated by the board or has passed a substantially equivalent licensing examination in another state for the profession which the applicant seeks licensure ~~a substantially equivalent licensing examination in another state or has passed the licensure examination in this state in the profession for which the applicant seeks licensure.~~

4. Holds a license in good standing, is not under

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610 investigation for an act that would constitute a violation of
611 this chapter, and has not been found to have committed any act
612 that would constitute a violation of this chapter. ~~The fees paid~~
613 ~~by any applicant for certification as a master social worker~~
614 ~~under this section are nonrefundable.~~

615 Section 7. Subsections (2) and (3) of section 491.007,
616 Florida Statutes, are amended to read:

617 491.007 Renewal of license, registration, or certificate.—

618 (2) Each applicant for renewal shall present satisfactory
619 evidence that, in the period since the license or certificate
620 was issued, the applicant has completed continuing education
621 requirements set by rule of the board or department. The board
622 may not require ~~Not~~ more than 25 classroom hours of continuing
623 education per year ~~shall be required. A certified master social~~
624 ~~worker is exempt from the continuing education requirements for~~
625 ~~the first renewal of the certificate.~~

626 ~~(3) The board or department shall prescribe by rule a~~
627 ~~method for the biennial renewal of an intern registration at a~~
628 ~~fee set by rule, not to exceed \$100.~~

629 Section 8. Paragraph (c) of subsection (1) and subsection
630 (2) of section 491.009, Florida Statutes, are amended to read:

631 491.009 Discipline.—

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

634 (c) Being convicted or found guilty of, or entering
635 ~~regardless of adjudication, or having entered~~ a plea of nolo
636 contendere to, a crime in any jurisdiction which directly
637 relates to the practice of his or her profession or the ability
638 to practice his or her profession, regardless of adjudication.

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639 ~~However, in the case of a plea of nolo contendere, the board~~
640 ~~shall allow the person who is the subject of the disciplinary~~
641 ~~proceeding to present evidence in mitigation relevant to the~~
642 ~~underlying charges and circumstances surrounding the plea.~~

643 (2) The board department, or, in the case of certified
644 master social workers psychologists, the department board, may
645 enter an order denying licensure or imposing any of the
646 penalties in s. 456.072(2) against any applicant for licensure
647 or licensee who is found guilty of violating any provision of
648 subsection (1) of this section or who is found guilty of
649 violating any provision of s. 456.072(1).

650 Section 9. Subsection (1) of section 491.0112, Florida
651 Statutes, is amended to read:

652 491.0112 Sexual misconduct by a psychotherapist;
653 penalties.—

654 (1) Any psychotherapist who commits sexual misconduct with
655 a client, or former client ~~when the professional relationship~~
656 ~~was terminated primarily for the purpose of engaging in sexual~~
657 ~~contact~~, commits a felony of the third degree, punishable as
658 provided in s. 775.082 or s. 775.083; however, a second or
659 subsequent offense is a felony of the second degree, punishable
660 as provided in s. 775.082, s. 775.083, or s. 775.084.

661 Section 10. Paragraphs (c) and (n) of subsection (1) of
662 section 491.012, Florida Statutes, are amended to read:

663 491.012 Violations; penalty; injunction.—

664 (1) It is unlawful and a violation of this chapter for any
665 person to:

666 (c) Use the following titles or any combination thereof,
667 unless she or he holds a valid, active license as a mental

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health counselor issued pursuant to this chapter:

1. "Licensed mental health counselor."
2. "Mental health counselor."
3. "Mental health therapist."
4. "Mental health consultant."
5. "Mental health counselor coach."

(n) ~~Effective October 1, 2000,~~ Practice juvenile sexual offender therapy in this state, as the practice is defined in s. 491.0144, for compensation, unless the person holds an active license issued under this chapter and meets the requirements to practice juvenile sexual offender therapy. An unlicensed person may be employed by a program operated by or under contract with the Department of Juvenile Justice or the Department of Children and Families ~~Family Services~~ if the program employs a professional who is licensed under chapter 458, chapter 459, s. 490.0145, or s. 491.0144 who manages or supervises the treatment services.

Section 11. Section 491.0145, Florida Statutes, is amended to read:

491.0145 Certified master social worker.—

(1) The department may certify an applicant for a designation as a certified master social worker upon the following conditions:

(a) ~~(1)~~ The applicant completes an application to be provided by the department and pays a nonrefundable fee not to exceed \$250 to be established by rule of the department. The completed application must be received by the department at least 60 days before the date of the examination in order for the applicant to qualify to take the scheduled exam.

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697 (b)~~(2)~~ The applicant submits proof satisfactory to the
698 department that the applicant has received a doctoral degree in
699 social work, or a master's degree with a major emphasis or
700 specialty in clinical practice or administration, including, but
701 not limited to, agency administration and supervision, program
702 planning and evaluation, staff development, research, community
703 organization, community services, social planning, and human
704 service advocacy. Doctoral degrees must have been received from
705 a graduate school of social work which at the time the applicant
706 was enrolled and graduated was accredited by an accrediting
707 agency approved by the United States Department of Education.
708 Master's degrees must have been received from a graduate school
709 of social work which at the time the applicant was enrolled and
710 graduated was accredited by the Council on Social Work Education
711 or the Canadian Association of Schools of Social Work or by one
712 that meets comparable standards.

713 (c)~~(3)~~ The applicant has had at least 3 years' experience,
714 as defined by rule, including, but not limited to, clinical
715 services or administrative activities as defined in paragraph
716 (b) ~~subsection (2)~~, 2 years of which must be at the post-
717 master's level under the supervision of a person who meets the
718 education and experience requirements for certification as a
719 certified master social worker, as defined by rule, or licensure
720 as a clinical social worker under this chapter. A doctoral
721 internship may be applied toward the supervision requirement.

722 (d)~~(4)~~ Any person who holds a master's degree in social
723 work from an institution ~~institutions~~ outside the United States
724 may apply to the department for certification if the academic
725 training in social work has been evaluated as equivalent to a

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degree from a school accredited by the Council on Social Work Education. Any such person shall submit a copy of the academic training from the Foreign Equivalency Determination Service of the Council on Social Work Education.

(e) ~~(5)~~ The applicant has passed an examination required by the department for this purpose. The nonrefundable fee for such examination may not exceed \$250 as set by department rule.

(2) A certified master social worker is exempt from the continuing education requirements for the first renewal of the certificate.

(3) ~~(6)~~ ~~Nothing in This chapter does not shall be construed~~ to authorize a certified master social worker to provide clinical social work services.

Section 12. Section 491.0149, Florida Statutes, is amended to read:

491.0149 Display of license; use of professional title ~~on promotional materials.~~

(1) (a) A person licensed under this chapter as a clinical social worker, marriage and family therapist, or mental health counselor, or certified as a master social worker shall conspicuously display the valid license issued by the department or a true copy thereof at each location at which the licensee practices his or her profession.

(b) 1. A licensed clinical social worker shall include the words "licensed clinical social worker" or the letters "LCSW" on all promotional materials, including cards, brochures, stationery, advertisements, ~~and~~ signs, and social media, naming the licensee.

2. A licensed marriage and family therapist shall include

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the words "licensed marriage and family therapist" or the letters "LMFT" on all promotional materials, including cards, brochures, stationery, advertisements, ~~and~~ signs, and social media, naming the licensee.

3. A licensed mental health counselor shall include the words "licensed mental health counselor" or the letters "LMHC" on all promotional materials, including cards, brochures, stationery, advertisements, ~~and~~ signs, and social media, naming the licensee.

(2)(a) A person registered under this chapter as a clinical social worker intern, marriage and family therapist intern, or mental health counselor intern shall conspicuously display the valid registration issued by the department or a true copy thereof at each location at which the registered intern is completing the experience requirements.

(b) A registered clinical social worker intern shall include the words "registered clinical social worker intern," a registered marriage and family therapist intern shall include the words "registered marriage and family therapist intern," and a registered mental health counselor intern shall include the words "registered mental health counselor intern" on all records, reports, and promotional materials, including cards, brochures, stationery, advertisements, ~~and~~ signs, and social media, naming the registered intern.

(3)(a) A person provisionally licensed under this chapter as a provisional clinical social worker licensee, provisional marriage and family therapist licensee, or provisional mental health counselor licensee shall conspicuously display the valid provisional license issued by the department or a true copy

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thereof at each location at which the provisional licensee is providing services.

(b) A provisional clinical social worker licensee shall include the words "provisional clinical social worker licensee," a provisional marriage and family therapist licensee shall include the words "provisional marriage and family therapist licensee," and a provisional mental health counselor licensee shall include the words "provisional mental health counselor licensee" on all promotional materials, including cards, brochures, stationery, advertisements, ~~and~~ signs, and social media, naming the provisional licensee.

Section 13. Section 491.017, Florida Statutes, is created to read:

491.017 Parenting plan recommendation; presumption of good faith; prerequisite to parent's filing suit; award of fees, costs, reimbursement.—

(1) A mental health professional licensed under this chapter who has been appointed by the court to develop a parenting plan recommendation in a dissolution of marriage, a case of domestic violence, or a paternity matter involving the relationship of a child and a parent, including time-sharing of children, is presumed to be acting in good faith if the mental health professional's recommendation has been reached under standards that a reasonable mental health professional would use to develop a parenting plan recommendation.

(2) An administrative complaint against a court-appointed mental health professional which relates to a parenting plan recommendation developed by the mental health professional may not be filed anonymously. The individual who files an

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administrative complaint must include in the complaint his or her name, address, and telephone number.

(3) A parent who desires to file a legal action against a court-appointed mental health professional who has acted in good faith in developing a parenting plan recommendation must petition the judge who presided over the dissolution of marriage, case of domestic violence, or paternity matter involving the relationship of a child and a parent, including time-sharing of children, to appoint another mental health professional. Upon the parent's showing of good cause, the court shall appoint another mental health professional. The court shall determine who is responsible for all court costs and attorney fees associated with making such an appointment.

(4) If a legal action, whether it be a civil action, a criminal action, or an administrative proceeding, is filed against a court-appointed mental health professional in a dissolution of marriage, case of domestic violence, or paternity matter involving the relationship of a child and a parent, including time-sharing of children, the claimant is responsible for all reasonable costs and reasonable attorney fees associated with the action for both parties if the mental health professional is held not liable. If the mental health professional is held liable in civil court, the mental health professional must pay all reasonable costs and reasonable attorney fees for the claimant.

Section 14. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic _____

Bill Number SB 1368
(if applicable)

Name JIM AKIN

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 1931 DEERWOOD DRIVE
Street

Phone 850-224-2400

TALLAHASSEE FL 32303
City State Zip

E-mail jim@NASWFL-ORG

Speaking: ☒ For ☐ Against ☐ Information

Representing NATIONAL ASSOCIATION OF SOCIAL WORKERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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APPEARANCE RECORD

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4 1 9 12013*Meeting Date*

Topic _____

Bill Number 1368*(if applicable)*Name BRIAN PITTS

Amendment Barcode _____

*(if applicable)*Job Title TRUSTEEAddress 1119 NEWTON AVNUE SOUTHPhone 727-897-9291*Street*SAINT PETERSBURGFLORIDA33705*City**State**Zip*E-mail JUSTICE2JESUS@YAHOO.COMSpeaking: ☐ For ☐ Against ☒ InformationRepresenting JUSTICE-2-JESUSAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic 491 STATUTE REVISION

Bill Number 1368
(if applicable)

Name Melinda Piller

Amendment Barcode _____
(if applicable)

Job Title Gov. Relations Director for Fla Assoc. for Marriage & Family Therapy

Address 3907 Dunheer Ct
Street
Tall, FL 32309
City State Zip

Phone (850) 548-8484

E-mail melindapiller@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Fla Assoc. for Marriage & Family Therapy

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 1358

INTRODUCER: Senators Flores and Sobel

SUBJECT: Audits of Pharmacy Records

DATE: March 29, 2013

REVISED: _____

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

I. Summary:

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

This bill substantially amends section 465.188 of the Florida Statutes.

II. Present Situation:

Medicaid

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

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

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

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

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

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

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

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

² See s. 409.907(2), F.S.

³ See s. 409.913(7), F.S.

⁴ Social Services Estimating Conference Medicaid Services Expenditures, February 25, 2013, available at: <http://edr.state.fl.us/content/conferences/medicaid/medhistory.pdf> (Last visited on March 28, 2013).

⁵ See s. 409.913(1)(e), F.S.

Medicaid Pharmacy Audits

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

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

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

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

Third-party Payor/Third-party Administrator Pharmacy Audits

Advances in pharmaceuticals have transformed health care over the last several decades. Many health care problems are prevented, cured, or managed effectively for years through the use of prescription drugs. As a result, national expenditures for retail prescription drugs have grown from \$120.9 billion in 2000 to 263 billion in 2011.⁶ This has brought about increased scrutiny of pharmaceutical dispensing and reimbursement processes.

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

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

Pharmacies have increasingly complained about the onerous and burdensome nature of these audits. Organizations such as the National Community Pharmacists Association⁸ and the Independent Pharmacy Cooperative,⁹ which both represent independent pharmacies, have been advocating for legislation at the federal and state levels to address what they perceive as predatory practices by pharmacy benefit managers.

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

⁶ Centers for Medicare and Medicaid Services, *National Health Expenditures Web Tables, Table 16, Retail Prescription Drugs Aggregate, Percent Change, and Percent Distribution, by Source of Funds: Selected Calendar Years 1970-2011*. Found at: <<https://www.cms.gov/NationalHealthExpendData/downloads/tables.pdf>> (Last visited on March 22, 2013).

⁷ *Id.*

⁸ National Community Pharmacists Association, *NCPA to Medicare: Rein in Egregious Pharmacy Audits; Reform Preferred Networks; and Curb Mail Order Waste in 2014 Prescription Drug Plans*. Found at: <<http://www.ncpanet.org/index.php/news-releases/1593-ncpa-to-medicare-rein-in-egregious-pharmacy-audits-reform-preferred-networks-and-curb-mail-order-waste-in-2014-prescription-drug-plans>> (Last visited on March 29, 2013).

⁹ Independent Pharmacy Cooperative, *IPC Introduces Pharmacy Audit Legislation in Florida*. Found at: <https://www.ipcrx.com/Public/Govt%20Affairs/GA_December_22_2011.aspx> (Last visited on March 22, 2013).

¹⁰ National Community Pharmacists Association, *New Survey Reveals Pharmacists are Increasingly Struggling to Care for Patients Amid Predatory Audits, Unfair Reimbursement Practices*. Found at: <<http://www.ncpanet.org/index.php/news-releases/1062-new-survey-reveals-pharmacists-are-increasingly-struggling-to-care-for-patients-amid-predatory-audits-unfair-reimbursement-practices>> (Last visited on March 22, 2013).

III. Effect of Proposed Changes:

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

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

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

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

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill may raise concerns due to impairment of contracts.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

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

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

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

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

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Flores

37-01148A-13

20131358__

1 A bill to be entitled
2 An act relating to audits of pharmacy records;
3 amending s. 465.188, F.S.; revising requirements for
4 the audit of Medicaid-related pharmacy records;
5 requiring that audits of third-party payor and third-
6 party administrator records of pharmacy permittees be
7 conducted in specified manners; providing that claims
8 containing certain clerical or recordkeeping errors
9 are not subject to financial recoupment under certain
10 circumstances; specifying that certain audit criteria
11 apply to third-party claims submitted after a
12 specified date; prohibiting certain accounting
13 practices used for calculating the recoupment of
14 claims; prohibiting the audit criteria from requiring
15 the recoupment of claims except under certain
16 circumstances; providing procedures for review and
17 appeal of third-party payor and third-party
18 administrator audits; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 465.188, Florida Statutes, is amended to
23 read:

24 465.188 Financial ~~Medicaid~~ audits of pharmacies.—

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

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30 (a) The agency or other entity conducting the audit must
31 give the pharmacist at least 1 week's prior notice of the
32 initial audit for each audit cycle.

33 (b) An audit must be conducted by a pharmacist licensed in
34 this state.

35 (c) Any clerical or recordkeeping error, such as a
36 typographical error, scrivener's error, or computer error
37 regarding a document or record required under the third-party
38 payor, third-party administrator, or Medicaid program does not
39 constitute a willful violation and, without proof of intent to
40 commit fraud, is not subject to criminal penalties ~~without proof~~
41 ~~of intent to commit fraud~~. A claim is not subject to financial
42 recoupment if, except for such typographical, scrivener's,
43 computer, or other clerical or recordkeeping error, the claim is
44 an otherwise valid claim.

45 (d) A pharmacist may use the physician's record or other
46 order for drugs or medicinal supplies written or transmitted by
47 any means of communication for purposes of validating the
48 pharmacy record with respect to orders or refills of a legend or
49 narcotic drug.

50 (e) A finding of an overpayment or underpayment must be
51 based on the actual overpayment or underpayment and may not be a
52 projection based on the number of patients served having a
53 similar diagnosis or on the number of similar orders or refills
54 for similar drugs.

55 (f) Each pharmacy shall be audited under the same standards
56 and parameters.

57 (g) A pharmacist must be allowed at least 10 days in which
58 to produce documentation to address any discrepancy found during

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20131358__

an audit.

(h) The period covered by an audit may not exceed 1 calendar year.

(i) An audit may not be scheduled during the first 5 days of any month due to the high volume of prescriptions filled during that time.

(j) The audit report must be delivered to the pharmacist within 90 days after conclusion of the audit. A final audit report shall be delivered to the pharmacist within 6 months after receipt of the preliminary audit report or final appeal, as provided for in subsection (2), whichever is later.

(k) The audit criteria set forth in this section apply ~~applies~~ only to audits of Medicaid claims submitted for payment after subsequent to July 11, 2003, and to third-party claims submitted for payment after July 1, 2011. Notwithstanding any ~~other~~ provision of in this section, the agency or other entity conducting the audit may ~~shall~~ not use the accounting practice of extrapolation in calculating penalties or recoupment for Medicaid, third-party payor, or third-party administrator audits.

(1) The audit criteria may not subject a claim to financial recoupment except in those circumstances when recoupment is required by law.

(2) The Agency for Health Care Administration, in the case of a Medicaid-related audit, or the third-party payor or third-party administrator contracting with the pharmacy, in the case of a third-party payor or third-party administrator audit, shall establish a process under which a pharmacist may obtain a preliminary review of an audit report and may appeal an

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88 unfavorable audit report without the necessity of obtaining
89 legal counsel. The preliminary review and appeal may be
90 conducted by an ad hoc peer review panel, appointed by the
91 agency in the case of a Medicaid-related audit, or appointed by
92 the third-party payor or third-party administrator contracting
93 with the pharmacy in the case of a third-party payor or third-
94 party administrator audit, which consists of pharmacists who
95 maintain an active practice. If, following the preliminary
96 review, the ~~agency or~~ review panel finds that an unfavorable
97 audit report is unsubstantiated, the agency, in the case of a
98 Medicaid-related audit, or the third-party payor or third-party
99 administrator contracting with the pharmacy, in the case of a
100 third-party payor or third-party administrator audit, shall
101 dismiss the audit report without the necessity of any further
102 proceedings.

103 (3) This section does not apply to investigative audits
104 conducted by the Medicaid Fraud Control Unit of the Department
105 of Legal Affairs.

106 (4) This section does not apply to any investigative audit
107 conducted by the Agency for Health Care Administration when the
108 agency has reliable evidence that the claim that is the subject
109 of the audit involves fraud, willful misrepresentation, or abuse
110 under the Medicaid program.

111 Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13
Meeting Date

Topic Audit of Pharmacy Records Bill Number SB1358
(if applicable)

Name Joy Ryan Amendment Barcode _____
(if applicable)

Job Title _____

Address 204 S. Monroe St.
Street

Phone 681-6710

City _____ State _____ Zip _____

E-mail joy@blanklaw.com

Speaking: ☐ For ☒ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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04/07/2013
Meeting Date

Topic Pharmacy Audits

Bill Number SB 1358
(if applicable)

Name Michael Garner

Amendment Barcode _____
(if applicable)

Job Title Pres & CEO

Address 200 W. College Ave., Suite 104
Street
Tallahassee FL 32301
City State Zip

Phone 850-386-2901

E-mail michael@fahp.net

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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4-9-13

Meeting Date

Topic

Pharmacy Audit

Bill Number

1358

(if applicable)

Name

Steve McCall, R.Ph.

Amendment Barcode

(if applicable)

Job Title

Director Pharmacy Audit

Address

5990 S Mesquite Grove Way

Phone

480-614-7326

Street

Chandler

AZ

85249

City

State

Zip

E-mail

Speaking:

☐

For

☒

Against

☐

Information

Representing

CVS Caremark

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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4/9/2013
Meeting Date

Topic Phy Audit

Bill Number 1358
(if applicable)

Name MIKE AGOTE

Amendment Barcode _____
(if applicable)

Job Title SA Director Government Affairs

Address 7578 West Broad St.
Street

Phone 804-3374906

Richmond VA 23294
City State Zip

E-mail MICHAEL.AGOTE@CVS
canema.com

Speaking: ☐ For ☒ Against ☐ Information

Representing CVS CANEMA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

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4/10/13

Meeting Date

Topic AUDITS

Bill Number SB 1358
(if applicable)

Name Jim Koivisto

Amendment Barcode _____
(if applicable)

Job Title PHARMACIST

Address 413 UNIVERSITY Blvd South

Phone 904-737-2216

SOX FLA 32216
City State Zip

E-mail KOIVISTO@BESOUTH.NET

Speaking: ☒ For ☐ Against ☐ Information

Representing HALLDAYS & KOIVISTO'S PHARMACY

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic PHARMACY AUDITING

Bill Number SB 1358
(if applicable)

Name JIM POWERS

Amendment Barcode _____
(if applicable)

Job Title PHARMACIST CONSULTANT

Address 1349 OLD VILLAGE RD

Phone 850-422-0079

Street

TALLAHASSEE FL.

City

State

32312

Zip

E-mail THEPOWERS@NETTALLY.COM

Speaking: ☒ For ☐ Against ☐ Information

Representing FLA. INDEPENDENT PHARMACY NETWORK

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic SB 1358 Audit

Bill Number SB 1358
(if applicable)

Name Bill Napier

Amendment Barcode _____
(if applicable)

Job Title Pharmacist owner

Address 4369 ST. ALBANS DR
Street

Phone 904-571-5730

Jacksonville, FL FL 32257
City State Zip

E-mail PanamaRx@AOL.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Panama Pharmacy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic PHARMACY AUDITS

Bill Number SB1358
(if applicable)

Name PRESTON McDONALD

Amendment Barcode _____
(if applicable)

Job Title PHARMACIST

Address 5740 WESTMONT ROAD

Phone 850-982-9087

Street

MILTON FL 32583

City

State

Zip

E-mail MCPHARM@MCHSI.COM

Speaking: ☒ For ☐ Against ☐ Information

Representing PHARMACIST - PHARMACIES - LOCAL PHARMACIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE
APPEARANCE RECORD

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4/9/2013
Meeting Date

Topic Pharmacy Audits

Bill Number SB 1358
(if applicable)

Name Bill Mincy

Amendment Barcode _____
(if applicable)

Job Title VP, PPSC

Address 2648 Bantary Bay Dr
Street

Phone 850-322-7740

Tallahassee FL 32309
City State Zip

E-mail bill.mincy@ppsconline.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Independent Pharmacy Owners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE
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4-9-13

Meeting Date

Topic ~~SB 1358~~ Pharmacy Audit

Bill Number SB 1358
(if applicable)

Name Greg Toole - Pharmist

Amendment Barcode _____
(if applicable)

Job Title Pharmacy owner - Pharmist

Address 757 N Edgewood Ave

⁹⁰⁴⁻Phone 388-0514

Street

Jacksonville FL 32254

City

State

Zip

E-mail gtoole7@bellsouth.net

Speaking: ☒ For ☐ Against ☐ Information

Representing O'Steens Pharmacy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE
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4/9/2013
Meeting Date

Topic Pharmacy Audits

Bill Number SB 1358
(if applicable)

Name Bob Parrado

Amendment Barcode _____
(if applicable)

Job Title Pharmacist

Address 7922 Flowerfield Dr
Street

Phone 813-361-0491

TAMPA FL
City State Zip

E-mail bob.parrado1@hotmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Pharmacy 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.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Pharmacy Audits

Bill Number 50 1358
(if applicable)

Name Larry Gonzalez

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 223 S. Gadsden St.

Phone 850-222-0465

Street

Tallahassee FL 32301

City

State

Zip

E-mail lgonzalez@earthlink.net

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Society of Health System Pharmacists

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/9/13

Meeting Date

Topic Pharmacy Audit Bill

Bill Number SB1358
(if applicable)

Name George Malone

Amendment Barcode
(if applicable)

Job Title Pharmacist

Address 16017 Bella Woods Dr.

Phone 813 494 0438

Street

Tampa FL 33647

City

State

Zip

E-mail gdeno1am@mac.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Self / FSH P

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/4/13
Meeting Date

Topic PHARMACY ~~TESTIMONY~~ AUDITS

Bill Number SB 1358
(if applicable)

Name LARRY WILLIAMS

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 215 SOUTH MONROE STREET
Street

Phone (850) 521-1980

TALLAHASSEE FL 32301
City State Zip

E-mail LWILLIAMS@GUNSTER.COM

Speaking: ☒ For ☐ Against ☐ Information

Representing AMERICAN PHARMACY COOPERATIVE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Pharmacy Audit Bill

Bill Number SB 1358
(if applicable)

Name Bernadette Brown

Amendment Barcode
(if applicable)

Job Title Director of Pharmacy

Address 25320 Pembroke Place
Street

Phone

Tallahassee FL 32309
City State Zip

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013

Meeting Date

Topic _____

Bill Number 1358
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013

Meeting Date

Topic Pharmacy Audit

Bill Number 1358
(if applicable)

Name Jorge Chamizo

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 108 S. Monroe Street

Phone (850) 681-0024

Tallahassee, FL 32301
City State Zip

E-mail jorge@flapartners.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Independent Pharmacy Cooperative

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

A & E PHARMACY

923 N. New Warrington Road

Pensacola, FL 32506

(850) 455-0381 fax 455-4649

April 8, 2013

To Whom It May Concern:

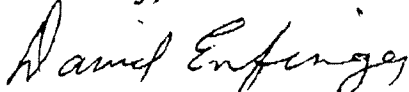
We have 3-5 audits per year. Our last audit was performed on October 11, 2012. I worked with the auditor on that day and 100 written prescriptions were examined along with some signature logs. It takes anywhere from 4 to 8 hours for the average audit. One hundred and thirty one days (over 4 months) later we received the results. The audit resulted in 5 prescriptions found with minor clerical (non-medical) discrepancies. The doctor left the date off one prescription and four had days supply in a range not accepted by the company. Because some of the prescriptions were refilled multiple times the total fills impacted was 14 for a total bill owed to the insurance company of \$1,494.32. **The interesting fact is that our total gross profit paid to us for these 14 fills was \$183.49.** The cost of the medication properly dispensed and received by the patient was part of the bill. The breakdown of the discrepancies with the recoupment amounts are as follows:

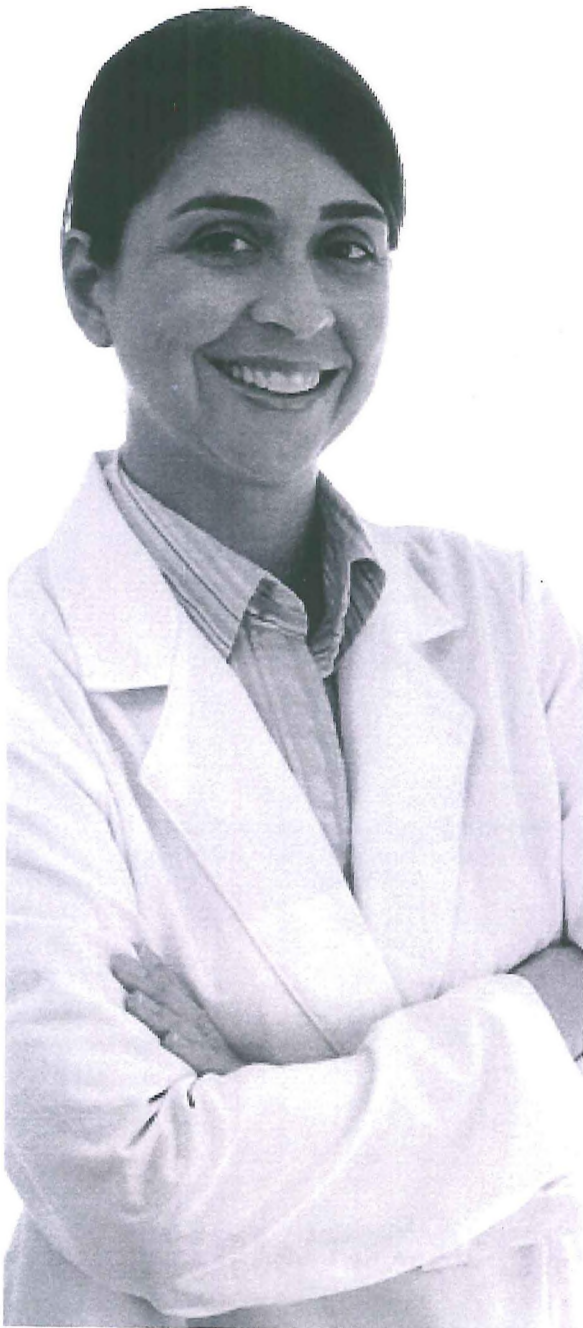
12 inhalers had days supply indicated not long enough	\$811.36
1 insulin had days supply indicated not long enough	\$189.65
1 prescription was not dated by the doctor	\$493.31

Right now it is open season on Independent Pharmacy. This single recoupment is our gross profit for over 140 prescriptions and the net profit for 7 full days of filling prescriptions. There is a multitude of non-medical discrepancies that can be screened that have nothing to do with the quality of the prescription dispensed. They know that fighting this is not worthwhile due to the time and expense necessary.

The single act of limiting the liability on these types of non-medical discrepancies to the gross profit would eliminate the entire problem. Thanks for your consideration in passing the bill.

Sincerely,


David Enfinger RPh



CVS CAREMARK

Florida Pharmacy Photos

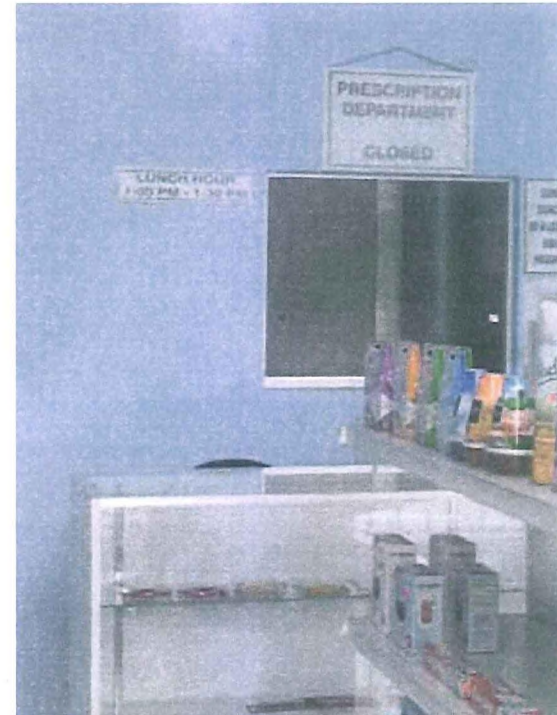
April 2013

Steve McCall, R.Ph. M.B.A.
Director, Pharmacy Performance

"Member" refers to plan member, an individual eligible for prescription drug benefits under a plan.
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■ Pharmacy Case #1



- The photos of this pharmacy were taken on October 25, 2012; the pharmacy was actively billing an unusually large amount of HIV medications during the month of October 2012. After numerous prescriber denials and member denials were received, Caremark suspended payments to the pharmacy. Shortly thereafter, the pharmacy stopped processing claims and has since 'closed'.

Pharmacy Case #2

This “pharmacy” was identified due to Caremark’s data mining abilities. Claims analysis revealed this pharmacy had ties to another pharmacy previously identified as billing fraudulent claims through Medicare Part D carriers. Both pharmacies were later identified as having forged their State Pharmacy Licensure as well as DEA licensure. Health Integrity Benefits – MEDIC provided this photo after Caremark notified them of our findings.

This unmarked pharmacy was able to process close to \$75K in Medicare Part D claims in 8 days.

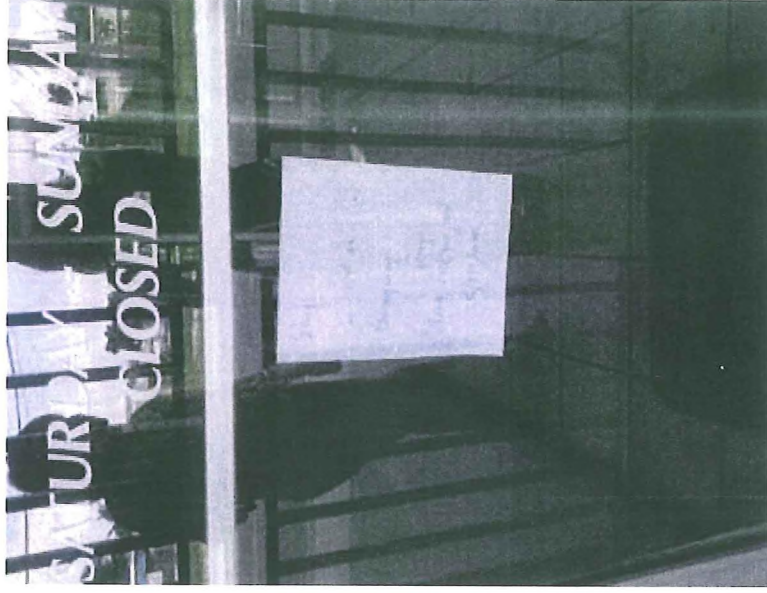


Pharmacy Case #3

CVS Caremark suspended payments to this pharmacy after receiving a prescriber denial. This denial accounted for more than half of all of their patients. The pharmacy was provided the opportunity to provide prescription hard copies in order clear the prescriber denials; they ceased processing claims.



■ Pharmacy Case #4



- This pharmacy was visited on August 22, 2012; pharmacy was found to be vacant with no shelf stock. A note taped to the door stated there was an emergency and the person would be back in 15 minutes. These types of 'emergency' notes have been seen more than a few times on pharmacies with concerning dispensing patterns.

Pharmacy Case #5

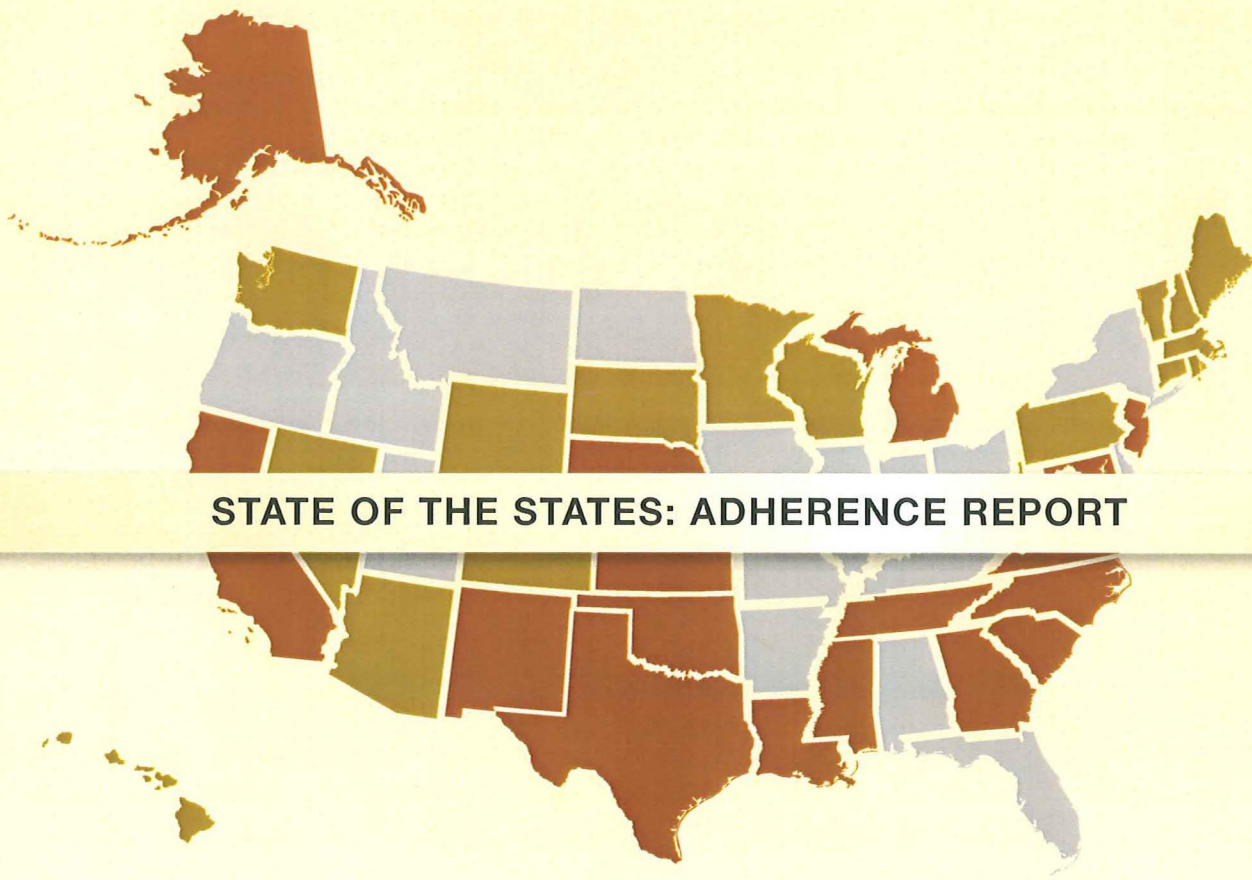
This pharmacy stopped processing claims after they were questioned about prescriber denials, and drug invoice shortages.



■ Pharmacy Case #6



- This pharmacy was found with minimal drug stock and no pharmacist on duty. Prior to taking the picture on the right, the technician behind the pharmacy counter switched the 'pharmacy open' sign to 'pharmacy closed'. These pictures were taken on August 22, 2012; on October 4, 2012 the new owner of this pharmacy was charged along with 90 other individuals for billing approximately \$430 million in false claims.



STATE OF THE STATES: ADHERENCE REPORT

FLORIDA

Adherence	Diabetes		Hypertension		Dyslipidemia		Depression		Overall	
	RANK	VALUE	RANK	VALUE	RANK	VALUE	RANK	VALUE	RANK	VALUE
MEDICATION POSSESSION RATIO (MPR)*	26	78.8%	23	81.6%	18	81.2%	9	74.7%	17	80.0%
PERCENT OPTIMAL MPR	38	58.4%	36	65.0%	38	63.7%	31	55.0%	33	62.2%
FIRST FILL PERSISTENCY RATE (FFPR)	10	68.3%	17	66.0%	18	64.9%	21	65.6%	18	66.0%
GENERIC DISPENSING RATE (GDR)	34	56.0%	41	82.0%	37	44.8%	34	60.4%	39	64.1%
MAIL DISPENSING RATE (MDR)	26	16.4%	26	18.6%	23	23.9%	25	12.5%	25	19.0%

*AGE AND GENDER ADJUSTED

Key Facts

- While in the middle tier of adherence, patients on depression therapies achieved better than average adherence
- There is an opportunity to improve generic dispensing rates, which would impact adherence rating



Florida
STATE RATING
● **SILVER**

Demographics

	RANK	VALUE
MALE	N/A	48.8%
OVER AGE 65	N/A	17.1%
ACTIVE (EXERCISE)	37	47.8%
OVERWEIGHT AND OBESE	28	65.0%
MEDIAN HOUSEHOLD INCOME	38	\$45,897

Access to Health Care

	RANK	VALUE
IMMUNIZED	5	77.9%
HEALTH CARE COVERAGE, COMMERCIAL	46	49.0%
HEALTH CARE COVERAGE, MEDICARE	2	16.4%
HEALTH CARE COVERAGE, MEDICAID	38	11.6%
PHYSICIANS PER 10,000 RESIDENTS	21	2.87
PHARMACY HOME RATING (1-5)	N/A	★★★★☆

CVS CAREMARK RESEARCH PARTNERSHIP

ADVANCING
ADHERENCE
& THE SCIENCE OF
PHARMACY CARE

Volume 2

SECTION I OVERVIEW OF ADHERENCE RESEARCH

2011

FINANCIAL
IMPACT OF
MEDICATION
ADHERENCE

Medication
Adherence Leads
to Lower Health
Care Use and
Costs Despite
Increased Drug
Spending

Published in *Health Affairs*,
January 2011

It seems like an obvious conclusion – people who are adherent to medications for chronic diseases (meaning they take their prescription drugs as directed by their doctor) have lower overall health care usage and costs. However, previously published studies have not been able to provide compelling evidence of the direct connection between medication adherence and cost savings and many questions have remained:

> Are these patients' health care costs lower because they are adherent, or do they have lower costs and use fewer health care resources because they are simply healthier individuals who make good lifestyle choices (e.g., healthy diet, regular exercise)?

> How much lower are health care costs for adherent patients?

> Does the reduction in health care costs make up for the increase in pharmacy costs due to patients taking their medications regularly, and therefore taking more medication?

We know that almost half of all Americans, approximately 133 million people, have at least one

chronic disease¹. In addition, studies have found that one-third of patients do not take their medications as prescribed and an even higher percentage of people with chronic conditions stop taking their medications within a year of diagnosis². Given these facts, CVS Caremark researchers evaluated integrated medical and pharmacy claims data and applied a disciplined methodology to better understand and analyze the impact of medication adherence for health plan sponsors. The research results were published in the January 2011 issue of *Health Affairs*³ and definitively establish that adherent patients who take medications as directed do indeed cost the health care system less. The study quantified these savings for patients with congestive heart failure, high blood pressure, diabetes and high cholesterol, indicating that adherent patients may save the health care system as much as \$7,800 per patient annually.

Patients who were adherent to their medications achieved savings as the result of fewer emergency department visits and fewer in-patient hospital days. In reviewing each of the four chronic conditions studied, the researchers found that adherent patients saved the following amounts compared to nonadherent patients:

Congestive heart failure
patients **saved \$7,823**
per year

High blood pressure
patients **saved \$3,908**
per year

High cholesterol
patients **saved \$1,258**
per year

Diabetes patients **saved**
\$3,756 per year

So what does this mean for the health care system in the coming years?

As health care reform is implemented and the Affordable Care Act expands access to medical care, players throughout the health care arena are all looking for ways to balance improved health outcomes with reduced spending. This research indicates that, even with increased pharmacy spending, medication adherence provides substantial medical savings due to reductions in hospitalizations and emergency department use. CVS Caremark believes that, moving forward, plan sponsors, government payers and patients should make programs that actively encourage medication adherence, such as value-based insurance design and pharmacist-led counseling, a top priority.

¹ Centers for Disease Control and Prevention. Chronic diseases and health promotion [Internet]. Atlanta (GA): CDC; 2010 Jul 7 [cited 2011 April 11]. Available from: <http://www.cdc.gov/NCCD/php/overview.htm>

² New England Healthcare Institute. Thinking Outside the Pillbox: A system-wide approach to improving patient medication adherence for chronic disease. August 2009.

³ Roebuck MG, Liberman JN, Gemmill-Toyama M, Brennan TA. Medication Adherence Leads to Lower Health Care Use and Costs Despite Increased Drug Spending. *Health Affairs*. 2011; 30:191-99.

Executive summary

As State Ratios increase, RPh's spend a greater proportion of time on RPh only activities. These are activities such as QA, counseling, administering flu shots, and any CII (Controlled Rx) related work.

When Ratios are lower, RPh have to complete work that could be done by a technician. This work becomes more costly when completed by a RPh as opposed to a technician.

As state ratio changes, you see the following fluctuations in RPh workload:

State Ratio	RPh Only Work %	RPh/Tech Work %
1-1	28%	72%
2-1	45%	55%
3-1	56%	44%
6-1	66%	34%

There are certain activities that only the RPh can complete

- **QA & DUR (Quality Assurance and Drug Utilization Review)**
 - Provide oversight for all Oral Countable Solid (OCS), Liquid, and prescriptions for both controlled and non controlled substances
- **Patient Counseling**
 - First Fill - Complex Therapy
- **Complex Clinical Adherence Issues**
 - Applies our most valuable resource to lower healthcare costs through adherence
- **Data Entry**
 - Handle all Prescriber calls requesting a new script for an existing customer
- **Production**
 - Complete the production of any controlled OCS and Non-OCS scripts, as well as any compound production
- **Doctor Calls and Clinical Discussions**
 - Handle all inbound and outbound calls from doctors
 - Address any customer questions (including Rx counseling) in the store
- **Other Admin**
 - Manage all controlled substance inventory related tasks (e.g. ordering, receiving, stock checks, processing paperwork)
 - Perform any patient level recalls
 - Provide individual coaching to all pharmacy staff members
 - Handle management responsibilities such as: Rx net patient review, review of weekly/monthly reports, team huddles, and management visits from Rx supervisors

The higher the state ratio, the more RPh time is allocated to only RPh work

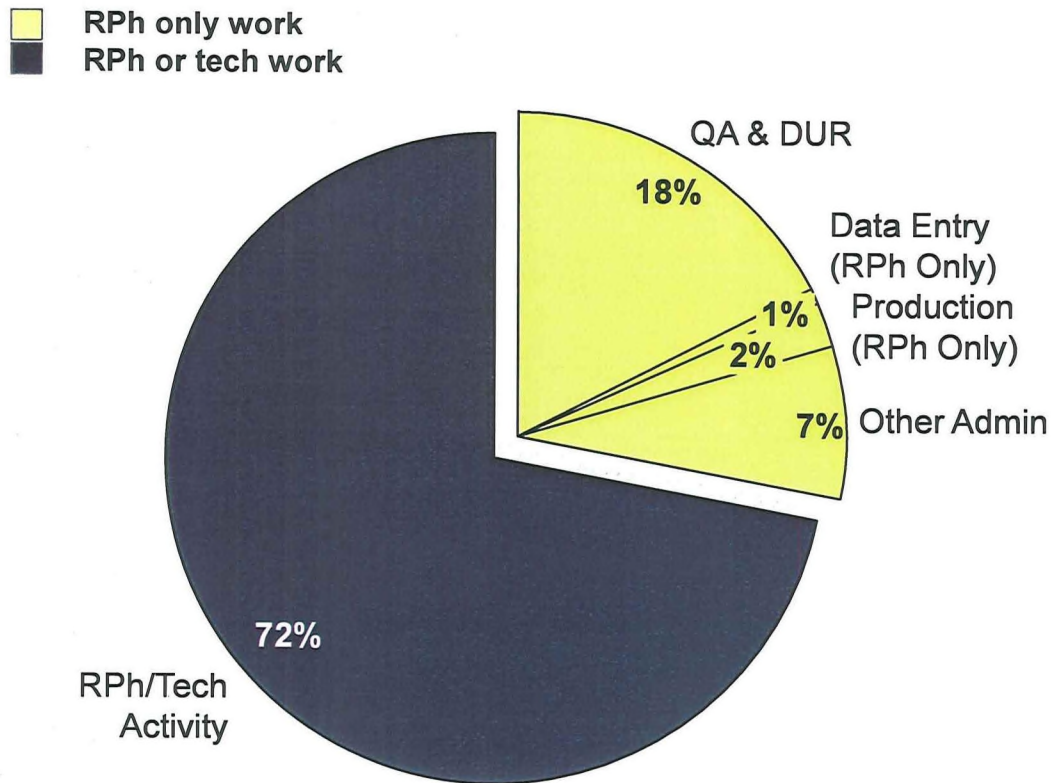
Other activities are traditionally completed by the Tech but can fall under the RPh workload

- **Data Entry**
 - Assist with data entry for existing customer refills, existing customers with new scripts, and new customers with new scripts through all of the following channels: In-store drop off, DriveThru, Fax, Voicemail, Calls, E-Scripts, IVR, and Transfers
- **Production**
 - Assist with the production of any manual countable, non controlled scripts
- **POS**
 - Support any DriveThru and front store Rx transactions
- **Customer Calls**
 - Contribute to non-customer facing call assistance; typically includes calls from an existing customer requesting a refill or new script
- **Other Admin**
 - Waiting bin returns and general cleaning/organizational tasks

In low ratio states, pharmacists spend a significant amount of time helping with technician work

In a 1-1 ratio, pharmacist workload would consist primarily of tech related activities

RPh to RPh/Tech Activity Comparison



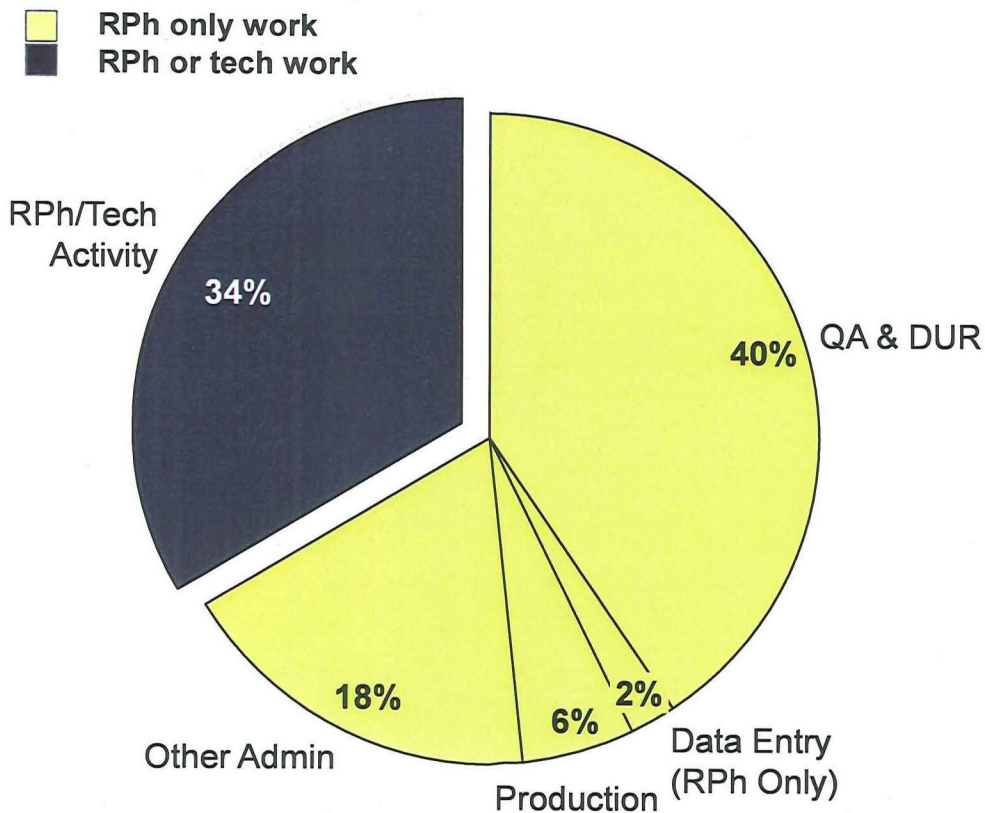
Only 28% of pharmacists time would be spent completing RPh's traditional workload, including: QA/DUR, RPh only Data Entry & Rx Production, etc.

Labor Findings in a 1-1 Ratio State

- ***Majority of pharmacists time would be spent completing technician workload***
- Pharmacist labor results in pharmacists completing Rx production, intake, and customer facing tasks traditionally completed by technicians

In a 6-1 store, RPh only activity increase Improves Patient Safety and Outcomes

RPh to RPh/Tech Activity Comparison



66% of pharmacists time can be applied to RPh's traditional workload, including: QA/DUR, RPh only Data Entry & Rx Production, etc.

Labor Findings in a 6-1 Ratio State

- Increasing ratio will continue to allow greater flexibility with scheduling, and will allow store teams to bring on additional tech support to meet periods of increased customer facing demand
- However, urgency requires more RPh labor to meet customer expectations.
- 77% of a Pharmacist workload is comprised of urgent work:
 - Consultations, CII production, Verification, Vaccinations, Patient Waiting Verification etc

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 662

INTRODUCER: Senator Hays

SUBJECT: Workers' Compensation

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Favorable
2.	Davlandes	Stovall	HP	Favorable
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 662 revises requirements for determining the amount of reimbursement for prescription medications of workers' compensation claimants by providing that the reimbursement rate is the same for repackaged or relabeled drugs as for non-repackaged drugs, unless the carrier has contracted for a lower rate. Reimbursement for repackaged or relabeled drugs would be determined by multiplying the number of units of the drug dispensed by the per-unit average wholesale price (AWP) set by the original manufacturer of the drug (which may not be the manufacturer of the repackaged or relabeled drug), plus a \$4.18 dispensing fee, unless the carrier has contracted for a lower amount. The bill expressly prohibits the price of repackaged or relabeled drugs from exceeding the amount that would otherwise be payable had the drug not been repackaged or relabeled. This provision would not apply in situations where the employer or insurer has contracted for a lower reimbursement amount.

Chapter 440, F.S., generally requires employers and carriers to provide medical and indemnity benefits to workers who are injured due to an accident arising out of and during the course of employment. Medical benefits can include, but are not limited to, medically necessary care and treatment, and prescription medications. In Florida, the prescription reimbursement rate for dispensing physicians and pharmacies is the AWP plus a \$4.18 dispensing fee, or the contracted rate, whichever is lower.¹

It is estimated that the bill would reduce workers' compensation costs overall by 1.1 percent or \$27 million.²

¹ Section 440.13(12), F.S.

² National Council on Compensation Insurers, Analysis of Florida Proposal to Revise Reimbursement for Repackaged or

This bill amends the following section of the Florida Statutes: 440.13.

II. Present Situation:

State and Federal Regulation of Prescription Drugs

Section 510 of the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. s. 360, requires registered drug establishments to provide the Food and Drug Administration (FDA) with a current list of all drugs manufactured, prepared, propagated, compounded, or processed by it for commercial distribution. Drug products are identified and reported to the FDA using a unique, three-segment number, called the National Drug Code (NDC), which is a universal product identifier for human drugs. The current edition of the NDC Directory is limited to prescription drugs and insulin products that have been manufactured, prepared, propagated, compounded, or processed by registered establishments for commercial distribution.³

The term “repackaged” drugs refers to drugs that have been purchased in bulk by a wholesaler/repackager from a manufacturer, relabeled, and repackaged into individual prescription sizes that can be dispensed directly by physicians or pharmacies to patients. Repackagers of drugs are required to register and list all such drug products repackaged and relabeled with the FDA.

In Florida, the Department of Business and Professional Regulation (DBPR) regulates prescription drug repackagers. A permit as a prescription drug repackager is required for any person that repackages a prescription drug in Florida. The permit authorizes the wholesale distribution of prescription drugs repackaged at the establishment.

Rule 64F-12, F.A.C., defines “repackaging or otherwise changing the container, wrapper, or labeling to further the distribution” to mean:

- Altering a packaging component that is or may be in direct contact with the drug, device, or cosmetic. For example, repackaging from bottles of 1,000 to bottles of 100.
- Altering a manufacturer’s package for sale under a label different from the manufacturer. For example: a kit that contains an injectable vaccine from manufacturer A; a syringe from manufacturer B; alcohol from manufacturer C; and sterile gauze from manufacturer D; packaged together and marketed as an immunization kit under a label of manufacturer Z.
- Altering a package of multiple-units, which the manufacturer intended to be distributed as one unit, for sale or transfer to a person engaged in the further distribution of the product.⁴

Relabeled Prescription Drugs, February 20, 2013. On file with Banking and Insurance Committee Staff.

³ *National Drug Code Database Background Information*, U.S. Food and Drug Administration. Found at: <http://www.fda.gov/drugs/developmentapprovalprocess/ucm070829>

⁴ The Rule provides that repackaging does not include:

- a. Selling or transferring an individual unit which is a fully labeled self-contained package that is shipped by the manufacturer in multiple units, or
- b. Selling or transferring a fully labeled individual unit, by adding the package insert, by a person authorized to distribute prescription drugs to an institutional pharmacy permit, health care practitioner, or emergency medical service provider for the purpose of administration and not for dispensing or further distribution.

According to the Workers' Compensation Research Institute, some states, such as Massachusetts, New York, and Texas prohibit physicians from dispensing drugs.⁵ In Florida, s. 465.0276(1), F.S., authorizes physicians and pharmacies to dispense, as provided below:

A person may not dispense medicinal drugs unless licensed as a pharmacist or otherwise authorized under this chapter to do so, except that a practitioner authorized by law to prescribe drugs may dispense such drugs to her or his patients in the regular course of her or his practice in compliance with this section.

To become a dispensing practitioner in Florida, a practitioner is required to register under s. 465.0276, F.S., with the applicable professional licensing board as a dispensing practitioner and pay a \$100 fee.⁶ Dispensing practitioners must comply with all laws and rules applicable to pharmacists and pharmacies including undergoing inspections. A practitioner registered under this section may not dispense a controlled substance listed in Schedule II or Schedule III in s. 893.03, F.S.⁷

Section 458.347, F.S., allows a supervising physician to delegate dispensing authority to his or her physician assistant (PA). No registration is required for a PA to dispense. The PA may prescribe under his or her supervising physician; however, a PA cannot prescribe controlled substances.

According to advocates of physician dispensers, there are some advantages for patients from physicians dispensing drugs. These benefits may include greater compliance by the patient in taking a drug dispensed directly by the physician, more convenience for patients residing in remote areas, and the benefit of prompt treatment.

A health care provider rendering medical treatment and care to an injured employee must be certified pursuant to Rule 69L-29.002, F.A.C., by the Department of Financial Services (DFS) or deemed certified, pursuant to s. 440.13(1)(d), F.S., as a provider within a managed care organization licensed through the Agency for Health Care Administration. Section 440.13(1)(d), F.S., provides that a "certified health care provider" is a provider approved to receive reimbursement through the Florida workers' compensation system. A certified provider may be a physician, a licensed practitioner, or a facility approved by the DFS or a provider who has entered an agreement with a licensed managed care organization to provide treatment to injured employees. Generally, a certified health care provider must receive authorization from the insurer before providing treatment.

Section 440.13(14), F.S., provides that fees charged for remedial treatment, care, and attendance, except for independent medical examinations and consensus independent medical examinations, may not exceed the applicable fee schedules adopted under ch. 440, F.S., and department rule. However, if a physician or health care provider specifically agrees in writing to follow identified procedures aimed at providing quality medical care to injured workers at reasonable costs, deviations from established fee schedules are allowed.

⁵ *Prescription Benchmarks for Massachusetts* by the Workers' Compensation Research Institute, March 2010.

⁶ If the practitioner is dispensing complimentary packages of medicinal drugs, the practitioner is not required to register.

⁷ See s. 465.0276(1)(b), F.S.

Reimbursement for Prescription Drugs in Workers' Compensation

Chapter 440, F.S., is Florida's workers' compensation law. The Division of Workers' Compensation within the DFS is responsible for administering ch. 440, F.S. Generally, employers/carriers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment. For such compensable injuries, an employer/carrier is responsible for providing medical treatment, which includes, but is not limited to, medically necessary care and treatment and prescription drugs.⁸

The reimbursement method for a prescription medication to pharmacies and dispensing physicians is found in s. 440.13(12)(c), F.S. The reimbursement amount is the average wholesale price (AWP) of the drug plus \$4.18 for the dispensing fee, unless the carrier has contracted for a lower amount. The AWP is comparable to a wholesaler's suggested price and the term, AWP, is not defined in ch. 440, F.S. Current law does not provide caps on reimbursements for repackaged or relabeled prescription drugs.

An NDC is assigned to each drug and used to identify the medication and the manufacturer or repackager of the medication. The original drug manufacturer creates an AWP for each drug. Drug repackagers purchase pharmaceuticals in bulk from the manufacturer, then relabel, and repackage the drugs into individual prescription sizes. Although drug repackagers do not alter the drugs, they do sell them in different quantities. By repackaging a drug, a new NDC is created and a new AWP is assigned to the repackaged drug.

Costs of Prescription Drugs in the Workers' Compensation System

According to a recent Workers' Compensation Research Institute (WCRI)⁹ report,¹⁰ the average payment per claim for prescription drugs in Florida was \$536, which was the second highest average prescription cost per claim among the 17 states in the study.¹¹ Between 2005-2006 and 2007-2008, the average prescription cost per claim increased 14 percent in Florida. Over the same period, prices per pill paid to physicians grew more rapidly than prices paid to pharmacies for the same prescription. In 2007-2008, the prices paid to physician dispensers for many common drugs were 40-80 percent higher than what was paid to pharmacies for the same drugs. For generic drugs, physicians were paid much higher prices per pill than pharmacies for the same prescription. According to the WCRI, this suggests that if physicians stop dispensing prescription drugs in response to a large price drop, more pharmacies would dispense the same prescriptions at a lower price, resulting in a decline in prescription costs.

⁸ Section 440.13(2)(a), F.S.

⁹ The Workers Compensation Research Institute is an independent, not-for-profit research organization providing information about public policy issues involving workers' compensation systems. Organized in late 1983, the WCRI does not take positions on the issues it researches.

¹⁰ *Prescription Benchmarks for Florida, 2ND Edition*, by Workers' Compensation Research Institute, July 2011.

¹¹ The following states were included in the WCRI study: Florida, California, Tennessee, Indiana, Texas, Louisiana, Michigan, Minnesota, North Carolina, Iowa, Pennsylvania, Illinois, Maryland, Wisconsin, New Jersey, New York, and Massachusetts.

III. Effect of Proposed Changes:

The bill amends s. 440.13, F.S., to require the same reimbursement rate for repackaged or relabeled drugs that currently exists for non-repackaged drugs in Florida. The bill provides that regardless of the location or the provider of a prescription to a claimant, the reimbursement amount is the average wholesale price, plus the \$4.18 for the dispensing fee, unless the carrier has contracted for a lower amount.

If a drug has been repackaged or relabeled, the reimbursement amount is calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug, which may not be the manufacturer of the repackaged or relabeled drug, plus a \$4.18 dispensing fee, unless the carrier has contracted for a lower amount. The bill also provides that the price of the repackaged or relabeled drug may not exceed the amount otherwise payable if the drug had not been repackaged or relabeled.

The act takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The NCCI¹² estimates that the changes proposed in SB 662 to revise reimbursement rules for repackaged or relabeled prescription drugs would result in an impact of -1.1 percent or -\$27.3 million¹³ on overall workers' compensation costs for employers in Florida.¹⁴

¹² In Florida, the National Council on Compensation Insurance (NCCI) is the rating and statistical organization that files rates on behalf of worker's compensation insurers in the state. The Office of Insurance Regulation licenses the NCCI.

¹³ Overall system costs are based on NAIC Annual Statement data as provided by A.M. Best including an estimate of self-insured premium. The estimated dollar impact of -\$27.3M (million) is the percent impact displayed multiplied by A.M. Best 2011 written premium (preliminary) of \$1,794M for Florida plus an estimate of the self-insured premium from the Florida Division of Workers Compensation for 2011 of \$692M. This figure does not include the policyholder retained portion of

In Florida, drug costs represent 15.1 percent¹⁵ of workers compensation (WC) medical costs. Repackaged or relabeled drug costs represent 24.3 percent of Florida's WC drug costs, or 3.7 percent ($=24.3 \times 15.1$) of medical costs. Non-repackaged drugs represent 11.4 percent ($=15.1 - 3.7$) of medical costs.

In order to estimate the cost impact of this proposal, NCCI compared the paid amount of repackaged or relabeled drugs to the expected payment for drugs if they had been dispensed in their original packaging from the manufacturer (not repackaged or relabeled). A repackaged or relabeled indicator field from First Databank's *National Drug Data File™ (NDDF), Descriptive and Pricing Data*, was used to distinguish repackaged or relabeled drugs from the drugs dispensed in their original packaging from the manufacturer within the Florida Workers Compensation Data licensed to NCCI.

Since HB 7095, effective July 1, 2011, bans dispensing of Schedule II and Schedule III controlled substances by a physician, these drugs were omitted from the cost impact analysis.

NCCI has assumed the difference between the current reimbursement for repackaged or relabeled drugs and the current reimbursement for the equivalent of these drugs that are not repackaged or relabeled to be a reasonable estimate of the cost impact due to the proposed legislation.

The current and proposed reimbursements for each repackaged or relabeled drug were calculated as follows:

Current Cost = Average price per unit for repackaged or relabeled drug x total units of repackaged or relabeled drug.

Proposed Cost = Average price per unit for equivalent drug that is not repackaged or relabeled x total units of repackaged or relabeled drug.

Where: *Units* = Total number of pills per prescription.

Average price per unit = Total paid divided by total units.

The current and proposed reimbursements are summed over all the transaction-level data to obtain total current and total proposed costs. The estimated direct impact on drug costs is the ratio of total proposed costs to total current costs. The impact on total prescription drugs due to the above proposals is summarized in the table below:

deductible policies, or adjustments for subsequent changes in premium levels. The use of premium as the basis for the dollar impact assumes that expenses and other premium adjustments will be affected proportionally to the change in benefit costs

¹⁴ *Ibid.*

¹⁵ Based on Florida Division of Workers' Compensation (DWC) data for Service Year 2011. This data would be on a calendar year basis – and include all 2011 medical provided on any open claim regardless of date of accident.

Type of Prescription Drug	Cost Distribution ¹⁶	Impact
Repackaged	24.3%	-45.1%
Non-Repackaged	75.7	0.0
Total Prescription Drugs	100.0%	-10.9%

The above impact of -10.9 percent on total prescription drugs is then multiplied by the Florida percentage of medical costs attributed to prescription drug payments (15.1 percent) to arrive at the estimated impact of -1.6 percent on medical costs. The resulting impact on medical costs is multiplied by the percentage of Florida benefit costs attributed to medical benefits (68.4 percent¹⁷) to arrive at the estimated impact on Florida overall workers compensation system in costs of -1.1 percent or -\$27.3 million.

C. Government Sector Impact:

State and local governments manage their workers' compensation risks by insuring or self-insuring. The impact on local government is indeterminate at this time. A local government that secures workers' compensation coverage would expect to experience a reduction in prescription drug costs to the extent that physicians dispense repackaged drugs to their employees. If a local government has contracted for a lower reimbursement rate, the bill would not affect that particular local government's costs.

Since the Division of Risk Management¹⁸ in the DFS has a contract provision regarding repackaged drug costs in its contract with its pharmacy benefits manager, it does not currently reimburse at the repackaged drug invoice price, and therefore the bill would not have a fiscal impact on the Division of Risk Management.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁶ Based on Florida Division of Workers' Compensation (DWC) data for Service Year 2011.

¹⁷ Based on NCCI Financial Call data from Policy Years 2009 and 2010 projected to 1/1/2013. This estimated date is subject to change depending on the effective date of this proposal.

¹⁸ The Division of Risk Management is responsible for the management of claims reported by or against state agencies for coverage under the self-insurance fund known as the "State Risk Management Trust Fund." Coverages provided through the trust fund include Workers' Compensation, Property, Fleet Automobile Liability, General Liability, Federal Civil Rights/Employment Discrimination and Court Awarded Attorney Fees.

¹⁹ Department of Financial Services, Division of Risk Management Bill Analysis, February 15, 2013. On file with Banking and Insurance Committee staff.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Hays

11-00036D-13

2013662__

1 A bill to be entitled
2 An act relating to workers' compensation; amending s.
3 440.13, F.S.; revising requirements for determining
4 the amount of a reimbursement for repackaged or
5 relabeled prescription medication; providing
6 limitations; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Paragraph (c) of subsection (12) of section
11 440.13, Florida Statutes, is amended to read:

12 440.13 Medical services and supplies; penalty for
13 violations; limitations.—

14 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
15 REIMBURSEMENT ALLOWANCES.—

16 (c) As to reimbursement for a prescription medication,
17 regardless of the location from which or the provider from whom
18 the claimant receives the prescription medication, the
19 reimbursement amount for a prescription shall be the average
20 wholesale price plus \$4.18 for the dispensing fee, unless except
21 where the carrier has contracted for a lower amount. If the drug
22 has been repackaged or relabeled, the reimbursement amount shall
23 be calculated by multiplying the number of units dispensed times
24 the per-unit average wholesale price set by the original
25 manufacturer of the underlying drug, which may not be the
26 manufacturer of the repackaged or relabeled drug, plus a \$4.18
27 dispensing fee, unless the carrier has contracted for a lower
28 amount. The repackaged or relabeled drug price may not exceed
29 the amount otherwise payable had the drug not been repackaged or

11-00036D-13

2013662__

30 relabeled. Fees for pharmaceuticals and pharmaceutical services
31 shall be reimbursable at the applicable fee schedule amount. If
32 ~~Where~~ the employer or carrier has contracted for such services
33 and the employee elects to obtain them through a provider not a
34 party to the contract, the carrier shall reimburse at the
35 schedule, negotiated, or contract price, whichever is lower. ~~No~~
36 Such contract may not ~~shall~~ rely on a provider that is not
37 reasonably accessible to the employee.

38 Section 2. This act shall take effect July 1, 2013.



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

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

Subject: Committee Agenda Request

Date: March 19, 2013

I respectfully request that **Senate Bill #662**, relating to Workers' Compensation, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, reading "Alan Hays".

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



File signed original with committee office

S-020 (09/2004)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Workers Comp

Bill Number 662
(if applicable)

Name Tom Panza

Amendment Barcode _____
(if applicable)

Job Title _____

Address 3600 N. Federal Highway
Street

Phone 954-390-0100

Fort Lauderdale FL 33308
City State Zip

E-mail tpanza@panzamaurer.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Automated Health Care Solutions

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic ~~XXXXXXXXXX~~ WE Drug Repack

Bill Number 662
(if applicable)

Name Tammy Perdue

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 516 N. Adams St

Phone 850-224-7173

Street

Tallahassee

FL

32301

City

State

Zip

E-mail tperdue@aif.com

Speaking: ☒ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013

Meeting Date

Topic Workers Compensation

Bill Number SB 662
(if applicable)

Name Howard E. "Gene" Adams

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 215 South Monroe Street, 2nd Floor
Street
Tallahassee Fla. 32301
City State Zip

Phone 850-222-3533

E-mail gene@penningtonlaw.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Sheriffs Risk Management Fund

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic _____

Bill Number SB662
(if applicable)

Name Bob Asztalos

Amendment Barcode _____
(if applicable)

Job Title Chief Lobbyist

Address 307 W Park Ave
Street

Phone 850-224-3907

Tallahassee FL 32301
City State Zip

E-mail basztalos@FHCA.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Health Care Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-10-13

Meeting Date

Topic _____

Bill Number 662
(if applicable)

Name Lance Lozano

Amendment Barcode _____
(if applicable)

Job Title Chief Operating Officer

Address 116 S. Monroe St.

Phone 850-681-6265

Tallahassee FL 32301
City State Zip

E-mail llozano@fuba.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida United Businesses Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Repurchase in Workers Comp Bill Number SB 662
(if applicable)

Name Larry Gonzalez Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address _____
Street

Phone 222-0465

E-mail _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing FSHP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 9, 2013

Meeting Date

Topic Workers' Compensation

Bill Number SB 662
(if applicable)

Name Cam Fentriss

Amendment Barcode _____
(if applicable)

Job Title Legislative Counsel

Address 1400 Village Square Boulevard, Number 3-243
Street

Phone 850-222-2772

Tallahassee, Florida 32312
City State Zip

E-mail afentriss@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Roofing, Sheet Metal and Air Conditioning Contractors Assn, Florida RACCA, FAPHCC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Workers' Comp Drug Re-package Bill Number SB 662
Name MART HEBRANK Amendment Barcode _____ (if applicable)
Job Title _____

Address 113 EAST COLLEGE AVE. #200 Phone 564-9824
TALLAHASSEE FL 32301
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA HOME BUILDERS ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Workers Comp

Bill Number 662
(if applicable)

Name Melissa Joiner

Amendment Barcode _____
(if applicable)

Job Title Director of Gov't Affairs

Address _____

Phone 570-0269

Street Tallahassee
City State Zip

E-mail Melissa@frf.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Workers' Compensation

Bill Number SB 662
(if applicable)

Name JIM BRAINERD

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2814 Rabbit Hill Road

Phone (950) 508-6716

Street

Tallahassee FL 32308

City

State

Zip

E-mail BRAINERDlaw@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Association of Insurance Agents

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Workers' Compensation

Bill Number SB 662
(if applicable)

Name Carolyn Johnson

Amendment Barcode _____
(if applicable)

Job Title Policy Director

Address 136 S Bronough St

Phone 850-521-1235

Street

Tallahassee

FL

32301

City

State

Zip

E-mail cjohnson@flchamber.com

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Chamber of Commerce

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.

the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/SB 648

INTRODUCER: Banking and Insurance Committee and Senator Hukill

SUBJECT: Health Insurance Marketing Materials

DATE: April 4, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Deffenbaugh	Burgess	BI	Fav/CS
2.	Lloyd	Stovall	HP	Favorable
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 648 deletes the requirement that health insurers and health maintenance organizations submit marketing communications for small employer health plans to the Office of Insurance Regulation (OIR) for review. The bill also deletes the requirement that each marketing communication contain specific disclosures, but retains the requirement that such disclosure be provided to a small employer upon the offer of coverage.

The bill continues the requirement that insurers file with OIR any long-term care insurance advertising materials, but deletes the requirement to file such materials 30 days prior to use. The bill allows the insurer to immediately begin using such materials upon filing, subject to subsequent disapproval by OIR. The bill does not delete the authority of the Financial Services Commission to adopt rules establishing standards for the advertising, marketing, and sale of long-term care insurance policies.

Florida law would continue to prohibit persons involved in the business of insurance from knowingly publishing any advertising with respect to the business of insurance, which is untrue, deceptive, or misleading.

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

CS/SB 648 substantially amends ss. 627.6699 and 627.9407, F.S.

II. Present Situation:

Small Employer Health Coverage

Florida Law - The Employee Health Care Access Act (s. 627.6699, F.S.), enacted in 1992, requires health insurers and health maintenance organizations (carriers) to offer a standard health benefit plan, a basic health benefit plan, and a high deductible plan that meets the requirements of health savings account plans, to any small employer who applies for coverage, regardless of the health status of the employees (“guaranteed-issue”). In general, a small employer is defined as an employer with 1 to 50 eligible employees, including a sole proprietor. Carriers may also offer a “limited benefit policy” to a small employer, as well as additional benefits to the standard and basic health benefit plans.

The current law requires that upon offering coverage to a small employer of a standard health benefit plan, basic health benefit plan, or limited benefit policy, the carrier must provide the small employer with a statement disclosing, at a minimum, the following:¹

- a. An explanation of those mandated benefits and providers that are not covered by the policy or contract;
- b. An explanation of the managed care and cost control features of the policy or contract, along with all appropriate mailing addresses and telephone numbers to be used by insureds in seeking information or authorization; and
- c. An explanation of the primary and preventive care features of the policy or contract.

The disclosure statement is required to be written in a clear and understandable form and be separate from the policy or certificate. The current law also requires that each marketing communication for small employer health benefit plans must be submitted by the carrier to the OIR for review prior to use. The law does not require prior approval by OIR and does not specify that OIR may disapprove the use of the marketing communication. The marketing communications must contain the disclosures specified above.

Federal Law - Effective January 1, 2014, the federal Patient Protection and Affordable Care Act² (PPACA) requires each health insurance issuer that offers health insurance coverage in the individual or group market to accept every individual and employer in the state that applies for such coverage.³ Final regulations require that health insurance issuers offer to any individual or employer in the state all products that are approved for sale in the applicable market.⁴ PPACA

¹ See specifically s. 627.6699(12)(d), F.S., for the disclosure statement requirements.

² Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

³ Section 1201, amending section 2701 of the Public Health Services Act (42 U.S.C. s.30066-1).

⁴ 77 Fed. Reg. 70612, (December 7, 2012) <http://www.gpo.gov/fdsys/pkg/FR-2012-12-07/html/2012-29184.htm> (last visited: April 4, 2013).

also requires, effective January 1, 2014, that coverage offered in the individual and small group market include a specified category of “essential health benefits.”⁵

Under PPACA, state insurance laws continue to apply except to the extent that they prevent the application of a provision of PPACA. Title I of PPACA, which includes the requirements summarized above, contains the following provision related to preemption of state insurance laws:

*No Interference With State Regulatory Authority—Nothing in the title shall be construed to preempt any State law that does not prevent the application of the provisions of this title.*⁶

Many of the provisions of PPACA, including those related to guaranteed-issuance of coverage, do not apply to a “grandfathered health plan,” which is individual or group coverage in which an individual was enrolled on March 23, 2010.⁷ Under federal regulations, plans lose grandfathered status if the insurer makes certain changes that reduce benefits or increase cost sharing.⁸ A grandfathered health plan that is exempt from a provision of PPACA would remain subject to any comparable state insurance law, including the Employee Health Care Access Act.

It is not entirely clear which provisions of the Employee Health Care Act may be preempted by PPACA and which continue to apply. It appears that the Florida requirement for small employer carriers to offer a standard, basic, and high-deductible health plan will be preempted to the extent that carriers will be required under federal law to offer all plans approved for sale in the small group market and that such plans must include the essential health benefits. However, the disclosure requirement of state law and the requirement to submit marketing materials to OIR for review would appear not to be preempted. For grandfathered-health plans exempt from these requirements of PPACA, the current requirements of the Employee Health Care Access Act would continue to apply.

Long-Term Care Insurance

Long-term care insurance generally covers care in a nursing home and one or more lower levels of care such as home health care or assisted living. Coverage typically includes the cost of personal care and services that are not covered by traditional health insurance or a Medicare Supplement insurance policy, such as assistance with activities of daily living. Florida law imposes specific requirements on long-term care insurance policies in part XVIII of chapter 627 (ss. 627.9410 - 627.9408), F.S., designated as the Long-Term Care Insurance Act (Act).

The Act requires that an insurer must file with the OIR any long-term care insurance advertising material intended for use in Florida at least 30 days before the advertisement is used. Within this 30-day period, the OIR must disapprove any advertisement that, in its opinion, violates any provision of the Act, any rule adopted by the Financial Services Commission, or any provision of part IX of chapter 626 (Unfair Insurance Trade Practices). The Act further authorizes OIR to

⁵ Section 1201, amending section 2707 of the Public Health Services Act (42 U.S.C. s. 300gg-6).

⁶ Section 1321(d); 42 U.S.C. s. 18041(d).

⁷ Section 1251; 42 U.S.C. s. 18011.

⁸ 45 C.F.R.147.140.

disapprove an advertisement at any time and enter an immediate order requiring that it be discontinued if OIR determines that the advertisement violates any such provisions.⁹

The Act requires the Financial Services Commission to adopt rules establishing standards for the advertising, marketing, and sale of long-term care insurance policies, for the stated purpose of protecting applicants from unfair or deceptive sales or enrollment practices.¹⁰ The rules for long-term care insurance policies cross-reference the advertising rules that apply to life and health insurance policies, generally, which include various form, content, and disclosure requirements.¹¹

Related Requirements

Persons involved in the business of insurance are prohibited from engaging in specified unfair insurance trade practices, including knowingly making, publishing, or circulating any advertisement, announcement, or statement with respect to the business of insurance, which is untrue, deceptive, or misleading.¹²

The OIR is authorized to perform market conduct examinations on each authorized insurer as often as it deems necessary, for the purpose of ascertaining compliance with ch. 627, F.S., and other specified provisions of the Florida Insurance Code.¹³

III. Effect of Proposed Changes:

Section 1 of CS/SB 648 modifies s. 627.6699, F.S., to delete the requirement that health insurers and health maintenance organizations submit each marketing communication for small employer health plans to the OIR for review. The bill also deletes the requirement that each marketing communication contain the specific disclosures that carriers are required to provide to a small employer upon offering a standard benefit plan, basic benefit plan, or limited benefit policy. However, the bill does not delete the requirement that this disclosure be provided to a small employer.

Section 2 modifies s. 627.9407, F.S., which continues the requirement that insurers file with OIR any long-term care insurance advertising materials, but deletes the requirement to file such materials 30 days prior to use. The bill allows the insurer to immediately begin using such material upon filing, subject to subsequent disapproval by OIR. Following receipt of a notice of disapproval or a withdrawal of approval, the insurer must immediately cease use of the disapproved material. The bill does not delete the authority of the Financial Services Commission to adopt rules establishing standards for the advertising, marketing, and sale of long-term care insurance policies.

⁹ Section 627.9407(2), F.S.

¹⁰ Id.

¹¹ 69O-157.115, F.A.C., referencing 69O-150, F.A.C.

¹² Section 626.9541(1)(b), F.S.

¹³ Section 624.3161, F.S.

Florida law would continue to prohibit persons involved in the business of insurance from knowingly publishing any advertisement with respect to the business of insurance, which is untrue, deceptive, or misleading.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 648 would reduce costs of insurers associated with filing marketing materials for small employer health plans.

C. Government Sector Impact:

There will be some reduction in OIR staff time devoted to review of marketing materials, but will not significantly impact OIR resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on March 20, 2013:

The CS clarifies that advertising materials for long-term care insurance policies, which the bill allows an insurer to begin using upon filing, are subject to subsequent disapproval by the office. The CS further clarifies that following receipt of a notice of disapproval or a withdrawal of approval, the insurer must immediately cease use of the disapproved material.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Hukill

597-02823-13

2013648c1

1 A bill to be entitled
2 An act relating to health insurance marketing
3 materials; amending ss. 627.6699 and 627.9407, F.S.;
4 authorizing a health insurer to immediately begin
5 using long-term care insurance advertising material
6 under certain circumstances; providing an effective
7 date.
8

9 Be It Enacted by the Legislature of the State of Florida:
10

11 Section 1. Paragraph (d) of subsection (12) of section
12 627.6699, Florida Statutes, is amended to read:

13 627.6699 Employee Health Care Access Act.—

14 (12) STANDARD, BASIC, HIGH DEDUCTIBLE, AND LIMITED HEALTH
15 BENEFIT PLANS.—

16 (d)1. Upon offering coverage under a standard health
17 benefit plan, a basic health benefit plan, or a limited benefit
18 policy or contract for a ~~any~~ small employer group, the small
19 employer carrier shall provide such employer group with a
20 written statement that contains, at a minimum:

21 a. An explanation of those mandated benefits and providers
22 that are not covered by the policy or contract;

23 b. An explanation of the managed care and cost control
24 features of the policy or contract, along with all appropriate
25 mailing addresses and telephone numbers to be used by insureds
26 in seeking information or authorization; and

27 c. An explanation of the primary and preventive care
28 features of the policy or contract.
29

597-02823-13

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Such disclosure statement must be presented in a clear and understandable form and format and must be separate from the policy or certificate or evidence of coverage provided to the employer group.

2. Before a small employer carrier issues a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, the carrier ~~it~~ must obtain from the prospective policyholder a signed written statement in which the prospective policyholder:

a. Certifies as to eligibility for coverage under the standard health benefit plan, basic health benefit plan, or limited benefit policy or contract;

b. Acknowledges the limited nature of the coverage and an understanding of the managed care and cost control features of the policy or contract;

c. Acknowledges that if misrepresentations are made regarding eligibility for coverage under a standard health benefit plan, a basic health benefit plan, or a limited benefit policy or contract, the person making such misrepresentations forfeits coverage provided by the policy or contract; and

d. If a limited plan is requested, acknowledges that the prospective policyholder had been offered, at the time of application for the insurance policy or contract, the opportunity to purchase any health benefit plan offered by the carrier and that the prospective policyholder ~~had~~ rejected that coverage.

A copy of such written statement must ~~shall~~ be provided to the prospective policyholder by ~~no later than at~~ the time of

597-02823-13

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59 delivery of the policy or contract, and the original of such
60 written statement must ~~shall~~ be retained in the files of the
61 small employer carrier for the period of time that the policy or
62 contract remains in effect or for 5 years, whichever ~~period~~ is
63 longer.

64 3. Any material statement made by an applicant for coverage
65 under a health benefit plan which falsely certifies ~~as to~~ the
66 applicant's eligibility for coverage serves as the basis for
67 terminating coverage under the policy or contract.

68 ~~4. Each marketing communication that is intended to be used~~
69 ~~in the marketing of a health benefit plan in this state must be~~
70 ~~submitted for review by the office prior to use and must contain~~
71 ~~the disclosures stated in this subsection.~~

72 Section 2. Subsection (2) of section 627.9407, Florida
73 Statutes, is amended to read:

74 627.9407 Disclosure, advertising, and performance standards
75 for long-term care insurance.—

76 (2) ADVERTISING.—The commission shall adopt rules
77 establishing ~~setting forth~~ standards for the advertising,
78 marketing, and sale of long-term care insurance policies in
79 order to protect applicants from unfair or deceptive sales or
80 enrollment practices. An insurer shall file with the office any
81 long-term care insurance advertising material intended for use
82 in this state and may immediately begin using such material upon
83 filing, subject to subsequent disapproval by the office.
84 Following receipt of a notice of disapproval or a withdrawal of
85 approval, the insurer must immediately cease use of the
86 disapproved material ~~at least 30 days before the date of use of~~
87 ~~the advertisement in this state. Within 30 days after the date~~

597-02823-13

2013648c1

88 ~~of receipt of the advertising material, the office shall review~~
89 ~~the material and shall disapprove any advertisement if, in the~~
90 ~~opinion of the office, such advertisement violates any of the~~
91 ~~provisions of this part or of part IX of chapter 626 or any rule~~
92 ~~of the commission.~~ The office may also disapprove an
93 advertisement at any time and enter an immediate order requiring
94 that the use of the advertisement be discontinued if it
95 determines that the advertisement violates ~~any of the provisions~~
96 ~~of this part, or of~~ part IX of chapter 626, or any rule of the
97 commission.

98 Section 3. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and
Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL

8th District

March 21, 2013

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

Dear Chairman Bean:

Senate Bill 648, relating to Health Insurance Marketing Materials has been referred to the Committee on Health Policy. I am requesting your consideration on placing SB 648 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

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

REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

ENTERED

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 9 / 2013

Meeting Date

Topic _____

Bill Number 648
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

Waive in Support

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-9-11

Meeting Date

Topic Health Ins. Marketing

Bill Number SB 648
(if applicable)

Name Joy Ryan

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone 681-6710

City _____ State _____ Zip _____

E-mail joy@blanklaw.com

Speaking: ☒ For ☐ Against ☐ Information

Representing ATIP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013

Meeting Date

Topic Insurance Marketing Materials

Bill Number SB 648
(if applicable)

Name Jennifer Green

Amendment Barcode _____
(if applicable)

Job Title President

Address 113 E. College Ave, Suite 300

Phone (850) 841-1726

Street

Tallahassee

FL

32301

City

State

Zip

E-mail jennifer@libertypartnersA.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Humana, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/9/13

Meeting Date

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

Topic Marketing Materials

Bill Number 648
(if applicable)

Name Tammy Perdue

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 516 N. Adams St

Phone 850-224-7173

Tallahassee FL 32301
City State Zip

E-mail tperdue@aif.com

Speaking: ☒ For ☐ Against ☐ Information

Representing AIF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/09/2013
Meeting Date

Topic Marketing Materials

Bill Number SB 648
(if applicable)

Name Michael Garner

Amendment Barcode _____
(if applicable)

Job Title Pres & CEO

Address 200 W. College Ave., Suite 104
Street

Phone 850-386-2904

Tallahassee FL 32301
City State Zip

E-mail michael@falguni.net

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Policy Committee

BILL: CS/SB 894

INTRODUCER: Health Policy Committee and Senator Braynon

SUBJECT: Community Health Workers

DATE: April 10, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daylantes	Stovall	HP	Fav/CS
2.			ED	
3.			CA	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 894 authorizes the Department of Health (DOH) to create and provide administrative support to a Community Health Worker (CHW) Task Force within a state college or university. The task force will be comprised of 12 members and will include representatives from the Senate, the House of Representatives, the executive branch, and community health workers.

The task force is charged with developing recommendations on including CHWs as part of the health care delivery team. The task force must also collaborate with other statewide stakeholders, such as universities, to devise a process that leads to the standardization of qualifications and skills of CHWs who are employed in state-supported health care programs.

The members of the task force will elect a chair and a vice chair, meet at least quarterly with a quorum of seven members, and are not entitled to compensation or reimbursement of travel expenses. The task force will submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2014.

The bill's provisions will be repealed on December 1, 2014.

This bill will take effect upon becoming a law.

This bill creates one undesignated section of law.

II. Present Situation:

Community Health Workers

According to the Florida Community Health Worker Coalition (the coalition), a CHW is “a frontline health worker who is a trusted member of and/or has an unusually close understanding of the community served. This trusting relationship enables the CHW to serve as a liaison/link/intermediary between health/social services and the community to facilitate access to services and improve the quality and cultural competence of service delivery. A CHW also builds individual and community capacity by increasing health knowledge and self-sufficiency through a range of activities such as outreach, community education, informal counseling, social support and advocacy. Some activities performed by the CHW include providing information on available resources, providing social support and informal counseling, advocating for individuals and community health needs, and providing services such as first aid and blood pressure screening. They may also collect data to help identify community health needs.”¹

There is a developing body of evidence demonstrating CHW effectiveness. Most studies are focused on CHW interventions targeted at specific conditions such as diabetes or asthma, and these studies generally show improvement in health outcomes, health behaviors, and patient satisfaction. Other studies have demonstrated cost savings and improved outreach and enrollment into public benefits. Comprehensive reviews such as those conducted by the United States Department of Health and Human Services’ Health Resources and Services Administration (HRSA) and the Agency for Healthcare Research and Quality have found mixed results in the literature due to both design limitation and results. Improvement in health outcomes has a stronger body of evidence than cost savings in these reviews but further research into both areas is required. This national attention has increased state level activity and many states, such as Texas, Minnesota, and Massachusetts, now have well-developed CHW programs, regulations and public funding sources.

The first federal effort authorizing CHW programs – the Patient Navigator Outreach and Chronic Disease Prevention Act – passed in 2005. The legislation authorized \$25 million in HRSA-administered grants for patient navigator (a type of CHW) programs to coordinate health care services, provide health screening and health insurance information, conduct outreach to medically underserved populations, and perform other duties common to CHWs. This program was reauthorized in 2010 under the Patient Protection and Affordable Care Act (PPACA); the PPACA also provides numerous other opportunities to expand and further integrate CHW programs into the health care system.²

¹ Florida CHW Coalition, *Status Update*, available at: <http://www.floridachwn.cop.ufl.edu/coalition/status-update/> (Last visited on March 30, 2013).

² National Health Care for the Homeless Council, *Community Health Workers: Financing and Administration*. August 2011. Available at: <http://www.nhchc.org/wp-content/uploads/2011/10/CHW-Policy-Brief.pdf> (Last visited on March 30, 2013).

Florida Community Health Worker Coalition

The coalition is a statewide partnership housed within the University of Florida College of Pharmacy dedicated to the support and promotion of the CHW profession. It was first formed as a task force in February 2011 through a grant from the Centers of Disease Control and Prevention (CDC) awarded to the DOH.³ The task force funded under the CDC grant has since blossomed into an organization of 130 volunteer members all over Florida.⁴ The coalition provides many resources for CHWs, including links to training programs and conferences, a listing of CHW employers in Florida, and success stories.

The coalition has established five subgroups or committees to explore current research, including models, curricula, and best practices in order to create a viable marketplace for CHWs. The subgroups are: Networking/Sustainability, Policy, Curriculum, Research, and Practice. The Networking/Sustainability Committee identifies various community health organizations around the state to participate in the coalition, promotes recognition of CHWs through branding, and has crafted a charter and an official definition of CHW for the group. The Policy Committee promotes legislation to further the efforts and sustainability of CHWs. The Curriculum Committee aims to establish core standards for CHW training, institute a curriculum review panel, and create a formal certification process for CHWs. The Research Committee reviews existing research on CHWs to provide concrete data on their effectiveness, how they are used, return on investment, and other key performance indicators. The Practice Committee collects information concerning the practical experiences of CHWs in Florida.⁵ Each subgroup meets approximately monthly via conference call, and the meetings are open to anyone who is interested.⁶

Medically Underserved in Florida

Medically underserved areas or populations are those areas or populations designated by HRSA as having too few primary care providers, high infant mortality, high poverty, and/or high elderly population.⁷ Medically underserved areas may consist of a whole county or group of contiguous counties, a group of county or civil divisions, or a group of urban census tracts in which residents have a shortage of personal health services. Medically underserved populations may include groups of persons who face economic, cultural, or linguistic barriers to health care.⁸ Medically underserved areas and populations are found in every county in Florida.⁹

Health professional shortage areas are defined by HRSA as having shortages of primary medical care, dental, or mental health providers and may be geographic (a county or service area), demographic (low-income populations), or institutional (a comprehensive health center, federally-qualified health center, or other public facility). All but two counties in Florida have at

³ *Supra* fn. 1.

⁴ Email correspondence with staff of the coalition. A copy of the email is on file with the Senate Health Policy Committee.

⁵ *Supra* fn. 1.

⁶ Department of Health, *Florida Community Health Worker Coalition*, available at: http://www.doh.state.fl.us/family/chronicdisease/CHW_Coalition/ (Last visited on March 30, 2013).

⁷ HRSA, *Find Shortage Areas: MUA/P by State and County*, available at: <http://muafind.hrsa.gov/> (Last visited on March 30, 2013).

⁸ HRSA, *Shortage Designation: Health Professional Shortage Areas & Medically Underserved Areas/Populations*, available at: <http://bhpr.hrsa.gov/shortage/> (Last visited on March 30, 2013).

⁹ *Supra* fn. 7.

least one shortage area for primary care, all but four counties have a shortage area for dentists, and all but six counties have a shortage area for mental health providers.¹⁰

According to 2011 data, 20 percent of Floridians have no form of health insurance, or 3,825,100 people.¹¹ This is the fourth-highest uninsured rate among all states, surpassed only by Texas, Nevada, and New Mexico.¹²

The federal poverty level for the continental U.S. is currently \$22,350 for a family of four; 185 percent of this is \$41,347.50.¹³

Statutory Creation of Advisory Bodies, Commissions, or Boards

The statutory creation of any collegial body to serve as an adjunct to an executive agency is subject to certain provisions in s. 20.052, F.S. Such a body may only be created when it is found to be necessary and beneficial to the furtherance of a public purpose, and it must be terminated by the Legislature when it no longer fulfills such a purpose. The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of any collegial or advisory bodies.

A committee or task force is defined in statute to mean “an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.”

Private citizen members of any advisory body (with exceptions for members of commissions or boards of trustees) may only be appointed by the Governor, the head of the executive agency to which the advisory body is adjunct, the executive director of the agency, or a Cabinet officer. Private citizen members of a commission or a board of trustees may only be appointed by the Governor, must be confirmed by the Senate, and are subject to the dual-office-holding prohibition of Art. II, s. 5(a) of the State Constitution.

Members of agency advisory bodies serve for 4-year staggered terms and are ineligible for any compensation other than travel expenses, unless expressly provided otherwise in the State Constitution. Unless an exemption is specified by law, all meetings are public, and records of minutes and votes must be maintained.¹⁴

¹⁰ HRSA, *Find Shortage Areas: HPSA by State and County*, available at: <http://hpsafind.hrsa.gov/> (Last visited on March 30, 2013).

¹¹ Kaiser Family Foundation, *Florida: Health Insurance Coverage of the Total Population, states (2010-2011), U.S. (2011)*, available at: <http://www.statehealthfacts.org/profileind.jsp?ind=125&cat=3&rgn=11> (Last visited on March 30, 2013).

¹² Kaiser Family Foundation, *Health Insurance Coverage of the Total Population, states (2010-2011), U.S. (2011)*, available at: <http://www.statehealthfacts.org/comparetable.jsp?typ=2&ind=125&cat=3&sub=39&sortc=6&o=a> (Last visited on March 30, 2013).

¹³ U.S. Department of Health and Human Services, *The 2011 HHS Federal Poverty Guidelines*, available at: <http://aspe.hhs.gov/poverty/11poverty.shtml> (Last visited on March 30, 2013).

¹⁴ Section 20.03(8), F.S.

III. Effect of Proposed Changes:

Section 1 provides definitions for various terms and describes the duties of CHWs.

This section also authorizes the DOH to create and provide administrative support to a Community Health Worker Task Force within a state college or university. The task force will be comprised of the following 12 members:

- One member of the Senate, appointed by the President of the Senate.
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives.
- One state official, appointed by the Governor.
- Six culturally and regionally diverse community health workers, appointed by the State Surgeon General.
- Three representatives of the coalition, appointed by the chair of the coalition.

The task force is charged with developing recommendations for:

- Including CHWs in the development of proposals for health care or Medicaid reform in the state as part of the outreach efforts for enrolling residents of this state in Medicaid managed care programs or other health care delivery services;
- Including CHWs in providing assistance to residents in navigating the health care system and providing information and guidance regarding preventive health care; and
- Providing support to community health centers and other safety net providers through the integration of CHWs as part of health care delivery teams.

The task force must also collaborate with other statewide stakeholders, such as universities, to devise a process that leads to the standardization of qualifications and skills of CHWs who are employed in state-supported health care programs.

The members of the task force will elect a chair and a vice chair, meet at least quarterly with a quorum of seven members, and are not entitled to compensation or reimbursement of travel expenses. The task force will submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 30, 2014.

This section is repealed on December 1, 2014.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOH currently provides support to the Florida CHW Coalition with funding from a CDC grant. Support could be extended to the task force within existing resources.¹⁵

VI. Technical Deficiencies:

In line 43, the name of the coalition should be the Florida Community Health Worker Coalition.

VII. Related Issues:

None.

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

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

CS by Health Policy on April 9, 2013:

The CS eliminates providing informal counseling from the list of proposed duties of CHWs. The CS also specifies that meetings of the task force may be held in person or by teleconference or other electronic means. The CS provides that the provisions of the bill will be repealed on December 1, 2014.

B. Amendments:

None.

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

¹⁵ Department of Health, 2013 Bill Analysis for SB 894. A copy is on file with the Senate Health Policy Committee.



950250

LEGISLATIVE ACTION

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

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

Senate Amendment

Delete line 63
and insert:
b. Provides social support.



308534

LEGISLATIVE ACTION

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

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

Senate Amendment (with title amendment)

Delete line 134
and insert:
by a majority of members. Meetings of the task force may be held
in person or by teleconference or other electronic means.

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

And the title is amended as follows:

Delete line 13
and insert:
force meet at least quarterly and meet in person, by



308534

13 teleconference, or by other electronic means;
14 specifying the number



363828

LEGISLATIVE ACTION

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

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

Senate Amendment (with title amendment)

Between lines 141 and 142
insert:

(3) This section is repealed on December 1, 2014.

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

And the title is amended as follows:

Delete line 16

and insert:

Legislature by a specified date; providing for future
repeal of the task force; providing an

By Senator Braynon

36-00967-13

2013894__

1 A bill to be entitled
2 An act relating to community health workers; providing
3 definitions; specifying the duties and activities of
4 community health workers; creating the Community
5 Health Worker Task Force within a state college or
6 university; requiring the Department of Health to
7 provide administrative support and services; providing
8 membership and duties of the task force; requiring the
9 members of the task force to elect a chair and vice
10 chair; providing that task force members serve without
11 compensation and are not entitled to reimbursement for
12 per diem or travel expenses; requiring that the task
13 force meet at least quarterly; specifying the number
14 of members required for a quorum; requiring the task
15 force to submit a report to the Governor and
16 Legislature by a specified date; providing an
17 effective date.

18
19 WHEREAS, Florida faces a number of challenges in providing
20 access to health care services in both urban and rural areas
21 which impair the health and well-being of state residents, and

22 WHEREAS, Florida continues to experience critical shortages
23 of providers in primary health care, oral health care, and
24 behavioral health care, particularly in rural and inner-city
25 areas, and

26 WHEREAS, there is substantial evidence that comprehensive
27 coordination of care for individuals who have chronic diseases
28 and the provision of information regarding preventive care can
29 improve individual health, create a healthier population, reduce

36-00967-13

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the costs of health care, and increase appropriate access to health care, and

WHEREAS, community health workers have demonstrated success in increasing access to health care in underserved communities, providing culturally appropriate education regarding disease prevention and management, providing translating and interpreting services for health care encounters, improving health outcomes through the coordination of care, increasing individual health care literacy and advocacy, and organizing to improve the health care of medically underserved communities while reducing costs in the state's health care system, and

WHEREAS, the Legislature recognizes that community health workers are important members of the health care delivery system in this state, and the Florida Health Worker Coalition has begun to explore options that would allow community health workers to earn a living wage and be part of an integrated health delivery team, NOW, THEREFORE,

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

Section 1. Community Health Worker Task Force.—

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

(a) "Community health worker" means a front-line health care worker who is a trusted member of or has an unusually close understanding of the community that he or she serves and who:

1. Serves as a liaison, link, or intermediary between health care services, social services, and the community in order to facilitate access to health care services and improve the quality of health care services and the cultural competency

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59 of health care providers.

60 2. Performs the following activities in a community
61 setting:

62 a. Provides information regarding available resources.

63 b. Provides social support and informal counseling.

64 c. Advocates for individuals and their health care needs.

65 d. Provides services such as first aid and blood pressure
66 screening.

67 3. Builds individual and community capacity by increasing
68 knowledge regarding wellness, disease prevention, and self-
69 sufficiency through a range of activities, such as community
70 outreach and education and advocacy.

71 4. Collects data to help identify the health care needs in
72 a medically underserved community by:

73 a. Enhancing the communication skills of residents in order
74 to assist them in effectively communicating with health care
75 providers.

76 b. Providing culturally and linguistically appropriate
77 health or nutrition education.

78 c. Advocating for better individual and community health,
79 including oral health, mental health, and nutritional needs.

80 d. Providing referral services, followup services, and
81 coordination of care.

82 (b) "Department" means the Department of Health.

83 (c) "Medically underserved community" means a geographic
84 area that has a shortage of health care professionals and has a
85 population that includes persons who do not have public or
86 private health insurance, are unable to pay for health care, and
87 have incomes at or below 185 percent of the federal poverty

36-00967-13

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level.

(d) "Task force" means the Community Health Worker Task Force established by the department under this section.

(2)(a) The department shall establish the Community Health Worker Task Force within a state college or university. The department shall provide administrative support and services to the task force to the extent requested by the chair of the task force and within available resources of the department.

(b) The task force shall consist of the following 12 members:

1. One member of the Senate appointed by the President of the Senate.

2. One member of the House of Representatives appointed by the Speaker of the House of Representatives.

3. One state official appointed by the Governor.

4. Six culturally and regionally diverse community health workers appointed by the State Surgeon General.

5. Three representatives of the Florida Community Health Worker Coalition appointed by the chair of the Florida Community Health Worker Coalition.

(c) The task force shall develop recommendations for:

1. Including community health workers in the development of proposals for health care or Medicaid reform in this state as part of the outreach efforts for enrolling residents of this state in Medicaid managed care programs or other health care delivery services.

2. Including community health workers in providing assistance to residents in navigating the health care system and providing information and guidance regarding preventive health

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117 care.

118 3. Providing support to community health centers and other
119 "safety net" providers through the integration of community
120 health workers as part of health care delivery teams.

121 (d) The task force shall also collaborate with the Florida
122 Community Health Worker Coalition, colleges and universities in
123 the state, and other organizations and institutions to recommend
124 a process that leads to the standardization of qualifications
125 and skills of community health workers who are employed in
126 state-supported health care programs.

127 (e) The members of the task force shall elect a chair and
128 vice chair.

129 (f) Members of the task force shall serve without
130 compensation and are not entitled to reimbursement for per diem
131 and travel expenses.

132 (g) The task force shall meet at least quarterly and may
133 meet at other times upon the call of the chair or as determined
134 by a majority of members.

135 (h) A quorum shall consist of seven members, and the
136 concurring vote of a majority of the members present is required
137 for final action.

138 (i) The task force shall submit a report by June 30, 2014,
139 to the Governor, the President of the Senate, and the Speaker of
140 the House of Representatives stating the findings, conclusions,
141 and recommendations of the task force.

142 Section 2. This act shall take effect upon becoming a law.

APPEARANCE RECORD

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

4 / 9 / 2013

Meeting Date

Topic _____

Bill Number 894
(if applicable)Name BRIAN PITTSAmendment Barcode _____
(if applicable)Job Title TRUSTEEAddress 1119 NEWTON AVNUE SOUTHPhone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City State ZipE-mail JUSTICE2JESUS@YAHOO.COMSpeaking: ☒ For ☐ Against ☒ InformationRepresenting JUSTICE-2-JESUSAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/SB 1384

INTRODUCER: Judiciary Committee and Senator Galvano

SUBJECT: Nursing Home Litigation

DATE: April 4, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.	Looke	Stovall	HP	Pre-meeting
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1384 amends statutory provisions relating to civil causes of action against nursing homes. The bill:

- Requires the court to hold an evidentiary hearing before allowing a claim for punitive damages to proceed.
- Prohibits the use of a state or federal survey report of nursing facilities to establish an entitlement to punitive damages.

This bill substantially amends section 400.0237, Florida Statutes.

II. Present Situation:

Causes of Action in Nursing Homes

Section 400.022, F.S., specifies the rights and responsibilities of nursing home residents. Section 400.023, F.S., creates a statutory cause of action against nursing homes that violate the statutory rights of residents. The action may be brought in any court to enforce the resident's rights and to recover actual and punitive damages for any violation of a resident's statutory rights

or for negligence.¹ Prevailing plaintiffs may be entitled to recover reasonable attorney fees plus costs of the action along with actual and punitive damages.²

Sections 400.023-400.0238, F.S., provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights. A claim for punitive damages is not permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.³ A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence as defined in s. 400.0237(2), F.S.⁴

In the case of an employer, principal, corporation, or other entity, punitive damages may be imposed for conduct of an employee or agent only for intentional misconduct or gross negligence which is proven by clear and convincing evidence if the employer actively and knowingly participated in the conduct, ratified or consented to the conduct, or engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.⁵

Elements in a Civil Action Under s. 400.023, F.S.

Section 400.023(2), F.S., provides that in any claim alleging a violation of a resident's rights or alleging that negligence caused injury to or the death of a resident, the claimant must prove, by a preponderance of the evidence:

- The defendant owed a duty to the resident;
- The defendant breached the duty to the resident;
- The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and
- The resident sustained loss, injury, death, or damage as a result of the breach.

In general, the Florida Supreme Court has set forth the elements of a negligence action:

- A duty, or obligation, recognized by the law, requiring the [defendant] to conform to a certain standard of conduct, for the protection of others against unreasonable risks;
- A failure on the [defendant's] part to conform to the standard required: a breach of the duty;
- A reasonably close causal connection between the conduct and the resulting injury;⁶ and
- Actual loss or damage.⁷

Current law provides that in any claim brought pursuant to s. 400.023, F.S., a licensee, person, or entity has the duty to exercise "reasonable care" and nurses⁸ have the duty to exercise care "consistent with the prevailing professional standard of care."⁹

¹ Sections 400.023 and 400.0237, F.S.

² *Id.*

³ Section 400.0237(1), F.S.

⁴ Section 400.0237(2), F.S.

⁵ Section 400.0237(3), F.S.

⁶ This is what is commonly known as "legal cause," or "proximate cause," and which includes the notion of cause in fact.

⁷ *United States v. Stevens*, 994 So. 2d 1062, 1065-66 (Fla. 2008).

Punitive Damages

Current law provides for recovery of punitive damages by a claimant. Punitive damages “are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence.”¹⁰ For a claim for damages relating to a violation of resident rights or negligence in a nursing home, punitive damages are generally limited to three times the amount of compensatory damages or \$1 million, whichever is greater.¹¹ Damages can exceed \$1 million if the jury finds that the wrongful conduct was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant.¹² If the jury finds that the defendant had a specific intent to harm the claimant and determines that the defendant’s conduct did in fact harm the claimant, there is no cap on punitive damages.¹³

Evidentiary Requirements to Bring a Punitive Damages Claim

Section 400.0237(1), F.S., provides:

In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

A court discussed how a claimant can make a proffer to assert a punitive damages claim:

[A] ‘proffer’ according to traditional notions of the term, connotes merely an ‘offer’ of evidence and neither the term standing alone nor the statute itself calls for an adjudication of the underlying veracity of that which is submitted, much less for countervailing evidentiary submissions. Therefore, a proffer is merely a representation of what evidence the defendant proposes to present and is not actual evidence. A reasonable showing by evidence in the record would typically include depositions, interrogatories, and requests for admissions that have been filed with the court. Hence, an evidentiary hearing where

⁸ “The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses.” s. 400.023(4), F.S.

⁹ See s. 400.023(3) and (4), F.S.

¹⁰ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).

¹¹ See s. 400.0238(1)(a), F.S.

¹² See s. 400.0238(1)(b), F.S.

¹³ See s. 400.0238(1)(c), F.S.

witnesses testify and evidence is offered and scrutinized under the pertinent evidentiary rules, as in a trial, is neither contemplated nor mandated by the statute in order to determine whether a reasonable basis has been established to plead punitive damages.^{14, 15}

Punitive damages claims are often raised after the initial complaint has been filed. Once a claimant discovers enough evidence that the claimant believes justifies a punitive damages claim, the claimant files a motion to amend the complaint to add a punitive damages action. The trial judge considers the evidence presented and proffered by the claimant to determine whether the claim should proceed.

Current law does not require a showing of admissibility before the proceedings begin or to authorize the claimant and defendant to present evidence before a judge authorizes a claim for punitive damages. Current law contemplates that the claimant will proffer evidence and the court, considering the proffer in the light most favorable to the claimant, will determine whether reasonable basis exists to allow the claimant's punitive damages case to proceed.¹⁶ However, discovery of the defendant's financial worth may not proceed until the pleading on punitive damages is permitted.¹⁷

Individual Liability for Punitive Damages

Section 400.0237(2), F.S., provides:

A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct¹⁸ or gross negligence.¹⁹

Vicarious Liability for Punitive Damages

Punitive damages claims are sometimes brought under a theory of vicarious liability where an employer is held responsible for the acts of an employee. Section 400.0237(3), F.S., provides that in the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets certain criteria²⁰ and:

- The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;
- The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or

¹⁴ *Estate of Despain v. Avante Group, Inc.*, 900 So. 2d 637, 642 (Fla. 5th DCA 2005)(internal citations omitted).

¹⁵ The *Despain* court was discussing a prior version of the punitive damages statute relating to nursing home litigation, but the language on proffering in that statute is the same as that in current law.

¹⁶ See *Estate of Despain*, *supra*, note 16.

¹⁷ See s. 400.0237(1)(b), F.S.

¹⁸ "Intentional misconduct" is actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant will result and, despite that knowledge, intentionally pursuing a course of conduct that results in injury or damage. See s. 400.0237(2)(a), F.S.

¹⁹ "Gross negligence" is conduct that is so reckless or wanting in care such that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. See s. 400.0237(2)(b), F.S.

²⁰ Criteria are whether the defendant was personally guilty of intentional misconduct or gross negligence.

- The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

III. Effect of Proposed Changes:

Evidentiary Requirements to Bring a Punitive Damages Claim

The bill provides that a claimant may not bring a claim for punitive damages unless admissible evidence submitted by the parties provides a reasonable basis for the recovery of punitive damages. The bill requires the court to conduct an evidentiary hearing where both sides present evidence. The judge must find that a reasonable basis exists to believe that the claimant will be able to demonstrate, by clear and convincing evidence, that the recovery of punitive damages is warranted. These requirements limit a judge to considering only admissible evidence.

Current law provides that the rules of civil procedure are to be liberally construed to allow the claimant discovery of admissible evidence on the issue of punitive damages. The bill removes that provision from statute. Discovery in civil cases is governed by the Florida Rules of Civil Procedure. Because the rules govern discovery, the effect of removing the provision, if any, is not clear.

The bill clarifies that the claimant may not proceed with discovery on the defendant's financial worth until after the trial judge approves the pleading on punitive damages.

Individual Liability for Punitive Damages

The bill provides that a defendant, including the licensee or management company against whom punitive damages is sought, may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that "a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant."

The bill strikes the current standard jury instructions which provide for punitive damages if the defendant was "personally guilty of intentional misconduct."²¹ The bill requires that the defendant "actively and knowingly participated in intentional misconduct."

Vicarious Liability for Punitive Damages

The bill provides that in the case of vicarious liability of an employer, principal, corporation, or other legal entity, punitive damages may not be imposed for the conduct of an employee or agent unless:

- An identified employee or agent actively and knowingly participated in intentional misconduct, or engaged in conduct that constituted gross negligence, and that conduct contributed to the loss, damages, or injury suffered by the claimant; and

²¹ Standard Jury Instructions in Civil Cases, 503.1, Punitive Damages - Bifurcated Procedure *available at* http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#500 (last visited Mar. 9, 2013).

- Officers, directors, or managers of the actual employer corporation or legal entity condoned, ratified, or consented to the specific conduct alleged.

The bill provides that a state or federal survey report of nursing facilities may not be used to establish an entitlement to punitive damages.

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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. Additional Information:

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

CS by Judiciary on April 1, 2013:

The committee substitute removes section 1 from the underlying bill, which would have amended s. 400.0023, F.S., to:

- Limit the class of persons who may be sued for a violation of a nursing home resident's rights to only the nursing home licensee, a management company employed by a nursing home licensee, or a direct caregiver employee.
- Make certain provisions of law the exclusive remedy against a nursing home licensee management company for a cause of action for the recovery damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights.
- Require the court to hold an evidentiary hearing to determine if sufficient evidence or a reasonable basis exists to find that a person or entity other than the nursing home licensee, the management company for the nursing home, or a direct caregiver owed a specific legal duty to the resident, breached that duty, and the breach of that duty is the legal cause of actual loss, injury, damage, or death to the resident.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Between lines 96 and 97
insert:

Section 2. Subsection (3) of section 400.23, Florida
Statutes, is amended to read:

400.23 Rules; evaluation and deficiencies; licensure
status.—

(3)(a)1. The agency shall adopt rules providing minimum
staffing requirements for nursing home facilities. These
requirements must include, for each facility:

a. A minimum certified nursing assistant staffing of 2.9



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hours of direct care per resident per day. A facility may not staff below one certified nursing assistant per 20 residents. A ~~minimum weekly average of certified nursing assistant and licensed nursing staffing combined of 3.6 hours of direct care per resident per day. As used in this sub-subparagraph, a week is defined as Sunday through Saturday.~~

b. A minimum licensed nursing staffing of 1.0 hour of direct care per resident per day. A facility may not staff below one licensed nurse per 40 residents. ~~A minimum certified nursing assistant staffing of 2.5 hours of direct care per resident per day. A facility may not staff below one certified nursing assistant per 20 residents.~~

e. ~~A minimum licensed nursing staffing of 1.0 hour of direct care per resident per day. A facility may not staff below one licensed nurse per 40 residents.~~

2. A Nursing assistant ~~assistants~~ employed under s. 400.211(2) may be included in computing the staffing ratio for certified nursing assistants if their job responsibilities include only nursing-assistant-related duties.

3. Each nursing home facility must document compliance with staffing standards as required under this paragraph and post daily the names of staff on duty for the benefit of facility residents and the public.

4. The agency shall recognize the use of licensed nurses for compliance with minimum staffing requirements for certified nursing assistants if the nursing home facility otherwise meets the minimum staffing requirements for licensed nurses and the licensed nurses are performing the duties of a certified nursing assistant. Unless otherwise approved by the agency, licensed



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nurses counted toward the minimum staffing requirements for certified nursing assistants must exclusively perform the duties of a certified nursing assistant for the entire shift and not also be counted toward the minimum staffing requirements for licensed nurses. If the agency approved a facility's request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties, the facility must allocate the amount of staff time specifically spent on certified nursing assistant duties for the purpose of documenting compliance with minimum staffing requirements for certified and licensed nursing staff. The hours of a licensed nurse with dual job responsibilities may not be counted twice.

(b) Nonnursing staff providing eating assistance to residents do ~~shall~~ not count toward compliance with minimum staffing standards.

(c) Licensed practical nurses licensed under chapter 464 who are providing nursing services in nursing home facilities under this part may supervise the activities of other licensed practical nurses, certified nursing assistants, and other unlicensed personnel providing services in such facilities in accordance with rules adopted by the Board of Nursing.

Section 3. For the purpose of incorporating the amendment made by this act to section 400.23, Florida Statutes, in a reference thereto, paragraphs (g) and (n) of subsection (1) of section 400.141, Florida Statutes, are reenacted, and paragraph (n) of subsection (1) of that section is amended, to read:

400.141 Administration and management of nursing home facilities.—

(1) Every licensed facility shall comply with all



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applicable standards and rules of the agency and shall:

(g) If the facility has a standard license, exceeds the minimum required hours of licensed nursing and certified nursing assistant direct care per resident per day, and is part of a continuing care facility licensed under chapter 651 or a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429 on a single campus, be allowed to share programming and staff. At the time of inspection, a continuing care facility or retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements for the facility were met. Licensed nurses and certified nursing assistants who work in the facility may be used to provide services elsewhere on campus if the facility exceeds the minimum number of direct care hours required per resident per day and the total number of residents receiving direct care services from a licensed nurse or a certified nursing assistant does not cause the facility to violate the staffing ratios required under s. 400.23(3)(a). Compliance with the minimum staffing ratios must be based on the total number of residents receiving direct care services, regardless of where they reside on campus. If the facility receives a conditional license, it may not share staff until the conditional license status ends. This paragraph does not restrict the agency's authority under federal or state law to require additional staff if a facility is cited for deficiencies in care which are caused by an insufficient number of certified nursing assistants or licensed nurses. The agency may adopt rules for the documentation necessary to determine compliance with this provision.



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(n) Comply with state minimum-staffing requirements:

1. A facility that has failed to comply with state minimum-staffing requirements for 2 consecutive days is prohibited from accepting new admissions until the facility has achieved the minimum-staffing requirements for 6 consecutive days. For the purposes of this subparagraph, any person who was a resident of the facility and was absent from the facility for the purpose of receiving medical care at a separate location or was on a leave of absence is not considered a new admission. Failure by the facility to impose such an admissions moratorium is subject to a \$1,000 fine.

2. A facility that does not have a conditional license may be cited for failure to comply with the standards in s. 400.23(3)(a)1.b. ~~and c.~~ only if it has failed to meet those standards on 2 consecutive days or if it has failed to meet at least 97 percent of those standards on any one day.

3. A facility that has a conditional license must be in compliance with the standards in s. 400.23(3)(a) at all times.

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

And the title is amended as follows:

Delete line 24

and insert:

damages; amending s. 400.23, F.S.; revising minimum staffing requirements for nursing homes; reenacting and amending s. 400.141(1)(g) and (1)(n), F.S., relating to the administration and management of nursing home facilities, to incorporate the amendment made to s. 400.23, F.S., in a reference thereto;



498834

129

providing an effective date.



529686

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment to Amendment (498834)

Delete lines 111 - 113
and insert:

2. A facility that does not have a conditional license may be cited for failure to comply with the standards in s. 400.23(3)(a)1.a. and b. ~~400.23(3)(a)1.b. and c.~~ only if it has failed to meet those



747198

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

In title, delete line 2
and insert:

An act relating to nursing homes; amending

By the Committee on Judiciary; and Senator Galvano

590-03362-13

20131384c1

A bill to be entitled
An act relating to nursing home litigation; amending
s. 400.0237, F.S.; providing that a claim for punitive
damages may not be brought unless there is a showing
of admissible evidence proffered by the parties which
provides a reasonable basis for recovery of punitive
damages when certain criteria are applied; requiring
the court to conduct a hearing to determine whether
there is sufficient admissible evidence to ensure that
there is a reasonable basis to believe that the
claimant will be able to demonstrate by clear and
convincing evidence that the recovery of punitive
damages is appropriate; requiring the trier of fact to
find by clear and convincing evidence that a specific
person or corporate defendant actively and knowingly
participated in intentional misconduct or engaged in
conduct that constituted gross negligence and
contributed to the loss, damages, or injury suffered
by the claimant before punitive damages may be
awarded; requiring an officer, director, or manager of
the employer, corporation, or legal entity to condone,
ratify, or consent to certain specified conduct before
holding the licensee vicariously liable for punitive
damages; providing an effective date.

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

Section 1. Section 400.0237, Florida Statutes, is amended
to read:

590-03362-13

20131384c1

400.0237 Punitive damages; pleading; burden of proof.—

(1) (a) In any action ~~for damages~~ brought under this part, a ~~no~~ claim for punitive damages may not be brought ~~shall be permitted~~ unless there is a reasonable showing of admissible ~~by~~ evidence that has been submitted in the record or proffered by the parties and provides ~~claimant which would provide~~ a reasonable basis for recovery of such damages when the criteria in this section are applied. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure in accordance with evidentiary requirements set forth in this section.

(b) The court shall conduct a hearing to determine whether there is sufficient admissible evidence submitted by the parties to ensure that there is a reasonable basis to believe that the claimant, at trial, will be able to demonstrate by clear and convincing evidence that the recovery of such damages is warranted. ~~A The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No~~ discovery of financial worth may not ~~shall~~ proceed until ~~after~~ the pleading on concerning punitive damages is approved by the court ~~permitted~~.

(2) A defendant may be held liable for punitive damages only if the trier of fact, by ~~based on~~ clear and convincing evidence, finds that a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the

590-03362-13

20131384c1

59 ~~claimant the defendant was personally guilty of intentional~~
60 ~~misconduct or gross negligence.~~ As used in this section, the
61 term:

62 (a) "Intentional misconduct" means that the defendant
63 against whom punitive damages are sought had actual knowledge of
64 the wrongfulness of the conduct and the high probability that
65 injury or damage to the claimant would result and, despite that
66 knowledge, intentionally pursued that course of conduct,
67 resulting in injury or damage.

68 (b) "Gross negligence" means that the defendant's conduct
69 was so reckless or wanting in care that it constituted a
70 conscious disregard or indifference to the life, safety, or
71 rights of persons exposed to such conduct.

72 (3) In the case of vicarious liability of an employer,
73 principal, corporation, or other legal entity, punitive damages
74 may not be imposed for the conduct of an employee or agent
75 unless only if the conduct of a specifically identified the
76 employee or agent meets the criteria specified in subsection (2)
77 and an officer, director, or manager of the actual employer,
78 corporation, or legal entity condoned, ratified, or consented to
79 the specific conduct as alleged in subsection (2). A state or
80 federal survey report of nursing facilities may not be used to
81 establish an entitlement to punitive damages under this section.

82 ~~(a) The employer, principal, corporation, or other legal~~
83 ~~entity actively and knowingly participated in such conduct;~~

84 ~~(b) The officers, directors, or managers of the employer,~~
85 ~~principal, corporation, or other legal entity condoned,~~
86 ~~ratified, or consented to such conduct; or~~

87 ~~(c) The employer, principal, corporation, or other legal~~

590-03362-13

20131384c1

88 ~~entity engaged in conduct that constituted gross negligence and~~
89 ~~that contributed to the loss, damages, or injury suffered by the~~
90 ~~claimant.~~

91 (4) The plaintiff shall ~~must~~ establish at trial, by clear
92 and convincing evidence, its entitlement to an award of punitive
93 damages. The "greater weight of the evidence" burden of proof
94 applies to a determination of the amount of damages.

95 (5) This section is remedial in nature and takes ~~shall take~~
96 effect upon becoming a law.

97 Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Nursing Home amendment 498834

Bill Number SB1384

Name Matthew Posgay

Amendment Barcode 498834
(if applicable)

Job Title attorney

Address 136 E. Bay St.
Street
Jacksonville, FL 32207
City State Zip

Phone 904-356-6071

E-mail mposgay@cockerlaw.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/12
Meeting Date

Topic _____

Bill Number SB 1384
(if applicable)

Name Brian Bursa

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 307 W Park Ave
Street
Tallahassee FL 32308
City State Zip

Phone 850-224-3907

E-mail b.bursa@bbslaw.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Health Care 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic				Bill Number	SB 1384	(if applicable)
Name	DANIEL DIAS			Amendment Barcode	(if applicable)	
Job Title	General Counsel Consulate Health Care					
Address	5102 W Laurel St			Phone	813 928 7353	
	TAMPA					
	FL					
	3607			E-mail	DDIAS@INDLEGAL.VEI	
Speaking:	☒ For ☐ Against ☐ Information					
Representing	Consulate Health CARE					
Appearing at request of Chair:	☐ Yes ☐ No			Lobbyist registered with Legislature:	☐ Yes ☒ No	

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Tab 7

Bill Number 1384
(if applicable)

Name Michael Sheedy

Amendment Barcode _____
(if applicable)

Job Title Dir. of Public Policy

Address 201 W. Park Ave.

Phone 850-205-6824

Street

Tall. FL 32301

City

State

Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Safe Staffing Standards

Bill Number CS/SB 1384

Name Rochelle Salcedo

Amendment Barcode 498834
(if applicable)

Job Title CNA

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing 1199SEIU

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic NURSING HOME LITIGATION

Bill Number 1384
(if applicable)

Name JACK McRAY

Amendment Barcode 498834
(if applicable)

Job Title _____

Address 200 W. COLLEGE ST., #304
Street

Phone 250-577-5127

TLH FL 32301
City State Zip

E-mail jmcray@aar-p.org

Speaking: ☒ For ☐ Against ☐ Information

Representing AAFP

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Nursing home litigation

Bill Number 1384
(if applicable)

Name Josh Aubuchon

Amendment Barcode _____
(if applicable)

Job Title attorney

Address 215 S. Monroe St.
Street

Phone 222-3533

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Justice Reform 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/9/13

Meeting Date

Topic Nursing Home Litigation

Bill Number SB 1384
(if applicable)

Name David Christman

Amendment Barcode _____
(if applicable)

Job Title Vice President

Address 134 S Bronough St

Phone 850-521-1200

Street

Talahassee FL 32301

City

State

Zip

E-mail dchristman@
flchamber.com

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic _____

Name L Marie Polivka-West

Job Title Sr Dir of Policy

Address 307 W Park Ave

Tal. FL 32301
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Health Care 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.

S-001 (10/20/11)

Bill Number SB1384

Amendment Barcode 498834
(if applicable)

Phone 850/224-3907

E-mail lpwest@fhca.org

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Nursing Home Bill

Bill Number SB 1384
(if applicable)

Name DAVID PAUL

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 580 E. GEORGE AVE.
Street

Phone _____

MAITLAND FL 32751
City State Zip

E-mail DPAUL@ORLANDOTRIALLAW.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing FJA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Nursing Homes

Bill Number SB 1384
(if applicable)

Name RANDOLPH GRAY

Amendment Barcode _____
(if applicable)

Job Title Insurance Adjuster

Address 4061 N. State Rd 53

Phone 850 464-1296

Street

Madison
City

FL
State

32340
Zip

E-mail RandyLGray@Hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-09-13

Meeting Date

Topic Nursing Homes

Bill Number SB 1384
(if applicable)

Name Sandra Banning

Amendment Barcode _____
(if applicable)

Job Title Victim

Address 553 Pinebrook Dr. E

Phone 904-378-9622

Street

Jax

City

Fl

State

32220

Zip

E-mail jnsbanning@bellsouth.net

Speaking: ☐ For ☒ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic MINIMUM STAFFING AMENDMENT

Bill Number 1384
(if applicable)

Name TONY MARSHALL

Amendment Barcode 498834
(if applicable)

Job Title SENIOR DIRECTOR OF REIMBURSEMENT

Address 307 W. PARK AVE.
Street

Phone 850 224 3907

TALLAHASSEE FL 32302
City State Zip

E-mail tmarshall@fhca.org

Speaking: ☐ For ☒ Against ☐ Information

Representing FLORIDA HEALTH CARE 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.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic _____

Bill Number SD 1384

Name JOHN SIMMONS

Amendment Barcode 498834
(if applicable)

Job Title ADMINISTRATOR

Address MACCLENNY NSG ; RENAI CT
Street

Phone 904-434-1845

MACCLENNY FL
City State Zip

E-mail JCSIMMONS@SOUTHEASTLTC.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing MACCLENNY NSG ; RENAI CT

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic

Nursing Home Litigation

Bill Number

SB 1384

(if applicable)

Name

Barbara Deane

Amendment Barcode

(if applicable)

Job Title

Organizer / Lobbyist

Address

625 E. Bernard St

Phone

850-222-3969

Street

City

Tallahassee

State

Zip

FL

32308

E-mail

barbaradeane1@
yahoo.com

Speaking:

☐

For

☒

Against

☐

Information

Representing

Florida Alliance for Retired Americans

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

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

Meeting Date

Topic Nursing Home Litigation

Bill Number 1324
(if applicable)

Name JACK McRAY

Amendment Barcode _____
(if applicable)

Job Title _____

Address 200 W. COLLEGE ST. # 304
Street
TLH FL 32301
City State Zip

Phone 250-577-5127

E-mail jmcraay@sa-p.org

Speaking: ☐ For ☒ Against ☐ Information

Representing ARP

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Staffing Increases for Nursing Homes

Name Carol Berkowitz

Job Title _____

Address 1812 Riggins Road

Street

Tallahassee, FL 32308

City

State

Zip

Bill Number CS/SB 1384

(if applicable)

Amendment Barcode 498834

(if applicable)

by Sen. Joyner

Phone _____

E-mail cberkowitz@leadingageflorida.org

Speaking: ☐ For ☒ Against ☐ Information

Representing LeadingAge Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13.

Meeting Date

Topic Nursing home

Bill Number 1304
(if applicable)

Name Herb Shelted

Amendment Barcode _____
(if applicable)

Job Title Self

Address 2115 Longview Dr.
Street

Phone 850-491-8577

Tallahassee FL 32303
City State Zip

E-mail herb_323@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Nursing home

Name Amy Datz

Job Title Self

Address 1130 Crestview Ave

Street

Tallahassee FL 32303

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Representing my mother's in nursing home

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

Bill Number ~~1142~~ 1384
(if applicable)

Amendment Barcode _____
(if applicable)

Phone 850-322-7599

E-mail amaldatz@mac.com

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/CS/SB 1724

INTRODUCER: Health Policy Committee, Children, Families, and Elder Affairs Committee; and
Senators Garcia and Grimsley

SUBJECT: Transitional Living Facilities

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Fav/CS
2.	Looke	Stovall	HP	Fav/CS
3.			AHS	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/SB 1724 revises regulations for transitional living facilities. The purpose of these facilities is to provide rehabilitative services in a small residential setting for persons with brain or spinal injuries who need significant care and services to regain their independence. The bill provides for admission criteria, client evaluations, treatment plans, and discharge plans. The bill establishes rights for clients in these facilities, screening requirements for facility employees, and penalties for violations.

The bill also exempts publicly traded pediatric cardiology, perinatology, or anesthesia clinical facilities from the definition of “clinic” and the licensure requirements under part X of ch. 400, F.S.

This bill substantially amends sections 381.745, 381.75, 381.78, 408.802, 408.820, 400.93 and 400.9905 of the Florida Statutes. This bill creates sections 400.9970, 400.9971, 400.9972, 400.9973, 400.9974, 400.9975, 400.9976, 400.9977, 400.9978, 400.9979, 400.998, 400.9981, 400.9982, 400.9983, and 400.9984 of the Florida Statutes. This bill repeals section 400.805 of the Florida Statutes.

II. Present Situation:

Brain and Spinal Cord Injuries

The human spinal cord operates much like a telephone line, relaying messages from the brain to the rest of the body. Spinal cord injuries are caused by bruising, crushing, or tearing of the delicate cord tissue. After an injury, the “messages” sent between the brain and the other parts of the body no longer flow through the damaged area. Many times the functions of the body which are located above the injury point will continue to work properly without impairment. However, the area below the injury point will be impaired to some degree, which will include any combination of the following: motor deficit, sensory deficit, initial breathing difficulty, and/or bowel and bladder dysfunction.¹

The Brain and Spinal Cord Injury Program (BSCIP) is administered by the Florida Department of Health (DOH). The program is funded through a percentage of traffic related fines and surcharges for driving or boating under the influence, fees on temporary license tags, and a percentage of fees from the motorcycle specialty tag.²

The BSCIP is operated through a statewide system of case managers and rehabilitation technicians. Children receive services from the Children’s Medical Services nurse care coordinators and human services counselors. The program also employs regional managers who supervise staff in their region and who oversee locally the operation, development, and evaluation of the program’s services and supports. Services include: case management, acute care, inpatient and outpatient rehabilitation, transitional living, assistive technology, home and vehicle modifications, nursing home transition facilitation; and long-term supports for survivors and families through contractual agreements with community-based agencies.

In addition to providing resource facilitation and funding for the services above, the program funds education, prevention, and research activities. It expands its services by funding a contract with the Brain Injury Association of Florida and the Florida Disabled Outdoors Association. Other services are provided through working relationships with the Florida Centers for Independent Living and the Florida Department of Education, Division of Vocational Rehabilitation.

Section 381.76, F.S., requires an individual to be a legal Florida resident who has sustained a moderate-to-severe traumatic brain or spinal cord injury meeting the state’s definition of such injuries, be referred to the BSCIP Central Registry, be medically stable, and be reasonably expected to achieve reintegration into the community through the services provided to be eligible for services.

The state definition of a brain injury is an insult to the skull, brain or its covering, resulting from external trauma that produces an altered state of consciousness or anatomic, motor, sensory, cognitive or behavioral deficit. The state definition of a spinal cord injury is a lesion to the spinal

¹Florida Spinal Cord Injury Resource Center, *Family and Survivor’s Guide*, available at <http://fscirc.com/what-is-a-sci> (last visited April 3, 2013).

² Florida Department of Health website, available at <http://www.doh.state.fl.us/demo/BrainSC/index.html/> (last visited April 3, 2013).

cord or cauda equina resulting from external trauma with evidence of significant involvement of two of the following-motor deficit, sensory deficit, or bowel and bladder dysfunction.³

Transitional Living Facilities

Transitional living facilities provide specialized health care services, including, but not limited to, rehabilitative services, community reentry training, aids for independent living, and counseling to spinal-cord-injured persons and head-injured persons. There are currently 13 facilities located in the state.⁴ Most of the facilities have between 5 and 10 beds, however, the Florida Institute for Neurologic Rehabilitation in Wauchula is licensed for 127 beds.⁵ Most facilities are located in Central Florida and the Agency for Health Care Administration (AHCA) licenses and is one of the regulators of transitional living facilities.⁶ The current licensure fee is \$4,588, and \$90 per bed fee per biennium.

The AHCA governs the physical plant and fiscal management of these facilities and adopts rules in conjunction with the DOH, which monitors services for persons with traumatic brain and spinal cord injuries. The Department of Children and Families (DCF) investigates allegations of abuse and neglect of children and vulnerable adults.⁷

Section 400.805, F.S., creates requirements for transitional living facilities. Section 400.805(2), F.S., provides the licensure requirements and fees for operation of a transitional living facility as well as the requirement to obtain a Level 2 background screening for all facility personnel. Section 400.805(3)(a), F.S., requires the AHCA, in consultation with the DOH, to adopt rules governing the physical plant and the fiscal management of transitional living facilities.

The Brain and Spinal Cord Injury Advisory Council has the right to entry and inspection of transitional living facilities granted under s. 400.805(4), F.S. In addition, designated representatives of AHCA, the local fire marshal, and other agencies have access to the facilities and clients.

According to a news report from Bloomberg, dated January 24, 2012, clients at the Florida Institute for Neurologic Rehabilitation in Wauchula, Florida, were abused, neglected and confined. The news report was based on information from 20 current and former clients and their family members, criminal charging documents, civil complaints and advocates for the disabled.⁸ The report states that three former employees face criminal charges for abusing clients. News

³ S. 381.745, F.S.

⁴ Agency for Health Care Administration, *2013 Bill Analysis and Economic Impact Statement SB 1724*, (on file with the Senate Health Policy Committee).

⁵ Florida Institute for Neurologic Rehab, Inc. found at <http://www.floridahealthfinder.gov/facilitylocator/FacilityProfilePage.aspx?id=28343>, last visited on April 4, 2013.

⁶ See 408, Part II, and ch. 400, Part V, F. S., and ch. 59A-17, F.A.C.

⁷ Id. n. 4.

⁸ Bloomberg, *Abuse of Brain Injured Americans Scandalizes U.S.*, (Jan. 7, 2012) available at <http://www.bloomberg.com/news/2012-07-24/brain-injured-abuse-at-for-profit-center-scandalizes-u-s-.html>, last visited on April 4, 2013.

reports state the facility and three affiliated corporations filed Chapter 11 petitions in U.S. Bankruptcy Court in Tampa.⁹ As of April 4, 2013, the facility remains licensed.

Clinics

Currently, clinics in the State of Florida must be licensed by the Agency for Health Care Administration (AHCA).¹⁰ However, there are many exclusions from this definition of “clinic” under s. 400.9905(a)-(n), F.S. This exclusion also excludes those listed health care facilities from the requirement to obtain a license from the AHCA.¹¹

III. Effect of Proposed Changes:

Section 1 designates ss. 400.9970 through 400.9984, F.S., as part XI of ch. 400, F.S., entitled “Transitional Living Facilities.”

Section 2 creates s. 400.9970, F.S., to state the intent behind the regulation of transitional living facilities. The bill specifies that such facilities shall be licensed by the AHCA to ensure the quality of care for clients, provide the least restrictive placement, and assist clients to achieve a higher level of functioning. The goal of the transitional living program is to enable the clients to return to the community. The bill also states that it is the policy of the state that the use of restraints and seclusion on clients is justified only as an emergency safety measure and that the intent of the legislature is to achieve a reduction of the use of restraints in seclusion in programs and facilities that serve persons with brain and spinal cord injuries.

Section 3 creates s. 400.9971, F.S., to define terms including, but not limited to:

- “Chemical restraint,” meaning a pharmacologic drug which physically limits, restricts, or deprives an individual of movement or mobility, is used for the client protection or safety, and is not required for the treatment of medical conditions or symptoms;
- “Physical restraint,” meaning any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual’s body so the client cannot easily remove the restraint and restricts freedom of movement or normal access to one’s body; and
- “Seclusion” meaning the physical segregation of a person in any fashion or the involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this chapter, the term does not mean isolation due to a person’s medical condition or symptoms; and
- “Transitional living facility,” the definition of which is moved from s. 381.475, F.S., and clarified so that a currently-licensed health care provider that treats brain and spinal cord injuries within the scope of its license need not be licensed as a transitional living facility.

⁹ Bloomberg, *Florida Brain-Injury Facility Files for Bankruptcy*, (Jan. 5, 2013) available at <http://www.bloomberg.com/news/2013-01-05/florida-brain-injury-facility-files-for-bankruptcy.html>, last visited on April 4, 2013.

¹⁰ s. 400.991, F.S.

¹¹ s. 400.9905(4)(a)-(n), F.S.

Section 4 creates s. 400.9972, F.S., to provide the licensure requirements and application fee for transitional living facilities. The bill codifies the current license fee of \$4,588 and the per bed fee of \$90.¹² The bill requires certain information from the applicant, including:

- The facility's location;
- Proof that local zoning requirements have been met;
- Proof of liability insurance;
- Documentation of a satisfactory fire safety inspection; and
- Documentation of satisfactory sanitation inspection by the county health department.

The bill also requires facilities to be accredited by an accrediting organization specializing in rehabilitation facilities which may be used by the AHCA in lieu of a licensure inspection.

Section 5 creates s. 400.9973, F.S., to set standards transitional living facilities must meet for client admission, transfer, and discharge from the facility. The facility is required to have admission, transfer, and discharge policies and procedures in writing.

Admission Criteria

Clients may only be admitted to the facility:

- Upon prescription by a licensed physician and they must remain under the care of the physician for the duration of their stay in the facility;
- If they have a brain and spinal cord injury¹³ with evidence of the significant involvement of two of the listed impairments; and
- Upon submission of documentation indicating the person is free of apparent signs and symptoms of communicable disease.

Clients may be admitted for an evaluation period of up to 90 days if their medical condition and diagnosis does not positively identify a cause of their disability.

Clients may not be admitted to the facility if:

- Their primary diagnosis is a mental illness or an intellectual or developmental disability;
- They present significant risk of infection to other clients or personnel;
- They are a danger to themselves or others as determined by a physician or mental health practitioner;
- They require mental health treatment;
- They require nursing supervision on a 24-hour basis; or
- They are bedridden.

Client Plans and Evaluation

At or before admission, the facility must develop a "discharge plan" that states the intended placement after the client has received rehabilitative services. The goal of the placement is to return the client to independent living in the community. Discharge plans must be updated at least monthly.

¹² Section 400.805(2)(b), F.S., authorizes a license fee of \$4,000 and a per bed fee of \$75.50. Pursuant to s. 408.805(2), F.S., AHCA can increase the fees each year by up to the increase in the consumer price index for that year. The current fee is \$4,588 and \$90 per bed and bill uses these amounts.

¹³ as defined in s. 381.745(2), F.S.

The medical or nursing director must complete an initial evaluation of the client within 72 hours of admission and develop and implement an “initial” comprehensive treatment plan within 4 days of admission. The bill contains requirements for the treatment plans.

A facility must discharge the client as soon as practicable when the specialized services of the facility are no longer required, the client is not making measurable progress, or the facility is no longer the most appropriate treatment option. Facilities must provide at least 30 days notice to clients before involuntarily transferring or discharging them unless the client voluntarily terminates their residency.

Section 6 creates s. 400.9974, F.S., to provide the requirements for clients’ comprehensive treatment plans and services. The facility must develop a comprehensive treatment plan for each client within 33 days of admission. An interdisciplinary team, including the client, as appropriate, must develop the plan. Each plan must be updated at least monthly and include the following:

- Physician’s orders, diagnosis, medical history, physical exams and rehab needs;
- A nursing evaluation with physician orders for immediate care completed at admission;
- A comprehensive assessment of the client’s functional status and the services needed to become independent and return to the community; and
- Steps necessary for the client to achieve transition to the community.

The facility must have qualified staff to carry out and monitor rehabilitation services in accordance with the stated goals of the treatment plan.

Section 7 creates s. 400.9975, F.S., to provide for certain rights of each client. Specifically, the facility must ensure that each client:

- Lives in a safe environment;
- Is treated with respect, recognition of personal dignity, and privacy;
- Retains use of his or her own clothes and personal property;
- Has unrestricted private communications, which includes mail, telephone, and visitors;
- Has the opportunity to participate in community services and activities;
- Has the opportunity to manage his or her own financial affairs, unless the client or the client’s representative authorizes the administrator of the facility to provide safekeeping for funds;
- Has reasonable opportunity for regular exercise and to be outdoors several times a week;
- Has the opportunity to exercise their civil and religious liberties;
- Has adequate access to appropriate health care services;
- Has the ability to present grievances and recommend changes in policies, procedures, and services;
- Promotes participation of client’s representative in the process of treatment for the client;
- Answers communications from a client’s family and friends promptly;
- Is able to have visits by individuals with a relationship to the client at any reasonable hour without prior notice;
- Is allowed leave from the facility to visit or to take trips or vacations; and

- That the client's representative is promptly notified of any significant incidents or changes in condition.

The bill requires the administrator to post a written notice of provider responsibilities in a prominent place in the facility that includes the statewide toll-free telephone number for reporting complaints to the AHCA and the statewide toll-free number of Disability Rights of Florida. The facility must ensure the client has access to a telephone to call the AHCA, the central abuse hotline, Disabilities Rights of Florida, or the local advocacy council. The facility cannot take retaliatory action against a client for filing a complaint or grievance. These are similar to protections provided to residents of nursing homes and assisted living facilities.

Section 8 creates s. 400.9976, F.S., to require the facility to record the client's medication administration, including self-administration, and each dose of medication. The medication must be administered in compliance with the physician's orders. The interdisciplinary team that develops the client's treatment plan must determine whether a client is capable of self-administration of medications. Drug administration errors and adverse drug reaction must be recorded and reported immediately to the physician.

Section 9 creates s. 400.9977, F.S., to state that the facility is responsible for developing and implementing policies and procedures for screening and training employees, protection of clients, and for the prevention, identification, investigation, and reporting of abuse, neglect, mistreatment, and exploitation. This includes the facility identifying clients whose history renders the client a risk for abusing other clients.

The facility must implement procedures to:

- Screen potential employees for a history of abuse, neglect, or mistreatment of clients;
- Train employees through orientation and on-going sessions on abuse prohibition practices;
- Have sufficient numbers of staff to meet the needs of the clients and assure staff has knowledge of each individual client's care needs;
- Provide adequate supervision to identify inappropriate behaviors, such as rough handling or ignoring clients while giving care
- Provide clients, families, and staff information on how and to whom they may report concerns, incidents and grievances without fear of retribution;
- Identify, correct, and intervene in situations where abuse, neglect, mistreatment, or exploitation is likely to occur, including conditions in the physical environment that make abuse and/or neglect more likely to occur, such as secluded areas;
- Identify events, such as suspicious bruising of clients, that may constitute abuse to determine the direction of the investigation;
- Investigate different types of incidents and identify staff members responsible for the initial reporting, and reporting of results to the proper authorities;
- Protect clients from harm during an investigation;
- Analyze the occurrences of abuse, exploitation, mistreatment, or neglect and determine what changes are needed to policies and procedures to prevent further occurrences; and
- Report all alleged violations and all substantiated incidents as required under chs. 39 and 415, F.S., to the appropriate licensing authorities.

Section 10 creates s. 400.9978, F.S., to require each facility to provide a therapeutic milieu that supports a culture of individual empowerment and responsibility with the health and safety of the client as the primary concern at all times. To require that physical and chemical restraints be ordered for clients before they are used by the facility. The bill also requires that the order must be documented by the client's physician and the client or client's representative must be informed of the facility's physical and chemical restraint policy at the time of the client's admission.

Chemical restraint is limited to the dosage of medications prescribed by the client's physician. Clients receiving medications that can serve as a restraint must be evaluated by their physician at least monthly to assess:

- Continued use of medication;
- Level of the medication in client's blood; and
- Adjustments in the prescription.

A physician may order medications, limited to a 24-hour period, for emergency treatment when a client exhibits symptoms indicating an immediate risk of injury or death to self or others.

The facility must ensure clients are free from unnecessary drugs and physical restraints. Physical restraints and seclusion may only be used in accordance with the facility's written policies and state law. All interventions to manage dangerous client behaviors must be administered with sufficient safeguards and supervision. Also, The facility must also notify the parent or guardian of a client within 24 hours each time restraint or seclusion is used.

The AHCA may adopt rules relating to the use of restraints, seclusion, and emergency treatment orders for psychotropic medications.

Section 11 creates s. 400.9979, F.S., to require all facility personnel to complete a Level 2 background screening.¹⁴ The facility must maintain personnel records which contain the staff's background screening, job description, training requirements, compliance documentation, and a copy of all licenses or certification held by staff who perform services for which licensure or certification is required. The record must also include a copy of all job performance evaluations. In addition, the bill requires the facility to:

- Implement infection control policies and procedures.
- Maintain liability insurance, as defined by s. 624.605, F.S., at all times.
- Designate one person as administrator who is responsible for the overall management of the facility.
- Designate in writing a person responsible for the facility when the administrator is absent for 24 hours.
- Obtain approval of the comprehensive emergency management plan from the local emergency management agency.
- Maintain written records in a form and system in accordance with standard medical and business practices and be available for submission to the AHCA upon request. The records must include:

¹⁴ As required in s 408.809(1)(e), F.S., and pursuant to ch. 435, F.S.

- A daily census record;
- A report of all accident or unusual incidents involving clients or a staff member that caused or had the potential to cause injury or harm to any person or property within the facility;
- Agreements with third party providers;
- Agreements with consultants employed by the facility; and
- Documentation of each consultant's visits and required written, dated reports.

Section 12 creates s. 400.9980, F.S., to allow clients the option of using their own personal belongings and choosing a roommate whenever possible. The admission of a client to a facility and his or her presence therein shall not confer on a licensee, administrator, employee, or representative any authority to manage, use, or dispose of any property of the client. The licensee, administrator, employee, or representative may not act as the client's guardian or trustee for any of the client's property.

The licensee, administrator, employee, or representative may act as a competent client's payee for social security or other benefits or be granted power of attorney for a client if the licensee has filed a surety bond with the AHCA in an amount equal to twice the average monthly income of the client.

The bill states the facility, upon consent from the client, shall provide for the safekeeping in the facility of personal effects not in excess of \$1,000 and funds of the client not in excess of \$500 in cash, and shall keep complete and accurate records of all funds and personal effects received.

The bill provides that any funds or other property belonging to or due to a client, or expendable for his or her account, which are received by the licensee, shall be trust funds which shall be kept separate from the funds and property of the licensee, and other clients, or shall be specifically credited to the client. At least once every month, unless upon order of a court of competent jurisdiction, the facility shall furnish the client and the client's representative a complete and verified statement of all funds and other property, detailing the amount and items received, together with their sources and disposition.

The bill mandates that any person who intentionally withholds the personal property of the a client or who borrows from any client's personal funds commits a crime punishable as a misdemeanor of the first degree. Also, any licensee, administrator, or staff, or representative thereof, who is granted power of attorney for any client of the facility and who misuses or misappropriates funds obtained through this power commits a felony of the third degree.

In the event of the death of a client, the facility shall return all refunds, funds, and property held in trust to the client's personal representative. If the client has no spouse or adult next of kin or such person cannot be located, funds due the client shall be placed in an interest-bearing account, and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code.

The bill allows the AHCA, by rule, to clarify terms and specify procedures and documentation necessary to administer the provisions relating to the proper management of clients' funds and personal property and the execution of surety bonds.

Section 13 creates s. 400.9981, F.S., to authorize the AHCA to publish and enforce rules to include criteria to ensure reasonable and consistent quality of care and client safety. The AHCA may adopt and enforce rules related to:

- Physical plant of transitional living facilities.
- Qualifications of all personnel having responsibility for any part of the client's care and services.
- Requirements for personnel procedures and reporting procedures.
- Services provided to clients.
- The preparation and annual update of a comprehensive emergency management plan.

Section 14 creates s. 400.9982, F.S., which establishes penalties for violations. Current law requires the AHCA to determine if violations in health care related facilities are isolated, patterned or widespread by the AHCA.¹⁵ The penalties in the bill take into account the frequency of the problems within the facility. Section 408.813, F.S., also separates violations into classes, 1 through 4, based on severity. Class 1 violations put clients in imminent danger, Class 2 violations directly threaten the safety of clients, Class 3 violations indirectly threaten the safety of clients, and Class 4 violations are primarily for paperwork violations that would not harm clients. The classifications must be included on the written notice of the violation provided to the facility.

The fines for violations are to be levied at the following amounts:

Class of Violation/Correction	Isolated	Patterned	Widespread
1 - regardless of correction	\$5,000	\$7,500	\$10,000
2 - regardless of correction	\$1,000	\$2,500	\$5,000
3 – if uncorrected	\$500	\$750	\$1,000
	Range		
4 – if uncorrected	\$100	\$200	

Section 15 creates s. 400.9983, F.S., to establish the right for the AHCA to use receivership proceedings established in s. 429.22, F.S. That section allows the AHCA to petition a court for the appointment of a receiver when the following conditions exist:

- The facility is closing or has informed the AHCA that it intends to close.
- The AHCA determines the conditions exist in the facility that presents danger to the health, safety, or welfare of the clients of the facility.
- The facility cannot meet its financial obligations for providing food, shelter, care, and utilities.

Section 429.22, F.S., states that petitions for receivership shall take priority over other court business. A hearing shall be conducted within 5 days of the petition filing and the AHCA notifies the facility administrator or owner of the petition and sets the date of the hearing. The court may grant the petition only upon finding that the health, safety, or welfare of the client is threatened if certain conditions exist.

¹⁵ s. 408.813(2), F.S.

A receiver is appointed from a list of persons qualified to act as receiver developed by the AHCA and must make provisions for the continued health, safety, and welfare of all clients for the facility and perform all duties set out by the court. The receiver must operate the facility to assure the safety and adequate health care for the clients. The receiver may use all resources and consumable goods in the provision of care services to the client and correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety of clients and staff. The receiver may hire or contract staff to carry out the duties of the receiver. The receiver must also honor all leases and mortgages, and has the power to direct and manage and to discharge employees of the facility.

Section 16 creates s. 400.9984, F.S., to require the AHCA, the DOH, the Agency for Persons with Disabilities, and the DCF to develop electronic systems to ensure relevant data pertaining to the regulation of transitional living facilities and clients is communicated timely among all agencies for the protection of clients. This system must include a brain and spinal cord injury registry and a client abuse registry. A database containing information on facilities will assist the various state agencies that are involved in regulating the facilities and the treatment of their clients.

Section 17 repeals s. 400.805, F.S. This section of law contains the current regulations for transitional living facilities. These provisions are replaced by ss. 400.997-9984, F.S., created in the bill.

Section 18 amends s. 381.745, F.S., to conform to changes in the definition of a transitional living facility.

Section 19 amends s. 381.75, F.S., to eliminate a reference to the responsibility of the DOH to develop rules with the AHCA for the regulation of transitional living facilities. Provisions in this section are moved and revised in the newly-created ss. 400.997-400.9984, F.S.

Section 20 amends s. 381.78, F.S., relating to the Brain and Spinal Cord Injury Advisory Council's appointment of a committee to regulate transitional living facilities. These duties are duplicative of the regulation by AHCA under the bill and, as a result, are removed.

Sections 21 – 23 amend ss. 408.802, 408.820, and 400.93, F.S., to make conforming changes.

Section 24 amends s. 400.9905, F.S., to create an exemption from the definition of "clinic" and the licensure requirements under part X of ch. 400, F.S., for publicly traded pediatric cardiology, perinatology, or anesthesia clinical facilities.

Section 25 provides for an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 6, Art. III of the State constitution, requires every law to embrace only one subject and matter properly connected therewith, and the subject is to be briefly expressed in the title. Section 23 of the bill creates an exemption from the definition of “clinic,” and the licensure requirements under part X of ch. 400, F.S., for publicly traded pediatric cardiology, perinatology, or anesthesia clinical facilities. This exemption does not relate to “Transitional Living Facilities” and, as such, section 23 may not be germane to the title of the bill.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Transitional living facilities may incur indeterminate increased costs based on the increased requirements under CS/CS/SB 1724.

C. Government Sector Impact:

The AHCA currently regulates the 13 transitional living facilities in the state and is not expected to incur increased costs of regulation. The AHCA will see increased costs however to develop a database to hold information on facilities that would be shared with other state agencies as required under the bill. The AHCA estimates the one-time costs for developing the database to be \$164,060 and \$64,020 for each subsequent year to maintain the database.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁶ Supra n. 4.

VIII. Additional Information:

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

CS/CS by Health Policy on April 9, 2013:

The CS/CS:

- Adds intent concerning the use of restraints and seclusion on clients;
- Adds a definition of seclusion
- Deletes the definition of licensee;
- Revising the licensee's responsibilities to ensure the client has the opportunity to engage in certain activities, as opposed to requiring the client to engage in those activities;
- Requires facilities to provide a therapeutic milieu that supports individual empowerment and responsibility;
- Requires that physical restraints and seclusion only be used in accordance with the facility's written policies and state law;
- Requires facilities to notify the parent or guardian of a client within 24 hours each time restraint or seclusion is used;
- Allows the AHCA to adopt rules related to duration, staff training, client observation and documentation pertaining to restraints and seclusion;
- Restricts the AHCA from imposing a fine for a corrected class IV deficiency.
- Creates an exemption from the definition of "clinic" and the licensure requirements under part X of ch. 400, F.S., for publicly traded pediatric cardiology, perinatology, or anesthesia clinical facilities; and
- Makes other technical changes.

CS by Children, Families, and Elder Affairs on April 1, 2013:

- Provides that other health care providers serving persons with brain and spinal cord injuries under their existing license, such as hospitals and skilled nursing rehabilitation programs, need not obtain a license as a transitional living facility.
- Requires client discharge plans that specify the rehabilitation goals must be developed before or at admission.
- Requires accreditation as a condition of licensure.
- Authorizes clients to stay beyond 2 years as long as they are making measurable progress to transition to the community.
- Allows a client whose diagnosis does not positively identify the cause of his or her condition to be admitted to the facility for up to 90 days for evaluation.
- Prohibits the admission of clients who have an intellectual or developmental disability as the primary diagnosis.
- Clarifies the requirements and timeframes for the client discharge plan (prior to or at admission), initial evaluation (within 72 hours of admission), initial comprehensive treatment plan (within 4 days of admission), and comprehensive treatment plan (within 30 days of admission).
- Provides that facilities must give the client 30 days notice prior to an involuntary discharge or transfer from the facility.

- Requires facilities to establish a system for investigating, tracking, and responding to complaints along with an appeals process.
- Amends s. 381.75, F.S., to delete current regulations that are replaced by newly-created ss. 400.997-9984, F.S.
- Amends s. 381.78, F.S., to eliminate the authority of the Brain and Spinal Cord Injury Advisory Council to appointment a committee to regulate transitional living facilities.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2013	.	
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The Committee on Health Policy (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Sections 400.9970 through 400.9984, Florida Statutes, are designated as part XI of chapter 400, Florida Statutes, entitled "Transitional Living Facilities."

Section 2. Section 400.9970, Florida Statutes, is created
to read:

400.9970 Legislative intent.—It is the intent of the Legislature to provide for the licensure of transitional living facilities and require the development, establishment, and



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enforcement of basic standards by the Agency for Health Care Administration to ensure quality of care and services to clients in transitional living facilities. It is the policy of the state that the least restrictive appropriate available treatment be used based on the individual needs and best interest of the client and consistent with optimum improvement of the client's condition. The goal of a transitional living program for individuals who have brain or spinal cord injuries is to assist each individual who has such an injury to achieve a higher level of independent functioning and to enable that individual to reenter the community. It is also the policy of this state that the use of restraints and seclusion on clients is justified only as an emergency safety measure to be used in response to danger to the client or others. It is, therefore, the intent of the Legislature to achieve an ongoing reduction in the use of restraints and seclusion in programs and facilities that serve persons who have brain injury or spinal cord injuries.

Section 3. Section 400.9971, Florida Statutes, is created to read:

400.9971 Definitions.—As used in this part, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2) "Chemical restraint" means a pharmacologic drug that physically limits, restricts, or deprives an individual of movement or mobility, is used for client protection or safety, and is not required for the treatment of medical conditions or symptoms.

(3) "Client's representative" means the parent of a child client or the client's guardian, designated representative or



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42 designee, surrogate, or attorney in fact.

43 (4) "Department" means the Department of Health.

44 (5) "Physical restraint" means any manual method to
45 restrict freedom of movement of or normal access to an
46 individual's body or a physical or mechanical device, material,
47 or equipment attached or adjacent to the individual's body so
48 that he or she cannot easily remove the restraint and which
49 restricts freedom of movement of or normal access to one's body,
50 including, but not limited to, a half-bed rail, a full-bed rail,
51 a geriatric chair, and a posey restraint. The term includes any
52 device that was not specifically manufactured as a restraint but
53 which has been altered, arranged, or otherwise used for this
54 purpose. The term does not include bandage material used for the
55 purpose of binding a wound or injury.

56 (6) "Seclusion" means the physical segregation of a person
57 in any fashion or the involuntary isolation of a person in a
58 room or area from which the person is prevented from leaving.
59 The prevention may be by physical barrier or by a staff member
60 who is acting in a manner, or who is physically situated, so as
61 to prevent the person from leaving the room or area. For
62 purposes of this chapter, the term does not mean isolation due
63 to a person's medical condition or symptoms.

64 (7) "Transitional living facility" means a site where
65 specialized health care services are provided, including, but
66 not limited to, rehabilitative services, behavior modification,
67 community reentry training, aids for independent living, and
68 counseling to individuals who have brain injuries or spinal cord
69 injuries. The term does not require a provider that is licensed
70 by the agency to obtain a separate transitional living facility



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license to serve persons who have brain injuries or spinal cord injuries as long as the services provided are within the scope of the provider's license.

Section 4. Section 400.9972, Florida Statutes, is created to read:

400.9972 License required; fee; application.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this part and part II of chapter 408 and to entities licensed by or applying for such licensure from the agency pursuant to this part. A license issued by the agency is required for the operation of a transitional living facility in this state.

(2) In accordance with this part, an applicant or a licensee shall pay a fee for each license application submitted under this part. The license fee shall consist of a \$4,588 license fee and a \$90 per-bed fee per biennium and shall conform to the annual adjustment authorized in s. 408.805.

(3) Each applicant for licensure must provide the following:

(a) The location of the facility for which a license is sought and documentation, signed by the appropriate local government official, which states that the applicant has met local zoning requirements.

(b) Proof of liability insurance as provided in s. 624.605.

(c) Proof of compliance with local zoning requirements, including compliance with the requirements of chapter 419 if the proposed facility is a community residential home.

(d) Proof that the facility has received a satisfactory firesafety inspection.



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100 (e) Documentation of a satisfactory sanitation inspection
101 of the facility by the county health department.

102
103 The applicant's proposed facility must attain and continuously
104 maintain accreditation by an accrediting organization
105 specializing in evaluating rehabilitation facilities whose
106 standards incorporate comparable licensure regulations required
107 by the state. An applicant for licensure as a transitional
108 living facility must acquire accreditation within 12 months
109 after the issuance of an initial license. The agency shall
110 accept the accreditation survey report of the accrediting
111 organization in lieu of conducting a licensure inspection if the
112 standards included in the survey report are determined by the
113 agency to document that the facility is in substantial
114 compliance with state licensure requirements. The applicant
115 shall submit to the agency within 10 days after receipt a copy
116 of any accreditation survey report and evidence of the
117 accreditation decision subsequent to a survey by the accrediting
118 organization on the facility. This part does not preclude the
119 agency from conducting periodic inspections of a transitional
120 living facility to ensure compliance with all licensure
121 requirements, and as it deems necessary to carry out the
122 functions of the agency. An inspection may be conducted to
123 ensure compliance with licensure requirements of this part, to
124 validate the inspection process of accrediting organizations, to
125 respond to licensure complaints, or to protect the public health
126 and safety.

127 Section 5. Section 400.9973, Florida Statutes, is created
128 to read:



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400.9973 Client admission, transfer, and discharge.—

(1) Each transitional living facility must have written policies and procedures governing the admission, transfer, and discharge of clients.

(2) The admission of each client to a transitional living facility must be in accordance with the licensee's policies and procedures.

(3) A client admitted to a transitional living facility must have a brain or spinal cord injury, such as a lesion to the spinal cord or cauda equina syndrome, with evidence of significant involvement of two of the following deficits or dysfunctions:

(a) A motor deficit.

(b) A sensory deficit.

(c) Bowel and bladder dysfunction.

(d) An acquired internal or external injury to the skull, the brain, or the brain's covering, whether caused by a traumatic or nontraumatic event, which produces an altered state of consciousness or an anatomic motor, sensory, cognitive, or behavioral deficit.

(4) A client whose medical condition and diagnosis does not positively identify a cause of the client's condition, whose symptoms are inconsistent with the known cause of injury, or whose recovery is inconsistent with the known medical condition may be admitted to a transitional living facility for evaluation for a period not to exceed 90 days.

(5) A client admitted to a transitional living facility must be admitted upon prescription by a licensed physician and must remain under the care of a licensed physician for the



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duration of the client's stay in the facility.

(6) A transitional living facility may not admit a client whose primary admitting diagnosis is mental illness or an intellectual or a developmental disability.

(7) An individual may not be admitted to a transitional living facility if the individual:

(a) Presents significant risk of infection to other clients or personnel. A health care practitioner must provide documentation that the individual is free of apparent signs and symptoms of communicable disease;

(b) Is a danger to self or others as determined by a physician or mental health practitioner licensed under chapter 490 or chapter 491, unless the facility provides adequate staffing and support to ensure patient safety;

(c) Is bedridden; or

(d) Requires 24-hour nursing supervision.

(8) If the client meets the admission criteria, the medical or nursing director of the facility must complete an initial evaluation of the client's functional skills, behavioral status, cognitive status, educational or vocational potential, medical status, psychosocial status, sensorimotor capacity, and other related skills and abilities within the first 72 hours after the client's admission to the facility. An initial comprehensive treatment plan that delineates services to be provided and appropriate sources for such services must be implemented within the first 4 days after admission.

(9) Each transitional living facility shall develop a discharge plan for each client before or upon admission to the facility. The discharge plan must identify the intended



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discharge site and possible alternative discharge sites. For each discharge site identified, the discharge plan must identify the skills, behaviors, and other conditions that the client must achieve to be appropriate for discharge. Discharge plans must be reviewed and updated as necessary, but no less often than once monthly.

(10) As soon as practicable, a transitional living facility shall discharge a client when he or she no longer requires any of the specialized services described in s. 400.9971(7) or is not making measurable progress in accordance with his or her comprehensive treatment plan, or if the transitional living facility is no longer the most appropriate, least restrictive treatment option.

(11) Each transitional living facility shall provide at least 30 days' notice to clients of transfer or discharge plans, including the location of an acceptable transfer location if the client is unable to live independently. This requirement does not apply if a client voluntarily terminates residency.

Section 6. Section 400.9974, Florida Statutes, is created to read:

400.9974 Client comprehensive treatment plans; client services.—

(1) Each transitional living facility shall develop a comprehensive treatment plan for each client as soon as possible, but no later than 30 days following development of the initial comprehensive treatment plan. Comprehensive treatment plans must be reviewed and updated if the client fails to meet projected improvements in the plan or if a significant change in the client's condition occurs. Comprehensive treatment plans



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216 must be reviewed and updated at least once monthly.
217 Comprehensive treatment plans must be developed by an
218 interdisciplinary team consisting of the case manager, the
219 program director, the nurse, and appropriate therapists. The
220 client or, if appropriate, the client's representative must be
221 included in developing the comprehensive treatment plan.

222 (2) The comprehensive treatment plan must include the
223 following:

224 (a) The physician's orders and the client's diagnosis,
225 medical history, physical examination, and rehabilitative or
226 restorative needs.

227 (b) A preliminary nursing evaluation with physician's
228 orders for immediate care, completed on admission.

229 (c) A comprehensive, accurate, reproducible, and
230 standardized assessment of the client's functional capability;
231 the treatments designed to achieve skills, behaviors, and other
232 conditions necessary to return to the community; and specific
233 measurable goals.

234 (d) Steps necessary for the client to achieve transition to
235 the community and estimated length of time to achieve the goals.

236 (3) The client or, if appropriate, the client's
237 representative must consent to the continued treatment at the
238 transitional living facility. Consent may be for a period of up
239 to 3 months. If such consent is not given, the transitional
240 living facility shall discharge the client as soon as
241 practicable.

242 (4) Each client must receive the professional program
243 services needed to implement the client's comprehensive
244 treatment plan.



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245 (5) The licensee must employ qualified professional staff
246 to carry out and monitor the various professional interventions
247 in accordance with the stated goals and objectives of every
248 client's comprehensive treatment plan.

249 (6) Each client must receive a continuous treatment program
250 that includes appropriate, consistent implementation of a
251 program of specialized and general training, treatment, health
252 services, and related services which is directed toward:

253 (a) The acquisition of the behaviors and skills necessary
254 for the client to function with as much self-determination and
255 independence as possible;

256 (b) The prevention or deceleration of regression or loss of
257 current optimal functional status; and

258 (c) The management of behavioral issues that preclude
259 independent functioning in the community.

260 Section 7. Section 400.9975, Florida Statutes, is created
261 to read:

262 400.9975 Licensee responsibilities.—

263 (1) The licensee shall ensure that each client:

264 (a) Lives in a safe environment free from abuse, neglect,
265 and exploitation.

266 (b) Is treated with consideration and respect and with due
267 recognition of personal dignity, individuality, and the need for
268 privacy.

269 (c) Retains and uses his or her own clothes and other
270 personal property in his or her immediate living quarters, so as
271 to maintain individuality and personal dignity, except when the
272 licensee can demonstrate that such retention and use would be
273 unsafe, impractical, or an infringement upon the rights of other



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clients.

(d) Has unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice. Upon request, the licensee shall make provisions to modify visiting hours for caregivers and guests. The facility shall restrict communication in accordance with any court order or written instruction of a client's representative. Any restriction on a client's communication for therapeutic reasons shall be documented and reviewed at least weekly and shall be removed as soon as it is no longer clinically indicated. The basis for the restriction shall be explained to the client and, if applicable, the client's representative. The client shall nonetheless retain the right to call the abuse hotline, the agency, and Disability Rights Florida at any and all times.

(e) Has the opportunity to participate in and benefits from community services and activities to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Has the opportunity to manage his or her financial affairs unless the client or, if applicable, the client's representative authorizes the administrator of the facility to provide safekeeping for funds as provided in this part.

(g) Has reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.

(h) Has the opportunity to exercise civil and religious liberties, including the right to independent personal decisions. No religious belief or practice, including attendance



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at religious services, shall be imposed upon any client.

(i) Has access to adequate and appropriate health care consistent with established and recognized standards within the community.

(j) Has the ability to present grievances and recommend changes in policies, procedures, and services to the staff of the licensee, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each licensee shall establish a grievance procedure to facilitate a client's ability to present grievances, including a system for investigating, tracking, managing, and responding to complaints by persons receiving services or individuals acting on their behalf, and an appeals process. This process must include access to Disability Rights Florida and other advocates and the right to be a member of, be active in, and associate with advocacy or special interest groups.

(2) The licensee shall:

(a) Promote participation of each client's representative in the process of providing treatment to the client unless the representative's participation is unobtainable or inappropriate.

(b) Answer communications from each client's family, guardians, and friends promptly and appropriately.

(c) Promote visits by individuals with a relationship to the client at any reasonable hour, without requiring prior notice, or in any area of the facility which provides direct client care services to the client, consistent with the client's and other clients' privacy, unless the interdisciplinary team determines that such a visit would not be appropriate.

(d) Promote leave from the facility for visits, trips, or



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vacations.

(e) Promptly notify the client's representative of any significant incidents or changes in the client's condition, including, but not limited to, serious illness, accident, abuse, unauthorized absence, or death.

(3) The administrator of a facility shall ensure that a written notice of licensee responsibilities is posted in a prominent place in each building where clients reside and read or explained to clients who cannot read. This notice shall include the statewide toll-free telephone number for reporting complaints to the agency, must be provided to clients in a manner that is clearly legible, and must include the words: "To report a complaint regarding the services you receive, please call toll-free ...[telephone number]... or Disability Rights Florida ...[telephone number]..."; and the statewide toll-free telephone number for the central abuse hotline must be provided to clients in a manner that is clearly legible and must include the words: "To report abuse, neglect or exploitation, please call toll-free ...[telephone number where complaints may be lodged]...." The licensee must ensure a client's access to a telephone, where telephone numbers required in this subsection are readily available to call the agency, central abuse hotline, or Disability Rights Florida.

(4) A licensee or employee of a facility may not serve notice upon a client to leave the premises or take any other retaliatory action against any person solely due to the following:

(a) The client or other person files an internal or external complaint or grievance regarding the facility.



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(b) The client or other person appears as a witness in any hearing inside or outside the facility.

(5) Before or at the time of admission, the client and the client's representative shall be provided with a copy of the licensee's responsibilities as provided in this section, including grievance procedures and the telephone numbers provided in this section.

(6) The licensee must develop and implement policies and procedures governing the release of any client information, including consent necessary from the client or the client's representative.

Section 8. Section 400.9976, Florida Statutes, is created to read:

400.9976 Medication practices.—

(1) An individual medication administration record must be maintained for each client. Each dose of medication, including a self-administered dose, shall be properly recorded in the client's record. Each client who self-administers medication shall be given a pill organizer. Medication must be placed in the pill organizer by a nurse. A nurse shall document the date and time medication is placed into each client's pill organizer. All medications must be administered in compliance with the physician's orders.

(2) If the interdisciplinary team determines that self-administration of medications is an appropriate objective, and if the physician does not specify otherwise, a client must be taught to self-administer his or her medication without a staff person. This includes all forms of administration, including orally, via injection, and via suppository. The client's



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physician must be informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client. A client may not self-administer medication until he or she demonstrates the competency to take the correct medication in the correct dosage at the correct time, to respond to missed doses, and to contact an appropriate person with questions.

(3) Medication administration discrepancies and adverse drug reactions must be recorded and reported immediately to a physician.

Section 9. Section 400.9977, Florida Statutes, is created to read:

400.9977 Protection from abuse, neglect, mistreatment, and exploitation.—The licensee must develop and implement policies and procedures for the screening and training of employees, the protection of clients, and the prevention, identification, investigation, and reporting of abuse, neglect, and exploitation. This includes the licensee's identification of clients whose personal histories render them at risk for abusing other clients, development of intervention strategies to prevent occurrences, monitoring for changes that would trigger abusive behavior, and reassessment of the interventions on a regular basis. A licensee shall implement procedures to:

(1) Screen potential employees for a history of abuse, neglect, or mistreatment of clients. The screening shall include an attempt to obtain information from previous employers and current employers and verification with the appropriate licensing boards.

(2) Train employees, through orientation and ongoing



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sessions, on issues related to abuse prohibition practices, including identification of abuse, neglect, mistreatment, and exploitation, appropriate interventions to deal with aggressive or catastrophic reactions of clients, the process to report allegations without fear of reprisal, and recognition of signs of frustration and stress that may lead to abuse.

(3) Provide clients, families, and staff with information on how and to whom they may report concerns, incidents, and grievances without the fear of retribution and provide feedback regarding the concerns that have been expressed. A licensee must identify, correct, and intervene in situations in which abuse, neglect, mistreatment, or exploitation is likely to occur, including:

(a) Evaluating the physical environment of the facility to identify characteristics that may make abuse or neglect more likely to occur, such as secluded areas.

(b) Providing sufficient staff on each shift to meet the needs of the clients, and ensuring that the staff assigned have knowledge of the individual clients' care needs. The licensee shall identify inappropriate behaviors of its staff, such as using derogatory language, rough handling, ignoring clients while giving care, and directing clients who need toileting assistance to urinate or defecate in their beds.

(c) Assessing, planning care for, and monitoring clients with needs and behaviors that might lead to conflict or neglect, such as clients with a history of aggressive behaviors, clients who have behaviors such as entering other clients' rooms, clients with self-injurious behaviors, clients with communication disorders, and clients who require heavy nursing



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care or are totally dependent on staff.

(4) Identify events, such as suspicious bruising of clients, occurrences, patterns, and trends that may constitute abuse and determine the direction of the investigation.

(5) Investigate different types of incidents, identify the staff member responsible for the initial reporting, investigate alleged violations, and report results to the proper authorities. The licensee must analyze the occurrences to determine what changes are needed, if any, to policies and procedures to prevent further occurrences and to take all necessary corrective action depending on the results of the investigation.

(6) Protect clients from harm during an investigation.

(7) Report all alleged violations and all substantiated incidents, as required under chapters 39 and 415, to the licensing authorities and all other agencies as required and to report any knowledge it has of any actions by a court of law that would indicate an employee is unfit for service.

Section 10. Section 400.9978, Florida Statutes, is created to read:

400.9978 Restraints and seclusion; client safety.—

(1) Each facility shall provide a therapeutic milieu that supports a culture of individual empowerment and responsibility. The health and safety of the client shall be the primary concern at all times.

(2) The use of physical restraints must be ordered and documented by a physician and must be consistent with policies and procedures adopted by the facility. The client or, if applicable, the client's representative must be informed of the



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477 facility's physical restraint policies and procedures at the
478 time of the client's admission.

479 (3) The use of chemical restraints is limited to prescribed
480 dosages of medications as ordered by a physician and must be
481 consistent with the client's diagnosis and the policies and
482 procedures adopted by the facility. The client and, if
483 applicable, the client's representative must be informed of the
484 facility's chemical restraint policies and procedures at the
485 time of the client's admission.

486 (4) Based on a physician's assessment, if a client exhibits
487 symptoms that present an immediate risk of injury or death to
488 self or others, a physician may issue an emergency treatment
489 order to immediately administer rapid response psychotropic
490 medications or other chemical restraints. Each emergency
491 treatment order must be documented and maintained in the
492 client's record.

493 (a) An emergency treatment order is effective for no more
494 than 24 hours.

495 (b) Whenever a client is medicated in accordance with this
496 subsection, the client's representative or responsible party and
497 the client's physician must be notified as soon as practicable.

498 (5) A client who is prescribed and receiving a medication
499 that can serve as a chemical restraint for a purpose other than
500 an emergency treatment order must be evaluated by his or her
501 physician at least monthly to assess the following:

502 (a) The continued need for the medication.

503 (b) The level of the medication in the client's blood, as
504 appropriate.

505 (c) The need for adjustments in the prescription.



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(6) The licensee shall ensure that clients are free from unnecessary drugs and physical restraints and are provided treatment to reduce dependency on drugs and physical restraints.

(7) The licensee may use physical restraints and seclusion only as authorized by the facility's written physical restraint and seclusion policies, which must be in compliance with this section and applicable rules.

(8) Interventions to manage dangerous client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare, and civil and human rights of each client are adequately protected.

(9) A facility shall notify the parent or guardian of a client each time restraint or seclusion is used. Such notification must be within 24 hours from the time the restraint or seclusion occurs. Reasonable efforts must be taken to notify the parent or guardian by telephone or e-mail, or both, and these efforts must be documented.

(10) The agency may adopt by rule standards and procedures relating to the use of restraints, restraint positioning, seclusion, and emergency treatment orders for psychotropic medications, restraint, and seclusion. These rules must include duration of restraint use, staff training, client observation during restraint, and documentation and reporting standards.

Section 11. Section 400.9979, Florida Statutes, is created to read:

400.9979 Background screening; administration and management.—

(1) The agency shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to



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chapter 435 and s. 408.809.

(2) The licensee shall maintain personnel records for each staff member which contain, at a minimum, documentation of background screening, if applicable, a job description, documentation of compliance with all training requirements of this part or applicable rule, the employment application, references, a copy of all job performance evaluations, and, for each staff member who performs services for which licensure or certification is required, a copy of all licenses or certification held by the staff member.

(3) The licensee must:

(a) Develop and implement infection control policies and procedures and include such policies and procedures in the licensee's policy manual.

(b) Maintain liability insurance as defined in s. 624.605.

(c) Designate one person as an administrator who is responsible and accountable for the overall management of the facility.

(d) Designate a person in writing to be responsible for the facility when the administrator is absent from the facility for more than 24 hours.

(e) Designate in writing a program director who is responsible for supervising the therapeutic and behavioral staff, determining the levels of supervision, and determining room placement for each client.

(f) Designate in writing a person to be responsible when the program director is absent from the facility for more than 24 hours.

(g) Obtain approval of the comprehensive emergency



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management plan, pursuant to s. 400.9981(2)(e), from the local emergency management agency. Pending the approval of the plan, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Health, the Agency for Health Care Administration, and the Division of Emergency Management. Appropriate volunteer organizations must also be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the licensee of necessary revisions.

(h) Maintain written records in a form and system that comply with medical and business practices and make such records available in the facility for review or submission to the agency upon request. The records shall include:

1. A daily census record that indicates the number of clients currently receiving services in the facility, including information regarding any public funding of such clients.

2. A record of all accidents or unusual incidents involving any client or staff member that caused, or had the potential to cause, injury or harm to any person or property within the facility. Such records must contain a clear description of each accident or incident, the names of the persons involved, a description of all medical or other services provided to these persons specifying who provided such services, and the steps taken to prevent recurrence of such accidents or incidents.

3. A copy of current agreements with third-party providers.

4. A copy of current agreements with each consultant employed by the licensee and documentation of each consultant's visits and required written, dated reports.



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Section 12. Section 400.9980, Florida Statutes, is created to read:

400.9980 Property and personal affairs of clients.—

(1) A client shall be given the option of using his or her own belongings, as space permits; choosing his or her roommate if practical and not clinically contraindicated; and, whenever possible, unless the client is adjudicated incompetent or incapacitated under state law, managing his or her own affairs.

(2) The admission of a client to a facility and his or her presence therein shall not confer on a licensee, administrator, employee, or representative thereof any authority to manage, use, or dispose of any property of the client, nor shall such admission or presence confer on any of such persons any authority or responsibility for the personal affairs of the client except that which may be necessary for the safe management of the facility or for the safety of the client.

(3) A licensee, administrator, employee, or representative thereof may:

(a) Not act as the guardian, trustee, or conservator for any client or any of such client's property.

(b) Act as a competent client's payee for social security, veteran's, or railroad benefits if the client provides consent and the licensee files a surety bond with the agency in an amount equal to twice the average monthly aggregate income or personal funds due to the client, or expendable for the client's account, that are received by a licensee.

(c) Act as the power of attorney for a client if the licensee has filed a surety bond with the agency in an amount equal to twice the average monthly income of the client, plus



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the value of any client's property under the control of the attorney in fact.

The bond under paragraph (b) or paragraph (c) shall be executed by the licensee as principal and a licensed surety company. The bond shall be conditioned upon the faithful compliance of the licensee with the requirements of licensure and shall be payable to the agency for the benefit of any client who suffers a financial loss as a result of the misuse or misappropriation of funds held pursuant to this subsection. Any surety company that cancels or does not renew the bond of any licensee shall notify the agency in writing not less than 30 days in advance of such action, giving the reason for the cancellation or nonrenewal. Any licensee, administrator, employee, or representative thereof who is granted power of attorney for any client of the facility shall, on a monthly basis, notify the client in writing of any transaction made on behalf of the client pursuant to this subsection, and a copy of such notification given to the client shall be retained in each client's file and available for agency inspection.

(4) A licensee, upon mutual consent with the client, shall provide for the safekeeping in the facility of the client's personal effects of a value not in excess of \$1,000 and the client's funds not in excess of \$500 cash and shall keep complete and accurate records of all such funds and personal effects received. If a client is absent from a facility for 24 hours or more, the licensee may provide for the safekeeping of the client's personal effects of a value in excess of \$1,000.

(5) Any funds or other property belonging to or due to a



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client or expendable for his or her account that is received by
licensee shall be trust funds and shall be kept separate from
the funds and property of the licensee and other clients or
shall be specifically credited to such client. Such trust funds
shall be used or otherwise expended only for the account of the
client. At least once every month, unless upon order of a court
of competent jurisdiction, the licensee shall furnish the client
and the client's representative a complete and verified
statement of all funds and other property to which this
subsection applies, detailing the amount and items received,
together with their sources and disposition. In any event, the
licensee shall furnish such statement annually and upon the
discharge or transfer of a client. Any governmental agency or
private charitable agency contributing funds or other property
to the account of a client shall also be entitled to receive
such statement monthly and upon the discharge or transfer of the
client.

(6) (a) In addition to any damages or civil penalties to
which a person is subject, any person who:

1. Intentionally withholds a client's personal funds,
personal property, or personal needs allowance, or who demands,
beneficially receives, or contracts for payment of all or any
part of a client's personal property or personal needs allowance
in satisfaction of the facility rate for supplies and services;
or
2. Borrows from or pledges any personal funds of a client,
other than the amount agreed to by written contract under s.
429.24,



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commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any licensee, administrator, employee, or representative thereof who is granted power of attorney for any client of the facility and who misuses or misappropriates funds obtained through this power commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) In the event of the death of a client, a licensee shall return all refunds, funds, and property held in trust to the client's personal representative, if one has been appointed at the time the licensee disburses such funds, or, if not, to the client's spouse or adult next of kin named in a beneficiary designation form provided by the licensee to the client. If the client has no spouse or adult next of kin or such person cannot be located, funds due the client shall be placed in an interest-bearing account and all property held in trust by the licensee shall be safeguarded until such time as the funds and property are disbursed pursuant to the Florida Probate Code. Such funds shall be kept separate from the funds and property of the licensee and other clients of the facility. If the funds of the deceased client are not disbursed pursuant to the Florida Probate Code within 2 years after the client's death, the funds shall be deposited in the Health Care Trust Fund administered by the agency.

(8) The agency, by rule, may clarify terms and specify procedures and documentation necessary to administer the provisions of this section relating to the proper management of clients' funds and personal property and the execution of surety



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bonds.

Section 13. Section 400.9981, Florida Statutes, is created to read:

400.9981 Rules establishing standards.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this part and part II of chapter 408 include criteria to ensure reasonable and consistent quality of care and client safety. Rules should make reasonable efforts to accommodate the needs and preferences of clients to enhance the quality of life in transitional living facilities.

(2) The agency may adopt and enforce rules to implement this part and part II of chapter 408, which shall include reasonable and fair criteria in relation to the following:

(a) The location of transitional living facilities.

(b) The number of qualifications of all personnel, including management, medical, nursing, and other professional personnel and nursing assistants and support personnel having responsibility for any part of the care given to clients. The licensee must have enough qualified professional staff available to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of each comprehensive treatment plan.

(c) Requirements for personnel procedures, reporting procedures, and documentation necessary to implement this part.

(d) Services provided to clients of transitional living facilities.

(e) The preparation and annual update of a comprehensive emergency management plan in consultation with the Division of Emergency Management. At a minimum, the rules must provide for



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plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including provision of emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of clients and transfer of records; communication with families; and responses to family inquiries.

Section 14. Section 400.9982, Florida Statutes, is created to read:

400.9982 Violations; penalties.—

(1) Each violation of this part and rules adopted pursuant thereto shall be classified according to the nature of the violation and the gravity of its probable effect on facility clients. The agency shall indicate the classification on the written notice of the violation as follows:

(a) Class "I" violations are defined in s. 408.813. The agency shall issue a citation regardless of correction and impose an administrative fine of \$5,000 for an isolated violation, \$7,500 for a patterned violation, and \$10,000 for a widespread violation. Violations may be identified and a fine must be levied notwithstanding the correction of the deficiency giving rise to the violation.

(b) Class "II" violations are defined in s. 408.813. The agency shall impose an administrative fine of \$1,000 for an isolated violation, \$2,500 for a patterned violation, and \$5,000 for a widespread violation. A fine must be levied notwithstanding the correction of the deficiency giving rise to the violation.

(c) Class "III" violations are defined in s. 408.813. The



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agency shall impose an administrative fine of \$500 for an isolated violation, \$750 for a patterned violation, and \$1,000 for a widespread violation. If a deficiency giving rise to a class "III" violation is corrected within the time specified by the agency, a fine may not be imposed.

(d) Class "IV" violations are defined in s. 408.813. The agency shall impose an administrative fine for a cited class IV violation in an amount not less than \$100 and not exceeding \$200 for each violation. If a deficiency giving rise to a class "IV" violation is corrected within the time specified by the agency, a fine may not be imposed.

Section 15. Section 400.9983, Florida Statutes, is created to read:

400.9983 Receivership proceedings.—The agency may apply s. 429.22 with regard to receivership proceedings for transitional living facilities.

Section 16. Section 400.9984, Florida Statutes, is created to read:

400.9984 Interagency communication.—The agency, the department, the Agency for Persons with Disabilities, and the Department of Children and Families shall develop electronic systems to ensure that relevant information pertaining to the regulation of transitional living facilities and clients is timely and effectively communicated among agencies in order to facilitate the protection of clients. Electronic sharing of information shall include, at a minimum, a brain and spinal cord injury registry and a client abuse registry.

Section 17. Section 400.805, Florida Statutes, is repealed. Every transitional living facility licensed under s. 400.805 on



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or before July 1, 2013, shall be licensed under the provisions
of this act.

Section 18. Subsection (9) of section 381.745, Florida
Statutes, is amended to read:

381.745 Definitions; ss. 381.739-381.79.—As used in ss.
381.739-381.79, the term:

(9) "Transitional living facility," for the purpose of this
part, means a state-approved facility, as defined and licensed
under chapter 400 ~~or chapter 429, or a facility approved by the~~
~~brain and spinal cord injury program in accordance with this~~
~~chapter.~~

Section 19. Section 381.75, Florida Statutes, is amended to
read:

381.75 Duties and responsibilities of the department, ~~of~~
~~transitional living facilities, and of residents.~~—Consistent
with the mandate of s. 381.7395, the department shall develop
and administer a multilevel treatment program for individuals
who sustain brain or spinal cord injuries and who are referred
to the brain and spinal cord injury program.

(1) Within 15 days after any report of an individual who
has sustained a brain or spinal cord injury, the department
shall notify the individual or the most immediate available
family members of their right to assistance from the state, the
services available, and the eligibility requirements.

(2) The department shall refer individuals who have brain
or spinal cord injuries to other state agencies to assure that
rehabilitative services, if desired, are obtained by that
individual.

(3) The department, in consultation with emergency medical



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service, shall develop standards for an emergency medical evacuation system that will ensure that all individuals who sustain traumatic brain or spinal cord injuries are transported to a department-approved trauma center that meets the standards and criteria established by the emergency medical service and the acute-care standards of the brain and spinal cord injury program.

(4) The department shall develop standards for designation of rehabilitation centers to provide rehabilitation services for individuals who have brain or spinal cord injuries.

(5) The department shall determine the appropriate number of designated acute-care facilities, inpatient rehabilitation centers, and outpatient rehabilitation centers, needed based on incidence, volume of admissions, and other appropriate criteria.

(6) The department shall develop standards for designation of transitional living facilities to provide transitional living services for individuals who participate in the brain and spinal cord injury program ~~the opportunity to adjust to their disabilities and to develop physical and functional skills in a supported living environment.~~

~~(a) The Agency for Health Care Administration, in consultation with the department, shall develop rules for the licensure of transitional living facilities for individuals who have brain or spinal cord injuries.~~

~~(b) The goal of a transitional living program for individuals who have brain or spinal cord injuries is to assist each individual who has such a disability to achieve a higher level of independent functioning and to enable that person to reenter the community. The program shall be focused on preparing~~



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~~participants to return to community living.~~

~~(c) A transitional living facility for an individual who has a brain or spinal cord injury shall provide to such individual, in a residential setting, a goal-oriented treatment program designed to improve the individual's physical, cognitive, communicative, behavioral, psychological, and social functioning, as well as to provide necessary support and supervision. A transitional living facility shall offer at least the following therapies: physical, occupational, speech, neuropsychology, independent living skills training, behavior analysis for programs serving brain-injured individuals, health education, and recreation.~~

~~(d) All residents shall use the transitional living facility as a temporary measure and not as a permanent home or domicile. The transitional living facility shall develop an initial treatment plan for each resident within 3 days after the resident's admission. The transitional living facility shall develop a comprehensive plan of treatment and a discharge plan for each resident as soon as practical, but no later than 30 days after the resident's admission. Each comprehensive treatment plan and discharge plan must be reviewed and updated as necessary, but no less often than quarterly. This subsection does not require the discharge of an individual who continues to require any of the specialized services described in paragraph (c) or who is making measurable progress in accordance with that individual's comprehensive treatment plan. The transitional living facility shall discharge any individual who has an appropriate discharge site and who has achieved the goals of his or her discharge plan or who is no longer making progress toward~~



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~~the goals established in the comprehensive treatment plan and the discharge plan. The discharge location must be the least restrictive environment in which an individual's health, well-being, and safety is preserved.~~

~~(7) Recipients of services, under this section, from any of the facilities referred to in this section shall pay a fee based on ability to pay.~~

Section 20. Subsection (4) of section 381.78, Florida Statutes, is amended to read:

381.78 Advisory council on brain and spinal cord injuries.-

(4) The council shall:

~~(a) provide advice and expertise to the department in the preparation, implementation, and periodic review of the brain and spinal cord injury program.~~

~~(b) Annually appoint a five-member committee composed of one individual who has a brain injury or has a family member with a brain injury, one individual who has a spinal cord injury or has a family member with a spinal cord injury, and three members who shall be chosen from among these representative groups: physicians, other allied health professionals, administrators of brain and spinal cord injury programs, and representatives from support groups with expertise in areas related to the rehabilitation of individuals who have brain or spinal cord injuries, except that one and only one member of the committee shall be an administrator of a transitional living facility. Membership on the council is not a prerequisite for membership on this committee.~~

~~1. The committee shall perform onsite visits to those transitional living facilities identified by the Agency for~~



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~~Health Care Administration as being in possible violation of the statutes and rules regulating such facilities. The committee members have the same rights of entry and inspection granted under s. 400.805(4) to designated representatives of the agency.~~

~~2. Factual findings of the committee resulting from an onsite investigation of a facility pursuant to subparagraph 1. shall be adopted by the agency in developing its administrative response regarding enforcement of statutes and rules regulating the operation of the facility.~~

~~3. Onsite investigations by the committee shall be funded by the Health Care Trust Fund.~~

~~4. Travel expenses for committee members shall be reimbursed in accordance with s. 112.061.~~

~~5. Members of the committee shall recuse themselves from participating in any investigation that would create a conflict of interest under state law, and the council shall replace the member, either temporarily or permanently.~~

Section 21. Subsection (21) of section 408.802, Florida Statutes, is amended to read:

408.802 Applicability.—The provisions of this part apply to the provision of services that require licensure as defined in this part and to the following entities licensed, registered, or certified by the agency, as described in chapters 112, 383, 390, 394, 395, 400, 429, 440, 483, and 765:

(21) Transitional living facilities, as provided under part XI ~~W~~ of chapter 400.

Section 22. Subsection (20) of section 408.820, Florida Statutes, is amended to read:

408.820 Exemptions.—Except as prescribed in authorizing



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statutes, the following exemptions shall apply to specified requirements of this part:

(20) Transitional living facilities, as provided under part XI ~~¶~~ of chapter 400, are exempt from s. 408.810(10).

Section 23. Subsection (5) of section 400.93, Florida Statutes, is amended to read:

400.93 Licensure required; exemptions; unlawful acts; penalties.—

(5) The following are exempt from home medical equipment provider licensure, unless they have a separate company, corporation, or division that is in the business of providing home medical equipment and services for sale or rent to consumers at their regular or temporary place of residence pursuant to the provisions of this part:

(a) Providers operated by the Department of Health or Federal Government.

(b) Nursing homes licensed under part II.

(c) Assisted living facilities licensed under chapter 429, when serving their residents.

(d) Home health agencies licensed under part III.

(e) Hospices licensed under part IV.

(f) Intermediate care facilities, homes for special services, and transitional living facilities licensed under part V.

(g) Transitional living facilities licensed under part XI.

(h) ~~(g)~~ Hospitals and ambulatory surgical centers licensed under chapter 395.

(i) ~~(h)~~ Manufacturers and wholesale distributors when not selling directly to consumers.



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(j)~~(i)~~ Licensed health care practitioners who utilize home medical equipment in the course of their practice, but do not sell or rent home medical equipment to their patients.

(k)~~(j)~~ Pharmacies licensed under chapter 465.

Section 24. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to transitional living facilities;
creating part XI of ch. 400, F.S., entitled
"Transitional Living Facilities"; creating s.
400.9970, F.S.; providing legislative intent; creating
s. 400.9971, F.S.; providing definitions; creating s.
400.9972, F.S.; requiring the licensure of
transitional living facilities; providing fees;
providing license application requirements; creating
s. 400.9973, F.S.; providing requirements for
transitional living facilities relating to client
admission, transfer, and discharge; creating s.
400.9974, F.S.; requiring a comprehensive treatment
plan to be developed for each client; providing plan
requirements; creating s. 400.9975, F.S.; providing
licensee responsibilities; providing notice
requirements; prohibiting a licensee or employee of a
facility from serving notice upon a client to leave
the premises or take other retaliatory action;



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requiring the client and client's representative to be provided with certain information; requiring the licensee to develop and implement certain policies and procedures; creating s. 400.9976, F.S.; providing licensee requirements relating to medication practices; creating s. 400.9977, F.S.; providing requirements for the screening of potential employees and monitoring of employees for the protection of clients; requiring licensees to implement certain procedures; creating s. 400.9978, F.S.; requiring a facility to provide a therapeutic milieu that supports a culture of individual empowerment and responsibility; providing that the health and safety of the client is the primary concern of the facility; providing requirements and limitations for the use of physical restraints, seclusion, and chemical restraint medication on clients; requiring the Agency for Health Care Administration to adopt rules; creating s. 400.9979, F.S.; providing background screening requirements; requiring the licensee to maintain certain personnel records; providing administrative responsibilities for licensees; providing recordkeeping requirements; creating s. 400.9980, F.S.; providing requirements relating to property and personal affairs of clients; providing requirements for a licensee with respect to obtaining surety bonds; providing recordkeeping requirements relating to the safekeeping of personal effects; providing requirements for trust funds received by licensee and



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credited to the client; providing a penalty for certain misuse of a resident's personal needs allowance; providing criminal penalties for violations; providing for the disposition of property in the event of the death of a client; authorizing the Agency for Health Care Administration to adopt rules; creating s. 400.9981, F.S.; authorizing the agency to adopt and enforce certain rules; creating s. 400.9982, F.S.; providing procedures relating to violations and penalties; providing administrative fines for specified classes of violations; creating s. 400.9983, F.S.; authorizing the agency to apply certain provisions with regard to receivership proceedings; creating s. 400.9984, F.S.; requiring the Agency for Health Care Administration, the Department of Health, the Agency for Persons with Disabilities, and the Department of Children and Families to develop electronic systems for certain purposes; repealing s. 400.805, F.S., relating to transitional living facilities; providing that every transitional living facilities licensed under s. 400.805, F.S., on or before a specified date is licensed under the provisions of the act; amending s. 381.745, F.S.; revising a definition; amending s. 381.75, F.S.; revising the duties of the Department of Health as they relate to transitional living facilities; amending s. 381.78, F.S.; conforming provisions to changes made by the act; amending ss. 408.802 and 408.820, F.S.; conforming a provision to changes made



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1057 by the act; amending s. 400.93, F.S.; providing that
1058 transitional living facilities licensed under part XI
1059 of ch. 400, F.S., are exempt from home medical
1060 equipment provider licensure; providing an effective
1061 date.



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LEGISLATIVE ACTION

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

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Sections 400.9970 through 400.9984, Florida Statutes, are designated as part XI of chapter 400, Florida Statutes, entitled "Transitional Living Facilities."

Section 2. Section 400.9970, Florida Statutes, is created
to read:

400.9970 Legislative intent.—It is the intent of the Legislature to provide for the licensure of transitional living facilities and require the development, establishment, and



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enforcement of basic standards by the Agency for Health Care Administration to ensure quality of care and services to clients in transitional living facilities. It is the policy of the state that the least restrictive appropriate available treatment be used based on the individual needs and best interest of the client and consistent with optimum improvement of the client's condition. The goal of a transitional living program for individuals who have brain or spinal cord injuries is to assist each individual who has such an injury to achieve a higher level of independent functioning and to enable that individual to reenter the community. It is also the policy of this state that the use of restraints and seclusion on clients is justified only as an emergency safety measure to be used in response to danger to the client or others. It is, therefore, the intent of the Legislature to achieve an ongoing reduction in the use of restraints and seclusion in programs and facilities that serve persons who have brain injury or spinal cord injuries.

Section 3. Section 400.9971, Florida Statutes, is created to read:

400.9971 Definitions.—As used in this part, the term:

(1) "Agency" means the Agency for Health Care Administration.

(2) "Chemical restraint" means a pharmacologic drug that physically limits, restricts, or deprives an individual of movement or mobility, is used for client protection or safety, and is not required for the treatment of medical conditions or symptoms.

(3) "Client's representative" means the parent of a child client or the client's guardian, designated representative or



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42 designee, surrogate, or attorney in fact.

43 (4) "Department" means the Department of Health.

44 (5) "Physical restraint" means any manual method to
45 restrict freedom of movement of or normal access to an
46 individual's body or a physical or mechanical device, material,
47 or equipment attached or adjacent to the individual's body so
48 that he or she cannot easily remove the restraint and which
49 restricts freedom of movement of or normal access to one's body,
50 including, but not limited to, a half-bed rail, a full-bed rail,
51 a geriatric chair, and a posey restraint. The term includes any
52 device that was not specifically manufactured as a restraint but
53 which has been altered, arranged, or otherwise used for this
54 purpose. The term does not include bandage material used for the
55 purpose of binding a wound or injury.

56 (6) "Seclusion" means the physical segregation of a person
57 in any fashion or the involuntary isolation of a person in a
58 room or area from which the person is prevented from leaving.
59 The prevention may be by physical barrier or by a staff member
60 who is acting in a manner, or who is physically situated, so as
61 to prevent the person from leaving the room or area. For
62 purposes of this chapter, the term does not mean isolation due
63 to a person's medical condition or symptoms.

64 (7) "Transitional living facility" means a site where
65 specialized health care services are provided, including, but
66 not limited to, rehabilitative services, behavior modification,
67 community reentry training, aids for independent living, and
68 counseling to individuals who have brain injuries or spinal cord
69 injuries. The term does not require a provider that is licensed
70 by the agency to obtain a separate transitional living facility



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71 license to serve persons who have brain injuries or spinal cord
72 injuries as long as the services provided are within the scope
73 of the provider's license.

74 Section 4. Section 400.9972, Florida Statutes, is created
75 to read:

76 400.9972 License required; fee; application.—

77 (1) The requirements of part II of chapter 408 apply to the
78 provision of services that require licensure pursuant to this
79 part and part II of chapter 408 and to entities licensed by or
80 applying for such licensure from the agency pursuant to this
81 part. A license issued by the agency is required for the
82 operation of a transitional living facility in this state.

83 (2) In accordance with this part, an applicant or a
84 licensee shall pay a fee for each license application submitted
85 under this part. The license fee shall consist of a \$4,588
86 license fee and a \$90 per-bed fee per biennium and shall conform
87 to the annual adjustment authorized in s. 408.805.

88 (3) Each applicant for licensure must provide the
89 following:

90 (a) The location of the facility for which a license is
91 sought and documentation, signed by the appropriate local
92 government official, which states that the applicant has met
93 local zoning requirements.

94 (b) Proof of liability insurance as provided in s. 624.605.

95 (c) Proof of compliance with local zoning requirements,
96 including compliance with the requirements of chapter 419 if the
97 proposed facility is a community residential home.

98 (d) Proof that the facility has received a satisfactory
99 firesafety inspection.



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100 (e) Documentation of a satisfactory sanitation inspection
101 of the facility by the county health department.

102
103 The applicant's proposed facility must attain and continuously
104 maintain accreditation by an accrediting organization
105 specializing in evaluating rehabilitation facilities whose
106 standards incorporate comparable licensure regulations required
107 by the state. An applicant for licensure as a transitional
108 living facility must acquire accreditation within 12 months
109 after the issuance of an initial license. The agency shall
110 accept the accreditation survey report of the accrediting
111 organization in lieu of conducting a licensure inspection if the
112 standards included in the survey report are determined by the
113 agency to document that the facility is in substantial
114 compliance with state licensure requirements. The applicant
115 shall submit to the agency within 10 days after receipt a copy
116 of any accreditation survey report and evidence of the
117 accreditation decision subsequent to a survey by the accrediting
118 organization on the facility. This part does not preclude the
119 agency from conducting periodic inspections of a transitional
120 living facility to ensure compliance with all licensure
121 requirements, and as it deems necessary to carry out the
122 functions of the agency. An inspection may be conducted to
123 ensure compliance with licensure requirements of this part, to
124 validate the inspection process of accrediting organizations, to
125 respond to licensure complaints, or to protect the public health
126 and safety.

127 Section 5. Section 400.9973, Florida Statutes, is created
128 to read:



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400.9973 Client admission, transfer, and discharge.—

(1) Each transitional living facility must have written policies and procedures governing the admission, transfer, and discharge of clients.

(2) The admission of each client to a transitional living facility must be in accordance with the licensee's policies and procedures.

(3) A client admitted to a transitional living facility must have a brain or spinal cord injury, such as a lesion to the spinal cord or cauda equina syndrome, with evidence of significant involvement of two of the following deficits or dysfunctions:

(a) A motor deficit.

(b) A sensory deficit.

(c) Bowel and bladder dysfunction.

(d) An acquired internal or external injury to the skull, the brain, or the brain's covering, whether caused by a traumatic or nontraumatic event, which produces an altered state of consciousness or an anatomic motor, sensory, cognitive, or behavioral deficit.

(4) A client whose medical condition and diagnosis does not positively identify a cause of the client's condition, whose symptoms are inconsistent with the known cause of injury, or whose recovery is inconsistent with the known medical condition may be admitted to a transitional living facility for evaluation for a period not to exceed 90 days.

(5) A client admitted to a transitional living facility must be admitted upon prescription by a licensed physician and must remain under the care of a licensed physician for the



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duration of the client's stay in the facility.

(6) A transitional living facility may not admit a client whose primary admitting diagnosis is mental illness or an intellectual or a developmental disability.

(7) An individual may not be admitted to a transitional living facility if the individual:

(a) Presents significant risk of infection to other clients or personnel. A health care practitioner must provide documentation that the individual is free of apparent signs and symptoms of communicable disease;

(b) Is a danger to self or others as determined by a physician or mental health practitioner licensed under chapter 490 or chapter 491, unless the facility provides adequate staffing and support to ensure patient safety;

(c) Is bedridden; or

(d) Requires 24-hour nursing supervision.

(8) If the client meets the admission criteria, the medical or nursing director of the facility must complete an initial evaluation of the client's functional skills, behavioral status, cognitive status, educational or vocational potential, medical status, psychosocial status, sensorimotor capacity, and other related skills and abilities within the first 72 hours after the client's admission to the facility. An initial comprehensive treatment plan that delineates services to be provided and appropriate sources for such services must be implemented within the first 4 days after admission.

(9) Each transitional living facility shall develop a discharge plan for each client before or upon admission to the facility. The discharge plan must identify the intended



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discharge site and possible alternative discharge sites. For each discharge site identified, the discharge plan must identify the skills, behaviors, and other conditions that the client must achieve to be appropriate for discharge. Discharge plans must be reviewed and updated as necessary, but no less often than once monthly.

(10) As soon as practicable, a transitional living facility shall discharge a client when he or she no longer requires any of the specialized services described in s. 400.9971(7) or is not making measurable progress in accordance with his or her comprehensive treatment plan, or if the transitional living facility is no longer the most appropriate, least restrictive treatment option.

(11) Each transitional living facility shall provide at least 30 days' notice to clients of transfer or discharge plans, including the location of an acceptable transfer location if the client is unable to live independently. This requirement does not apply if a client voluntarily terminates residency.

Section 6. Section 400.9974, Florida Statutes, is created to read:

400.9974 Client comprehensive treatment plans; client services.—

(1) Each transitional living facility shall develop a comprehensive treatment plan for each client as soon as possible, but no later than 30 days following development of the initial comprehensive treatment plan. Comprehensive treatment plans must be reviewed and updated if the client fails to meet projected improvements in the plan or if a significant change in the client's condition occurs. Comprehensive treatment plans



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216 must be reviewed and updated at least once monthly.
217 Comprehensive treatment plans must be developed by an
218 interdisciplinary team consisting of the case manager, the
219 program director, the nurse, and appropriate therapists. The
220 client or, if appropriate, the client's representative must be
221 included in developing the comprehensive treatment plan.

222 (2) The comprehensive treatment plan must include the
223 following:

224 (a) The physician's orders and the client's diagnosis,
225 medical history, physical examination, and rehabilitative or
226 restorative needs.

227 (b) A preliminary nursing evaluation with physician's
228 orders for immediate care, completed on admission.

229 (c) A comprehensive, accurate, reproducible, and
230 standardized assessment of the client's functional capability;
231 the treatments designed to achieve skills, behaviors, and other
232 conditions necessary to return to the community; and specific
233 measurable goals.

234 (d) Steps necessary for the client to achieve transition to
235 the community and estimated length of time to achieve the goals.

236 (3) The client or, if appropriate, the client's
237 representative must consent to the continued treatment at the
238 transitional living facility. Consent may be for a period of up
239 to 3 months. If such consent is not given, the transitional
240 living facility shall discharge the client as soon as
241 practicable.

242 (4) Each client must receive the professional program
243 services needed to implement the client's comprehensive
244 treatment plan.



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245 (5) The licensee must employ qualified professional staff
246 to carry out and monitor the various professional interventions
247 in accordance with the stated goals and objectives of every
248 client's comprehensive treatment plan.

249 (6) Each client must receive a continuous treatment program
250 that includes appropriate, consistent implementation of a
251 program of specialized and general training, treatment, health
252 services, and related services which is directed toward:

253 (a) The acquisition of the behaviors and skills necessary
254 for the client to function with as much self-determination and
255 independence as possible;

256 (b) The prevention or deceleration of regression or loss of
257 current optimal functional status; and

258 (c) The management of behavioral issues that preclude
259 independent functioning in the community.

260 Section 7. Section 400.9975, Florida Statutes, is created
261 to read:

262 400.9975 Licensee responsibilities.—

263 (1) The licensee shall ensure that each client:

264 (a) Lives in a safe environment free from abuse, neglect,
265 and exploitation.

266 (b) Is treated with consideration and respect and with due
267 recognition of personal dignity, individuality, and the need for
268 privacy.

269 (c) Retains and uses his or her own clothes and other
270 personal property in his or her immediate living quarters, so as
271 to maintain individuality and personal dignity, except when the
272 licensee can demonstrate that such retention and use would be
273 unsafe, impractical, or an infringement upon the rights of other



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clients.

(d) Has unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice. Upon request, the licensee shall make provisions to modify visiting hours for caregivers and guests. The facility shall restrict communication in accordance with any court order or written instruction of a client's representative. Any restriction on a client's communication for therapeutic reasons shall be documented and reviewed at least weekly and shall be removed as soon as it is no longer clinically indicated. The basis for the restriction shall be explained to the client and, if applicable, the client's representative. The client shall nonetheless retain the right to call the abuse hotline, the agency, and Disability Rights Florida at any and all times.

(e) Has the opportunity to participate in and benefits from community services and activities to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Has the opportunity to manage his or her financial affairs unless the client or, if applicable, the client's representative authorizes the administrator of the facility to provide safekeeping for funds as provided in this part.

(g) Has reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals except when prevented by inclement weather.

(h) Has the opportunity to exercise civil and religious liberties, including the right to independent personal decisions. No religious belief or practice, including attendance



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at religious services, shall be imposed upon any client.

(i) Has access to adequate and appropriate health care consistent with established and recognized standards within the community.

(j) Has the ability to present grievances and recommend changes in policies, procedures, and services to the staff of the licensee, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. Each licensee shall establish a grievance procedure to facilitate a client's ability to present grievances, including a system for investigating, tracking, managing, and responding to complaints by persons receiving services or individuals acting on their behalf, and an appeals process. This process must include access to Disability Rights Florida and other advocates and the right to be a member of, be active in, and associate with advocacy or special interest groups.

(2) The licensee shall:

(a) Promote participation of each client's representative in the process of providing treatment to the client unless the representative's participation is unobtainable or inappropriate.

(b) Answer communications from each client's family, guardians, and friends promptly and appropriately.

(c) Promote visits by individuals with a relationship to the client at any reasonable hour, without requiring prior notice, or in any area of the facility which provides direct client care services to the client, consistent with the client's and other clients' privacy, unless the interdisciplinary team determines that such a visit would not be appropriate.

(d) Promote leave from the facility for visits, trips, or



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vacations.

(e) Promptly notify the client's representative of any significant incidents or changes in the client's condition, including, but not limited to, serious illness, accident, abuse, unauthorized absence, or death.

(3) The administrator of a facility shall ensure that a written notice of licensee responsibilities is posted in a prominent place in each building where clients reside and read or explained to clients who cannot read. This notice shall include the statewide toll-free telephone number for reporting complaints to the agency, must be provided to clients in a manner that is clearly legible, and must include the words: "To report a complaint regarding the services you receive, please call toll-free ...[telephone number]... or Disability Rights Florida ...[telephone number]..."; and the statewide toll-free telephone number for the central abuse hotline must be provided to clients in a manner that is clearly legible and must include the words: "To report abuse, neglect or exploitation, please call toll-free ...[telephone number where complaints may be lodged]...." The licensee must ensure a client's access to a telephone, where telephone numbers required in this subsection are readily available to call the agency, central abuse hotline, or Disability Rights Florida.

(4) A licensee or employee of a facility may not serve notice upon a client to leave the premises or take any other retaliatory action against any person solely due to the following:

(a) The client or other person files an internal or external complaint or grievance regarding the facility.



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(b) The client or other person appears as a witness in any hearing inside or outside the facility.

(5) Before or at the time of admission, the client and the client's representative shall be provided with a copy of the licensee's responsibilities as provided in this section, including grievance procedures and the telephone numbers provided in this section.

(6) The licensee must develop and implement policies and procedures governing the release of any client information, including consent necessary from the client or the client's representative.

Section 8. Section 400.9976, Florida Statutes, is created to read:

400.9976 Medication practices.—

(1) An individual medication administration record must be maintained for each client. Each dose of medication, including a self-administered dose, shall be properly recorded in the client's record. Each client who self-administers medication shall be given a pill organizer. Medication must be placed in the pill organizer by a nurse. A nurse shall document the date and time medication is placed into each client's pill organizer. All medications must be administered in compliance with the physician's orders.

(2) If the interdisciplinary team determines that self-administration of medications is an appropriate objective, and if the physician does not specify otherwise, a client must be taught to self-administer his or her medication without a staff person. This includes all forms of administration, including orally, via injection, and via suppository. The client's



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physician must be informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client. A client may not self-administer medication until he or she demonstrates the competency to take the correct medication in the correct dosage at the correct time, to respond to missed doses, and to contact an appropriate person with questions.

(3) Medication administration discrepancies and adverse drug reactions must be recorded and reported immediately to a physician.

Section 9. Section 400.9977, Florida Statutes, is created to read:

400.9977 Protection from abuse, neglect, mistreatment, and exploitation.—The licensee must develop and implement policies and procedures for the screening and training of employees, the protection of clients, and the prevention, identification, investigation, and reporting of abuse, neglect, and exploitation. This includes the licensee's identification of clients whose personal histories render them at risk for abusing other clients, development of intervention strategies to prevent occurrences, monitoring for changes that would trigger abusive behavior, and reassessment of the interventions on a regular basis. A licensee shall implement procedures to:

(1) Screen potential employees for a history of abuse, neglect, or mistreatment of clients. The screening shall include an attempt to obtain information from previous employers and current employers and verification with the appropriate licensing boards.

(2) Train employees, through orientation and ongoing



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sessions, on issues related to abuse prohibition practices, including identification of abuse, neglect, mistreatment, and exploitation, appropriate interventions to deal with aggressive or catastrophic reactions of clients, the process to report allegations without fear of reprisal, and recognition of signs of frustration and stress that may lead to abuse.

(3) Provide clients, families, and staff with information on how and to whom they may report concerns, incidents, and grievances without the fear of retribution and provide feedback regarding the concerns that have been expressed. A licensee must identify, correct, and intervene in situations in which abuse, neglect, mistreatment, or exploitation is likely to occur, including:

(a) Evaluating the physical environment of the facility to identify characteristics that may make abuse or neglect more likely to occur, such as secluded areas.

(b) Providing sufficient staff on each shift to meet the needs of the clients, and ensuring that the staff assigned have knowledge of the individual clients' care needs. The licensee shall identify inappropriate behaviors of its staff, such as using derogatory language, rough handling, ignoring clients while giving care, and directing clients who need toileting assistance to urinate or defecate in their beds.

(c) Assessing, planning care for, and monitoring clients with needs and behaviors that might lead to conflict or neglect, such as clients with a history of aggressive behaviors, clients who have behaviors such as entering other clients' rooms, clients with self-injurious behaviors, clients with communication disorders, and clients who require heavy nursing



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care or are totally dependent on staff.

(4) Identify events, such as suspicious bruising of clients, occurrences, patterns, and trends that may constitute abuse and determine the direction of the investigation.

(5) Investigate different types of incidents, identify the staff member responsible for the initial reporting, investigate alleged violations, and report results to the proper authorities. The licensee must analyze the occurrences to determine what changes are needed, if any, to policies and procedures to prevent further occurrences and to take all necessary corrective action depending on the results of the investigation.

(6) Protect clients from harm during an investigation.

(7) Report all alleged violations and all substantiated incidents, as required under chapters 39 and 415, to the licensing authorities and all other agencies as required and to report any knowledge it has of any actions by a court of law that would indicate an employee is unfit for service.

Section 10. Section 400.9978, Florida Statutes, is created to read:

400.9978 Restraints and seclusion; client safety.—

(1) Each facility shall provide a therapeutic milieu that supports a culture of individual empowerment and responsibility. The health and safety of the client shall be the primary concern at all times.

(2) The use of physical restraints must be ordered and documented by a physician and must be consistent with policies and procedures adopted by the facility. The client or, if applicable, the client's representative must be informed of the



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facility's physical restraint policies and procedures at the time of the client's admission.

(3) The use of chemical restraints is limited to prescribed dosages of medications as ordered by a physician and must be consistent with the client's diagnosis and the policies and procedures adopted by the facility. The client and, if applicable, the client's representative must be informed of the facility's chemical restraint policies and procedures at the time of the client's admission.

(4) Based on a physician's assessment, if a client exhibits symptoms that present an immediate risk of injury or death to self or others, a physician may issue an emergency treatment order to immediately administer rapid response psychotropic medications or other chemical restraints. Each emergency treatment order must be documented and maintained in the client's record.

(a) An emergency treatment order is effective for no more than 24 hours.

(b) Whenever a client is medicated in accordance with this subsection, the client's representative or responsible party and the client's physician must be notified as soon as practicable.

(5) A client who is prescribed and receiving a medication that can serve as a chemical restraint for a purpose other than an emergency treatment order must be evaluated by his or her physician at least monthly to assess the following:

(a) The continued need for the medication.

(b) The level of the medication in the client's blood, as appropriate.

(c) The need for adjustments in the prescription.



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506 (6) The licensee shall ensure that clients are free from
507 unnecessary drugs and physical restraints and are provided
508 treatment to reduce dependency on drugs and physical restraints.

509 (7) The licensee may use physical restraints and seclusion
510 only as authorized by the facility's written physical restraint
511 and seclusion policies, which must be in compliance with this
512 section and applicable rules.

513 (8) Interventions to manage dangerous client behavior must
514 be employed with sufficient safeguards and supervision to ensure
515 that the safety, welfare, and civil and human rights of each
516 client are adequately protected.

517 (9) A facility shall notify the parent or guardian of a
518 client each time restraint or seclusion is used. Such
519 notification must be within 24 hours from the time the restraint
520 or seclusion occurs. Reasonable efforts must be taken to notify
521 the parent or guardian by telephone or e-mail, or both, and
522 these efforts must be documented.

523 (10) The agency may adopt by rule standards and procedures
524 relating to the use of restraints, restraint positioning,
525 seclusion, and emergency treatment orders for psychotropic
526 medications, restraint, and seclusion. These rules must include
527 duration of restraint use, staff training, client observation
528 during restraint, and documentation and reporting standards.

529 Section 11. Section 400.9979, Florida Statutes, is created
530 to read:

531 400.9979 Background screening; administration and
532 management.—

533 (1) The agency shall require level 2 background screening
534 for personnel as required in s. 408.809(1)(e) pursuant to



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chapter 435 and s. 408.809.

(2) The licensee shall maintain personnel records for each staff member which contain, at a minimum, documentation of background screening, if applicable, a job description, documentation of compliance with all training requirements of this part or applicable rule, the employment application, references, a copy of all job performance evaluations, and, for each staff member who performs services for which licensure or certification is required, a copy of all licenses or certification held by the staff member.

(3) The licensee must:

(a) Develop and implement infection control policies and procedures and include such policies and procedures in the licensee's policy manual.

(b) Maintain liability insurance as defined in s. 624.605.

(c) Designate one person as an administrator who is responsible and accountable for the overall management of the facility.

(d) Designate a person in writing to be responsible for the facility when the administrator is absent from the facility for more than 24 hours.

(e) Designate in writing a program director who is responsible for supervising the therapeutic and behavioral staff, determining the levels of supervision, and determining room placement for each client.

(f) Designate in writing a person to be responsible when the program director is absent from the facility for more than 24 hours.

(g) Obtain approval of the comprehensive emergency



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management plan, pursuant to s. 400.9981(2)(e), from the local emergency management agency. Pending the approval of the plan, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Health, the Agency for Health Care Administration, and the Division of Emergency Management. Appropriate volunteer organizations must also be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the licensee of necessary revisions.

(h) Maintain written records in a form and system that comply with medical and business practices and make such records available in the facility for review or submission to the agency upon request. The records shall include:

1. A daily census record that indicates the number of clients currently receiving services in the facility, including information regarding any public funding of such clients.

2. A record of all accidents or unusual incidents involving any client or staff member that caused, or had the potential to cause, injury or harm to any person or property within the facility. Such records must contain a clear description of each accident or incident, the names of the persons involved, a description of all medical or other services provided to these persons specifying who provided such services, and the steps taken to prevent recurrence of such accidents or incidents.

3. A copy of current agreements with third-party providers.

4. A copy of current agreements with each consultant employed by the licensee and documentation of each consultant's visits and required written, dated reports.



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Section 12. Section 400.9980, Florida Statutes, is created to read:

400.9980 Property and personal affairs of clients.—

(1) A client shall be given the option of using his or her own belongings, as space permits; choosing his or her roommate if practical and not clinically contraindicated; and, whenever possible, unless the client is adjudicated incompetent or incapacitated under state law, managing his or her own affairs.

(2) The admission of a client to a facility and his or her presence therein shall not confer on a licensee, administrator, employee, or representative thereof any authority to manage, use, or dispose of any property of the client, nor shall such admission or presence confer on any of such persons any authority or responsibility for the personal affairs of the client except that which may be necessary for the safe management of the facility or for the safety of the client.

(3) A licensee, administrator, employee, or representative thereof may:

(a) Not act as the guardian, trustee, or conservator for any client or any of such client's property.

(b) Act as a competent client's payee for social security, veteran's, or railroad benefits if the client provides consent and the licensee files a surety bond with the agency in an amount equal to twice the average monthly aggregate income or personal funds due to the client, or expendable for the client's account, that are received by a licensee.

(c) Act as the power of attorney for a client if the licensee has filed a surety bond with the agency in an amount equal to twice the average monthly income of the client, plus



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the value of any client's property under the control of the
attorney in fact.

The bond under paragraph (b) or paragraph (c) shall be executed
by the licensee as principal and a licensed surety company. The
bond shall be conditioned upon the faithful compliance of the
licensee with the requirements of licensure and shall be payable
to the agency for the benefit of any client who suffers a
financial loss as a result of the misuse or misappropriation of
funds held pursuant to this subsection. Any surety company that
cancels or does not renew the bond of any licensee shall notify
the agency in writing not less than 30 days in advance of such
action, giving the reason for the cancellation or nonrenewal.
Any licensee, administrator, employee, or representative thereof
who is granted power of attorney for any client of the facility
shall, on a monthly basis, notify the client in writing of any
transaction made on behalf of the client pursuant to this
subsection, and a copy of such notification given to the client
shall be retained in each client's file and available for agency
inspection.

(4) A licensee, upon mutual consent with the client, shall
provide for the safekeeping in the facility of the client's
personal effects of a value not in excess of \$1,000 and the
client's funds not in excess of \$500 cash and shall keep
complete and accurate records of all such funds and personal
effects received. If a client is absent from a facility for 24
hours or more, the licensee may provide for the safekeeping of
the client's personal effects of a value in excess of \$1,000.

(5) Any funds or other property belonging to or due to a



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client or expendable for his or her account that is received by
licensee shall be trust funds and shall be kept separate from
the funds and property of the licensee and other clients or
shall be specifically credited to such client. Such trust funds
shall be used or otherwise expended only for the account of the
client. At least once every month, unless upon order of a court
of competent jurisdiction, the licensee shall furnish the client
and the client's representative a complete and verified
statement of all funds and other property to which this
subsection applies, detailing the amount and items received,
together with their sources and disposition. In any event, the
licensee shall furnish such statement annually and upon the
discharge or transfer of a client. Any governmental agency or
private charitable agency contributing funds or other property
to the account of a client shall also be entitled to receive
such statement monthly and upon the discharge or transfer of the
client.

(6) (a) In addition to any damages or civil penalties to
which a person is subject, any person who:

1. Intentionally withholds a client's personal funds,
personal property, or personal needs allowance, or who demands,
beneficially receives, or contracts for payment of all or any
part of a client's personal property or personal needs allowance
in satisfaction of the facility rate for supplies and services;
or

2. Borrows from or pledges any personal funds of a client,
other than the amount agreed to by written contract under s.
429.24,



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commits a misdemeanor of the first degree, punishable as
provided in s. 775.082 or s. 775.083.

(b) Any licensee, administrator, employee, or
representative thereof who is granted power of attorney for any
client of the facility and who misuses or misappropriates funds
obtained through this power commits a felony of the third
degree, punishable as provided in s. 775.082, s. 775.083, or s.
775.084.

(7) In the event of the death of a client, a licensee shall
return all refunds, funds, and property held in trust to the
client's personal representative, if one has been appointed at
the time the licensee disburses such funds, or, if not, to the
client's spouse or adult next of kin named in a beneficiary
designation form provided by the licensee to the client. If the
client has no spouse or adult next of kin or such person cannot
be located, funds due the client shall be placed in an interest-
bearing account and all property held in trust by the licensee
shall be safeguarded until such time as the funds and property
are disbursed pursuant to the Florida Probate Code. Such funds
shall be kept separate from the funds and property of the
licensee and other clients of the facility. If the funds of the
deceased client are not disbursed pursuant to the Florida
Probate Code within 2 years after the client's death, the funds
shall be deposited in the Health Care Trust Fund administered by
the agency.

(8) The agency, by rule, may clarify terms and specify
procedures and documentation necessary to administer the
provisions of this section relating to the proper management of
clients' funds and personal property and the execution of surety



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bonds.

Section 13. Section 400.9981, Florida Statutes, is created to read:

400.9981 Rules establishing standards.—

(1) It is the intent of the Legislature that rules published and enforced pursuant to this part and part II of chapter 408 include criteria to ensure reasonable and consistent quality of care and client safety. Rules should make reasonable efforts to accommodate the needs and preferences of clients to enhance the quality of life in transitional living facilities.

(2) The agency may adopt and enforce rules to implement this part and part II of chapter 408, which shall include reasonable and fair criteria in relation to the following:

(a) The location of transitional living facilities.

(b) The number of qualifications of all personnel, including management, medical, nursing, and other professional personnel and nursing assistants and support personnel having responsibility for any part of the care given to clients. The licensee must have enough qualified professional staff available to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of each comprehensive treatment plan.

(c) Requirements for personnel procedures, reporting procedures, and documentation necessary to implement this part.

(d) Services provided to clients of transitional living facilities.

(e) The preparation and annual update of a comprehensive emergency management plan in consultation with the Division of Emergency Management. At a minimum, the rules must provide for



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plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including provision of emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of clients and transfer of records; communication with families; and responses to family inquiries.

Section 14. Section 400.9982, Florida Statutes, is created to read:

400.9982 Violations; penalties.—

(1) Each violation of this part and rules adopted pursuant thereto shall be classified according to the nature of the violation and the gravity of its probable effect on facility clients. The agency shall indicate the classification on the written notice of the violation as follows:

(a) Class "I" violations are defined in s. 408.813. The agency shall issue a citation regardless of correction and impose an administrative fine of \$5,000 for an isolated violation, \$7,500 for a patterned violation, and \$10,000 for a widespread violation. Violations may be identified and a fine must be levied notwithstanding the correction of the deficiency giving rise to the violation.

(b) Class "II" violations are defined in s. 408.813. The agency shall impose an administrative fine of \$1,000 for an isolated violation, \$2,500 for a patterned violation, and \$5,000 for a widespread violation. A fine must be levied notwithstanding the correction of the deficiency giving rise to the violation.

(c) Class "III" violations are defined in s. 408.813. The



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agency shall impose an administrative fine of \$500 for an isolated violation, \$750 for a patterned violation, and \$1,000 for a widespread violation. If a deficiency giving rise to a class "III" violation is corrected within the time specified by the agency, a fine may not be imposed.

(d) Class "IV" violations are defined in s. 408.813. The agency shall impose an administrative fine for a cited class IV violation in an amount not less than \$100 and not exceeding \$200 for each violation. If a deficiency giving rise to a class "IV" violation is corrected within the time specified by the agency, a fine may not be imposed.

Section 15. Section 400.9983, Florida Statutes, is created to read:

400.9983 Receivership proceedings.—The agency may apply s. 429.22 with regard to receivership proceedings for transitional living facilities.

Section 16. Section 400.9984, Florida Statutes, is created to read:

400.9984 Interagency communication.—The agency, the department, the Agency for Persons with Disabilities, and the Department of Children and Families shall develop electronic systems to ensure that relevant information pertaining to the regulation of transitional living facilities and clients is timely and effectively communicated among agencies in order to facilitate the protection of clients. Electronic sharing of information shall include, at a minimum, a brain and spinal cord injury registry and a client abuse registry.

Section 17. Section 400.805, Florida Statutes, is repealed. Every transitional living facility licensed under s. 400.805 on



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or before July 1, 2013, shall be licensed under the provisions
of this act.

Section 18. Subsection (9) of section 381.745, Florida
Statutes, is amended to read:

381.745 Definitions; ss. 381.739-381.79.—As used in ss.
381.739-381.79, the term:

(9) "Transitional living facility," for the purpose of this
part, means a state-approved facility, as defined and licensed
under chapter 400 ~~or chapter 429, or a facility approved by the~~
~~brain and spinal cord injury program in accordance with this~~
~~chapter.~~

Section 19. Section 381.75, Florida Statutes, is amended to
read:

381.75 Duties and responsibilities of the department, ~~of~~
~~transitional living facilities, and of residents.~~—Consistent
with the mandate of s. 381.7395, the department shall develop
and administer a multilevel treatment program for individuals
who sustain brain or spinal cord injuries and who are referred
to the brain and spinal cord injury program.

(1) Within 15 days after any report of an individual who
has sustained a brain or spinal cord injury, the department
shall notify the individual or the most immediate available
family members of their right to assistance from the state, the
services available, and the eligibility requirements.

(2) The department shall refer individuals who have brain
or spinal cord injuries to other state agencies to assure that
rehabilitative services, if desired, are obtained by that
individual.

(3) The department, in consultation with emergency medical



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service, shall develop standards for an emergency medical evacuation system that will ensure that all individuals who sustain traumatic brain or spinal cord injuries are transported to a department-approved trauma center that meets the standards and criteria established by the emergency medical service and the acute-care standards of the brain and spinal cord injury program.

(4) The department shall develop standards for designation of rehabilitation centers to provide rehabilitation services for individuals who have brain or spinal cord injuries.

(5) The department shall determine the appropriate number of designated acute-care facilities, inpatient rehabilitation centers, and outpatient rehabilitation centers, needed based on incidence, volume of admissions, and other appropriate criteria.

(6) The department shall develop standards for designation of transitional living facilities to provide transitional living services for individuals who participate in the brain and spinal cord injury program ~~the opportunity to adjust to their disabilities and to develop physical and functional skills in a supported living environment.~~

~~(a) The Agency for Health Care Administration, in consultation with the department, shall develop rules for the licensure of transitional living facilities for individuals who have brain or spinal cord injuries.~~

~~(b) The goal of a transitional living program for individuals who have brain or spinal cord injuries is to assist each individual who has such a disability to achieve a higher level of independent functioning and to enable that person to reenter the community. The program shall be focused on preparing~~



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~~participants to return to community living.~~

~~(c) A transitional living facility for an individual who has a brain or spinal cord injury shall provide to such individual, in a residential setting, a goal-oriented treatment program designed to improve the individual's physical, cognitive, communicative, behavioral, psychological, and social functioning, as well as to provide necessary support and supervision. A transitional living facility shall offer at least the following therapies: physical, occupational, speech, neuropsychology, independent living skills training, behavior analysis for programs serving brain-injured individuals, health education, and recreation.~~

~~(d) All residents shall use the transitional living facility as a temporary measure and not as a permanent home or domicile. The transitional living facility shall develop an initial treatment plan for each resident within 3 days after the resident's admission. The transitional living facility shall develop a comprehensive plan of treatment and a discharge plan for each resident as soon as practical, but no later than 30 days after the resident's admission. Each comprehensive treatment plan and discharge plan must be reviewed and updated as necessary, but no less often than quarterly. This subsection does not require the discharge of an individual who continues to require any of the specialized services described in paragraph (c) or who is making measurable progress in accordance with that individual's comprehensive treatment plan. The transitional living facility shall discharge any individual who has an appropriate discharge site and who has achieved the goals of his or her discharge plan or who is no longer making progress toward~~



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~~the goals established in the comprehensive treatment plan and the discharge plan. The discharge location must be the least restrictive environment in which an individual's health, well-being, and safety is preserved.~~

~~(7) Recipients of services, under this section, from any of the facilities referred to in this section shall pay a fee based on ability to pay.~~

Section 20. Subsection (4) of section 381.78, Florida Statutes, is amended to read:

381.78 Advisory council on brain and spinal cord injuries.-

(4) The council shall:

~~(a) provide advice and expertise to the department in the preparation, implementation, and periodic review of the brain and spinal cord injury program.~~

~~(b) Annually appoint a five-member committee composed of one individual who has a brain injury or has a family member with a brain injury, one individual who has a spinal cord injury or has a family member with a spinal cord injury, and three members who shall be chosen from among these representative groups: physicians, other allied health professionals, administrators of brain and spinal cord injury programs, and representatives from support groups with expertise in areas related to the rehabilitation of individuals who have brain or spinal cord injuries, except that one and only one member of the committee shall be an administrator of a transitional living facility. Membership on the council is not a prerequisite for membership on this committee.~~

~~1. The committee shall perform onsite visits to those transitional living facilities identified by the Agency for~~



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~~Health Care Administration as being in possible violation of the statutes and rules regulating such facilities. The committee members have the same rights of entry and inspection granted under s. 400.805(4) to designated representatives of the agency.~~

~~2. Factual findings of the committee resulting from an onsite investigation of a facility pursuant to subparagraph 1. shall be adopted by the agency in developing its administrative response regarding enforcement of statutes and rules regulating the operation of the facility.~~

~~3. Onsite investigations by the committee shall be funded by the Health Care Trust Fund.~~

~~4. Travel expenses for committee members shall be reimbursed in accordance with s. 112.061.~~

~~5. Members of the committee shall recuse themselves from participating in any investigation that would create a conflict of interest under state law, and the council shall replace the member, either temporarily or permanently.~~

Section 21. Subsection (21) of section 408.802, Florida Statutes, is amended to read:

408.802 Applicability.—The provisions of this part apply to the provision of services that require licensure as defined in this part and to the following entities licensed, registered, or certified by the agency, as described in chapters 112, 383, 390, 394, 395, 400, 429, 440, 483, and 765:

(21) Transitional living facilities, as provided under part XI ~~W~~ of chapter 400.

Section 22. Subsection (20) of section 408.820, Florida Statutes, is amended to read:

408.820 Exemptions.—Except as prescribed in authorizing



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statutes, the following exemptions shall apply to specified requirements of this part:

(20) Transitional living facilities, as provided under part XI ~~¶~~ of chapter 400, are exempt from s. 408.810(10).

Section 23. Subsection (5) of section 400.93, Florida Statutes, is amended to read:

400.93 Licensure required; exemptions; unlawful acts; penalties.—

(5) The following are exempt from home medical equipment provider licensure, unless they have a separate company, corporation, or division that is in the business of providing home medical equipment and services for sale or rent to consumers at their regular or temporary place of residence pursuant to the provisions of this part:

(a) Providers operated by the Department of Health or Federal Government.

(b) Nursing homes licensed under part II.

(c) Assisted living facilities licensed under chapter 429, when serving their residents.

(d) Home health agencies licensed under part III.

(e) Hospices licensed under part IV.

(f) Intermediate care facilities, homes for special services, and transitional living facilities licensed under part V.

(g) Transitional living facilities licensed under part XI.

(h) ~~(g)~~ Hospitals and ambulatory surgical centers licensed under chapter 395.

(i) ~~(h)~~ Manufacturers and wholesale distributors when not selling directly to consumers.



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(j)~~(i)~~ Licensed health care practitioners who utilize home medical equipment in the course of their practice, but do not sell or rent home medical equipment to their patients.

(k)~~(j)~~ Pharmacies licensed under chapter 465.

Section 24. Paragraph (l) of subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4) "Clinic" means an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

(l) Orthotic, ~~or~~ prosthetic, pediatric cardiology, or perinatology clinical facilities or anesthesia clinical facilities that are not otherwise exempt under paragraph (a) or paragraph (k) and that are a publicly traded corporation or ~~that~~ are wholly owned, directly or indirectly, by a publicly traded corporation. As used in this paragraph, a publicly traded corporation is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

Notwithstanding this subsection, an entity shall be deemed a clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h).

Section 25. This act shall take effect July 1, 2013.



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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to transitional living facilities;
creating part XI of ch. 400, F.S., entitled
"Transitional Living Facilities"; creating s.
400.9970, F.S.; providing legislative intent; creating
s. 400.9971, F.S.; providing definitions; creating s.
400.9972, F.S.; requiring the licensure of
transitional living facilities; providing fees;
providing license application requirements; creating
s. 400.9973, F.S.; providing requirements for
transitional living facilities relating to client
admission, transfer, and discharge; creating s.
400.9974, F.S.; requiring a comprehensive treatment
plan to be developed for each client; providing plan
requirements; creating s. 400.9975, F.S.; providing
licensee responsibilities; providing notice
requirements; prohibiting a licensee or employee of a
facility from serving notice upon a client to leave
the premises or take other retaliatory action;
requiring the client and client's representative to be
provided with certain information; requiring the
licensee to develop and implement certain policies and
procedures; creating s. 400.9976, F.S.; providing
licensee requirements relating to medication
practices; creating s. 400.9977, F.S.; providing



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requirements for the screening of potential employees and monitoring of employees for the protection of clients; requiring licensees to implement certain procedures; creating s. 400.9978, F.S.; requiring a facility to provide a therapeutic milieu that supports a culture of individual empowerment and responsibility; providing that the health and safety of the client is the primary concern of the facility; providing requirements and limitations for the use of physical restraints, seclusion, and chemical restraint medication on clients; requiring the Agency for Health Care Administration to adopt rules; creating s. 400.9979, F.S.; providing background screening requirements; requiring the licensee to maintain certain personnel records; providing administrative responsibilities for licensees; providing recordkeeping requirements; creating s. 400.9980, F.S.; providing requirements relating to property and personal affairs of clients; providing requirements for a licensee with respect to obtaining surety bonds; providing recordkeeping requirements relating to the safekeeping of personal effects; providing requirements for trust funds received by licensee and credited to the client; providing a penalty for certain misuse of a resident's personal needs allowance; providing criminal penalties for violations; providing for the disposition of property in the event of the death of a client; authorizing the Agency for Health Care Administration to adopt rules;



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creating s. 400.9981, F.S.; authorizing the agency to adopt and enforce certain rules; creating s. 400.9982, F.S.; providing procedures relating to violations and penalties; providing administrative fines for specified classes of violations; creating s. 400.9983, F.S.; authorizing the agency to apply certain provisions with regard to receivership proceedings; creating s. 400.9984, F.S.; requiring the Agency for Health Care Administration, the Department of Health, the Agency for Persons with Disabilities, and the Department of Children and Families to develop electronic systems for certain purposes; repealing s. 400.805, F.S., relating to transitional living facilities; providing that every transitional living facilities licensed under s. 400.805, F.S., on or before a specified date is licensed under the provisions of the act; amending s. 381.745, F.S.; revising a definition; amending s. 381.75, F.S.; revising the duties of the Department of Health as they relate to transitional living facilities; amending s. 381.78, F.S.; conforming provisions to changes made by the act; amending ss. 408.802 and 408.820, F.S.; conforming a provision to changes made by the act; amending s. 400.93, F.S.; providing that transitional living facilities licensed under part XI of ch. 400, F.S., are exempt from home medical equipment provider licensure; amending s. 400.9905, F.S.; revising a definition; providing an effective date.

By the Committee on Children, Families, and Elder Affairs; and
Senator Garcia

586-03371-13

20131724c1

A bill to be entitled
An act relating to transitional living facilities;
creating part XI of ch. 400, F.S., entitled
"Transitional Living Facilities"; creating s.
400.9970, F.S.; providing legislative intent; creating
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400.9972, F.S.; requiring the licensure of
transitional living facilities; providing fees;
providing license application requirements; creating
s. 400.9973, F.S.; providing requirements for
transitional living facilities relating to client
admission, transfer, and discharge; creating s.
400.9974, F.S.; requiring a comprehensive treatment
plan to be developed for each client; providing plan
requirements; creating s. 400.9975, F.S.; providing
licensee responsibilities; providing notice
requirements; prohibiting a licensee or employee of a
facility from serving notice upon a client to leave
the premises or take other retaliatory action;
requiring the client and client's representative to be
provided with certain information; requiring the
licensee to develop and implement certain policies and
procedures; creating s. 400.9976, F.S.; providing
licensee requirements relating to medication
practices; creating s. 400.9977, F.S.; providing
requirements for the screening of potential employees
and monitoring of employees for the protection of
clients; requiring licensees to implement certain
procedures; creating s. 400.9978, F.S.; providing

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requirements for the use of physical restraints and chemical restraint medication on clients; creating s. 400.9979, F.S.; providing background screening requirements; requiring the licensee to maintain certain personnel records; providing administrative responsibilities for licensees; providing recordkeeping requirements; creating s. 400.9980, F.S.; providing requirements relating to property and personal affairs of clients; providing requirements for a licensee with respect to obtaining surety bonds; providing recordkeeping requirements relating to the safekeeping of personal effects; providing requirements for trust funds received by licensee and credited to the client; providing a penalty for certain misuse of a resident's personal needs allowance; providing criminal penalties for violations; providing for the disposition of property in the event of the death of a client; authorizing the Agency for Health Care Administration to adopt rules; creating s. 400.9981, F.S.; authorizing the agency to adopt and enforce certain rules; creating s. 400.9982, F.S.; providing procedures relating to violations and penalties; providing administrative fines for specified classes of violations; creating s. 400.9983, F.S.; authorizing the agency to apply certain provisions with regard to receivership proceedings; creating s. 400.9984, F.S.; requiring the Agency for Health Care Administration, the Department of Health, the Agency for Persons with Disabilities, and the

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Department of Children and Families to develop electronic systems for certain purposes; repealing s. 400.805, F.S., relating to transitional living facilities; providing that every transitional living facilities licensed under s. 400.805, F.S., on or before a specified date is licensed under the provisions of the act; amending s. 381.745, F.S.; revising a definition; amending s. 381.75, F.S.; revising the duties of the Department of Health as they relate to transitional living facilities; amending s. 381.78, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Sections 400.9970 through 400.9984, Florida Statutes, are designated as part XI of chapter 400, Florida Statutes, entitled "Transitional Living Facilities."

Section 2. Section 400.9970, Florida Statutes, is created to read:

400.9970 Legislative intent.—It is the intent of the Legislature to provide for the licensure of transitional living facilities and require the development, establishment, and enforcement of basic standards by the Agency for Health Care Administration to ensure quality of care and services to clients in transitional living facilities. It is the policy of the state that the least restrictive appropriate available treatment be used based on the individual needs and best interest of the client and consistent with optimum improvement of the client's

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88 condition. The goal of a transitional living program for
89 individuals who have brain or spinal cord injuries is to assist
90 each individual who has such an injury to achieve a higher level
91 of independent functioning and to enable that individual to
92 reenter the community.

93 Section 3. Section 400.9971, Florida Statutes, is created
94 to read:

95 400.9971 Definitions.—As used in this part, the term:

96 (1) "Agency" means the Agency for Health Care
97 Administration.

98 (2) "Chemical restraint" means a pharmacologic drug that
99 physically limits, restricts, or deprives an individual of
100 movement or mobility, is used for client protection or safety,
101 and is not required for the treatment of medical conditions or
102 symptoms.

103 (3) "Client's representative" means the parent of a child
104 client or the client's guardian, designated representative or
105 designee, surrogate, or attorney in fact.

106 (4) "Department" means the Department of Health.

107 (5) "Licensee" means an individual issued a license by the
108 agency.

109 (6) "Physical restraint" means any manual method to
110 restrict freedom of movement of or normal access to an
111 individual's body or a physical or mechanical device, material,
112 or equipment attached or adjacent to the individual's body so
113 that he or she cannot easily remove the restraint and which
114 restricts freedom of movement of or normal access to one's body,
115 including, but not limited to, a half-bed rail, a full-bed rail,
116 a geriatric chair, and a posey restraint. The term includes any

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117 device that was not specifically manufactured as a restraint but
118 which has been altered, arranged, or otherwise used for this
119 purpose. The term does not include bandage material used for the
120 purpose of binding a wound or injury.

121 (7) "Transitional living facility" means a site where
122 specialized health care services are provided, including, but
123 not limited to, rehabilitative services, behavior modification,
124 community reentry training, aids for independent living, and
125 counseling to individuals who have brain injuries or spinal cord
126 injuries. The term does not require a provider that is licensed
127 by the agency to obtain a separate transitional living facility
128 license to serve persons who have brain injuries or spinal cord
129 injuries as long as the services provided are within the scope
130 of the provider's license.

131 Section 4. Section 400.9972, Florida Statutes, is created
132 to read:

133 400.9972 License required; fee; application.—

134 (1) The requirements of part II of chapter 408 apply to the
135 provision of services that require licensure pursuant to this
136 part and part II of chapter 408 and to entities licensed by or
137 applying for such licensure from the agency pursuant to this
138 part. A license issued by the agency is required for the
139 operation of a transitional living facility in this state.

140 (2) In accordance with this part, an applicant or a
141 licensee shall pay a fee for each license application submitted
142 under this part. The license fee shall consist of a \$4,588
143 license fee and a \$90 per-bed fee per biennium and shall conform
144 to the annual adjustment authorized in s. 408.805.

145 (3) Each applicant for licensure must provide the

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146 following:

147 (a) The location of the facility for which a license is
148 sought and documentation, signed by the appropriate local
149 government official, which states that the applicant has met
150 local zoning requirements.

151 (b) Proof of liability insurance as provided in s. 624.605.

152 (c) Proof of compliance with local zoning requirements,
153 including compliance with the requirements of chapter 419 if the
154 proposed facility is a community residential home.

155 (d) Proof that the facility has received a satisfactory
156 firesafety inspection.

157 (e) Documentation of a satisfactory sanitation inspection
158 of the facility by the county health department.

159
160 The applicant's proposed facility must attain and continuously
161 maintain accreditation by an accrediting organization
162 specializing in evaluating rehabilitation facilities whose
163 standards incorporate comparable licensure regulations required
164 by the state. An applicant for licensure as a transitional
165 living facility must acquire accreditation within 12 months
166 after the issuance of an initial license. The agency shall
167 accept the accreditation survey report of the accrediting
168 organization in lieu of conducting a licensure inspection if the
169 standards included in the survey report are determined by the
170 agency to document that the facility is in substantial
171 compliance with state licensure requirements. The applicant
172 shall submit to the agency within 10 days after receipt a copy
173 of any accreditation survey report and evidence of the
174 accreditation decision subsequent to a survey by the accrediting

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175 organization on the facility. This part does not preclude the
176 agency from conducting periodic inspections of a transitional
177 living facility to ensure compliance with all licensure
178 requirements, and as it deems necessary to carry out the
179 functions of the agency. An inspection may be conducted to
180 ensure compliance with licensure requirements of this part, to
181 validate the inspection process of accrediting organizations, to
182 respond to licensure complaints, or to protect the public health
183 and safety.

184 Section 5. Section 400.9973, Florida Statutes, is created
185 to read:

186 400.9973 Client admission, transfer, and discharge.—

187 (1) Each transitional living facility must have written
188 policies and procedures governing the admission, transfer, and
189 discharge of clients.

190 (2) The admission of each client to a transitional living
191 facility must be in accordance with the licensee's policies and
192 procedures.

193 (3) A client admitted to a transitional living facility
194 must have a brain or spinal cord injury, such as a lesion to the
195 spinal cord or cauda equina syndrome, with evidence of
196 significant involvement of two of the following deficits or
197 dysfunctions:

198 (a) A motor deficit.

199 (b) A sensory deficit.

200 (c) Bowel and bladder dysfunction.

201 (d) An acquired internal or external injury to the skull,
202 the brain, or the brain's covering, whether caused by a
203 traumatic or nontraumatic event, which produces an altered state

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of consciousness or an anatomic motor, sensory, cognitive, or behavioral deficit.

(4) A client whose medical diagnosis does not positively identify a cause of the client's condition, whose symptoms are inconsistent with the known cause of injury, or whose recovery is inconsistent with the known medical condition may be admitted to a transitional living facility for evaluation for a period not to exceed 90 days.

(5) A client admitted to a transitional living facility must be admitted upon prescription by a licensed physician and must remain under the care of a licensed physician for the duration of the client's stay in the facility.

(6) A transitional living facility may not admit a client whose primary admitting diagnosis is mental illness or an intellectual or a developmental disability.

(7) An individual may not be admitted to a transitional living facility if the individual:

(a) Presents significant risk of infection to other clients or personnel. A health care practitioner must provide documentation that the individual is free of apparent signs and symptoms of communicable disease;

(b) Is a danger to self or others as determined by a physician or mental health practitioner licensed under chapter 490 or chapter 491, unless the facility provides adequate staffing and support to ensure patient safety;

(c) Is bedridden; or

(d) Requires 24-hour nursing supervision.

(8) If the client meets the admission criteria, the medical or nursing director of the facility must complete an initial

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233 evaluation of the client's functional skills, behavioral status,
234 cognitive status, educational or vocational potential, medical
235 status, psychosocial status, sensorimotor capacity, and other
236 related skills and abilities within the first 72 hours after the
237 client's admission to the facility. An initial comprehensive
238 treatment plan that delineates services to be provided and
239 appropriate sources for such services must be implemented within
240 the first 4 days after admission.

241 (9) Each transitional living facility shall develop a
242 discharge plan for each client before or upon admission to the
243 facility. The discharge plan must identify the intended
244 discharge site and possible alternative discharge sites. For
245 each discharge site identified, the discharge plan must identify
246 the skills, behaviors, and other conditions that the client must
247 achieve to be appropriate for discharge. Discharge plans must be
248 reviewed and updated as necessary, but no less often than once
249 monthly.

250 (10) As soon as practicable, a transitional living facility
251 shall discharge a client when he or she no longer requires any
252 of the specialized services described in s. 400.9971(7) or is
253 not making measurable progress in accordance with his or her
254 comprehensive treatment plan, or if the transitional living
255 facility is no longer the most appropriate, least restrictive
256 treatment option.

257 (11) Each transitional living facility shall provide at
258 least 30 days' notice to clients of transfer or discharge plans,
259 including the location of an acceptable transfer location if the
260 client is unable to live independently. This requirement does
261 not apply if a client voluntarily terminates residency.

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262 Section 6. Section 400.9974, Florida Statutes, is created
263 to read:

264 400.9974 Client comprehensive treatment plans; client
265 services.—

266 (1) Each transitional living facility shall develop a
267 comprehensive treatment plan for each client as soon as
268 possible, but no later than 30 days following development of the
269 initial comprehensive treatment plan. Comprehensive treatment
270 plans must be reviewed and updated if the client fails to meet
271 projected improvements in the plan or if a significant change in
272 the client's condition occurs. Comprehensive treatment plans
273 must be reviewed and updated at least once monthly.
274 Comprehensive treatment plans must be developed by an
275 interdisciplinary team consisting of the case manager, the
276 program director, the nurse, and appropriate therapists. The
277 client or, if appropriate, the client's representative must be
278 included in developing the comprehensive treatment plan.

279 (2) The comprehensive treatment plan must include the
280 following:

281 (a) The physician's orders and the client's diagnosis,
282 medical history, physical examination, and rehabilitative or
283 restorative needs.

284 (b) A preliminary nursing evaluation with physician's
285 orders for immediate care, completed on admission.

286 (c) A comprehensive, accurate, reproducible, and
287 standardized assessment of the client's functional capability;
288 the treatments designed to achieve skills, behaviors, and other
289 conditions necessary to return to the community; and specific
290 measurable goals.

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291 (d) Steps necessary for the client to achieve transition to
292 the community and estimated length of time to achieve the goals.

293 (3) The client or, if appropriate, the client's
294 representative shall consent to the continued treatment at the
295 transitional living facility. If such consent is not given, the
296 transitional living facility shall discharge the client as soon
297 as practicable.

298 (4) Each client must receive the professional program
299 services needed to implement the client's comprehensive
300 treatment plan.

301 (5) The licensee must employ qualified professional staff
302 to carry out and monitor the various professional interventions
303 in accordance with the stated goals and objectives of every
304 client's comprehensive treatment plan.

305 (6) Each client must receive a continuous treatment program
306 that includes appropriate, consistent implementation of a
307 program of specialized and general training, treatment, health
308 services, and related services which is directed toward:

309 (a) The acquisition of the behaviors and skills necessary
310 for the client to function with as much self-determination and
311 independence as possible;

312 (b) The prevention or deceleration of regression or loss of
313 current optimal functional status; and

314 (c) The management of behavioral issues that preclude
315 independent functioning in the community.

316 Section 7. Section 400.9975, Florida Statutes, is created
317 to read:

318 400.9975 Licensee responsibilities.—

319 (1) The licensee shall ensure that each client:

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320 (a) Lives in a safe environment free from abuse, neglect,
321 and exploitation.

322 (b) Is treated with consideration and respect and with due
323 recognition of personal dignity, individuality, and the need for
324 privacy.

325 (c) Retains and uses his or her own clothes and other
326 personal property in his or her immediate living quarters, so as
327 to maintain individuality and personal dignity, except when the
328 licensee can demonstrate that such retention and use would be
329 unsafe, impractical, or an infringement upon the rights of other
330 clients.

331 (d) Has unrestricted private communication, including
332 receiving and sending unopened correspondence, access to a
333 telephone, and visiting with any person of his or her choice.
334 Upon request, the licensee shall make provisions to modify
335 visiting hours for caregivers and guests. The facility shall
336 restrict communication in accordance with any court order or
337 written instruction of a client's representative. Any
338 restriction on a client's communication for therapeutic reasons
339 shall be documented and reviewed at least weekly and shall be
340 removed as soon as it is no longer clinically indicated. The
341 basis for the restriction shall be explained to the client and,
342 if applicable, the client's representative. The client shall
343 nonetheless retain the right to call the abuse hotline, the
344 agency, and Disability Rights Florida at any and all times.

345 (e) Participates in and benefits from community services
346 and activities to achieve the highest possible level of
347 independence, autonomy, and interaction within the community.

348 (f) Manages his or her financial affairs unless the client

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349 or, if applicable, the client's representative authorizes the
350 administrator of the facility to provide safekeeping for funds
351 as provided in this part.

352 (g) Has reasonable opportunity for regular exercise several
353 times a week and to be outdoors at regular and frequent
354 intervals except when prevented by inclement weather.

355 (h) Exercises civil and religious liberties, including the
356 right to independent personal decisions. No religious belief or
357 practice, including attendance at religious services, shall be
358 imposed upon any client.

359 (i) Has access to adequate and appropriate health care
360 consistent with established and recognized standards within the
361 community.

362 (j) Has the ability to present grievances and recommend
363 changes in policies, procedures, and services to the staff of
364 the licensee, governing officials, or any other person without
365 restraint, interference, coercion, discrimination, or reprisal.
366 Each licensee shall establish a grievance procedure to
367 facilitate a client's ability to present grievances, including a
368 system for investigating, tracking, managing, and responding to
369 complaints by persons receiving services or individuals acting
370 on their behalf, and an appeals process. This process must
371 include access to Disability Rights Florida and other advocates
372 and the right to be a member of, be active in, and associate
373 with advocacy or special interest groups.

374 (2) The licensee shall:

375 (a) Promote participation of each client's representative
376 in the process of providing treatment to the client unless the
377 representative's participation is unobtainable or inappropriate.

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378 (b) Answer communications from each client's family,
379 guardians, and friends promptly and appropriately.

380 (c) Promote visits by individuals with a relationship to
381 the client at any reasonable hour, without requiring prior
382 notice, or in any area of the facility which provides direct
383 client care services to the client, consistent with the client's
384 and other clients' privacy, unless the interdisciplinary team
385 determines that such a visit would not be appropriate.

386 (d) Promote leave from the facility for visits, trips, or
387 vacations.

388 (e) Promptly notify the client's representative of any
389 significant incidents or changes in the client's condition,
390 including, but not limited to, serious illness, accident, abuse,
391 unauthorized absence, or death.

392 (3) The administrator of a facility shall ensure that a
393 written notice of licensee responsibilities is posted in a
394 prominent place in each building where clients reside and read
395 or explained to clients who cannot read. This notice shall
396 include the statewide toll-free telephone number for reporting
397 complaints to the agency, must be provided to clients in a
398 manner that is clearly legible, and must include the words: "To
399 report a complaint regarding the services you receive, please
400 call toll-free ...[telephone number]... or Disability Rights
401 Florida ...[telephone number]..."; and the statewide toll-free
402 telephone number for the central abuse hotline must be provided
403 to clients in a manner that is clearly legible and must include
404 the words: "To report abuse, neglect or exploitation, please
405 call toll-free ...[telephone number where complaints may be
406 lodged]...." The licensee must ensure a client's access to a

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407 telephone, where telephone numbers required in this subsection
408 are readily available, to call the agency, central abuse
409 hotline, or Disability Rights Florida.

410 (4) A licensee or employee of a facility may not serve
411 notice upon a client to leave the premises or take any other
412 retaliatory action against any person solely due to the
413 following:

414 (a) The client or other person files an internal or
415 external complaint or grievance regarding the facility.

416 (b) The client or other person appears as a witness in any
417 hearing inside or outside the facility.

418 (5) Before or at the time of admission, the client and the
419 client's representative shall be provided with a copy of the
420 licensee's responsibilities as provided in this section,
421 including grievance procedures and the telephone numbers
422 provided in this section.

423 (6) The licensee must develop and implement policies and
424 procedures governing the release of any client information,
425 including consent necessary from the client or the client's
426 representative.

427 Section 8. Section 400.9976, Florida Statutes, is created
428 to read:

429 400.9976 Medication practices.—

430 (1) An individual medication administration record must be
431 maintained for each client. Each dose of medication, including a
432 self-administered dose, shall be properly recorded in the
433 client's record. Each client who self-administers medication
434 shall be given a pill organizer. Medication must be placed in
435 the pill organizer by a nurse. A nurse shall document the date

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436 and time medication is placed into each client's pill organizer.
437 All medications must be administered in compliance with the
438 physician's orders.

439 (2) If the interdisciplinary team determines that self-
440 administration of medications is an appropriate objective, and
441 if the physician does not specify otherwise, a client must be
442 taught to self-administer his or her medication without a staff
443 person. This includes all forms of administration, including
444 orally, via injection, and via suppository. The client's
445 physician must be informed of the interdisciplinary team's
446 decision that self-administration of medications is an objective
447 for the client. A client may not self-administer medication
448 until he or she demonstrates the competency to take the correct
449 medication in the correct dosage at the correct time, to respond
450 to missed doses, and to contact an appropriate person with
451 questions.

452 (3) Medication administration discrepancies and adverse
453 drug reactions must be recorded and reported immediately to a
454 physician.

455 Section 9. Section 400.9977, Florida Statutes, is created
456 to read:

457 400.9977 Protection from abuse, neglect, mistreatment, and
458 exploitation.—The licensee must develop and implement policies
459 and procedures for the screening and training of employees, the
460 protection of clients, and the prevention, identification,
461 investigation, and reporting of abuse, neglect, and
462 exploitation. This includes the licensee's identification of
463 clients whose personal histories render them at risk for abusing
464 other clients, development of intervention strategies to prevent

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occurrences, monitoring for changes that would trigger abusive behavior, and reassessment of the interventions on a regular basis. A licensee shall implement procedures to:

(1) Screen potential employees for a history of abuse, neglect, or mistreatment of clients. The screening shall include an attempt to obtain information from previous employers and current employers and verification with the appropriate licensing boards and registries.

(2) Train employees, through orientation and ongoing sessions, on issues related to abuse prohibition practices, including identification of abuse, neglect, mistreatment, and exploitation, appropriate interventions to deal with aggressive or catastrophic reactions of clients, the process to report allegations without fear of reprisal, and recognition of signs of frustration and stress that may lead to abuse.

(3) Provide clients, families, and staff with information on how and to whom they may report concerns, incidents, and grievances without the fear of retribution and provide feedback regarding the concerns that have been expressed. A licensee must identify, correct, and intervene in situations in which abuse, neglect, mistreatment, or exploitation is likely to occur, including:

(a) Evaluating the physical environment of the facility to identify characteristics that may make abuse or neglect more likely to occur, such as secluded areas.

(b) Providing sufficient staff on each shift to meet the needs of the clients, and ensuring that the staff assigned have knowledge of the individual clients' care needs. The licensee shall identify inappropriate behaviors of its staff, such as

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494 using derogatory language, rough handling, ignoring clients
495 while giving care, and directing clients who need toileting
496 assistance to urinate or defecate in their beds.

497 (c) Assessing, planning care for, and monitoring clients
498 with needs and behaviors that might lead to conflict or neglect,
499 such as clients with a history of aggressive behaviors, clients
500 who have behaviors such as entering other clients' rooms,
501 clients with self-injurious behaviors, clients with
502 communication disorders, and clients who require heavy nursing
503 care or are totally dependent on staff.

504 (4) Identify events, such as suspicious bruising of
505 clients, occurrences, patterns, and trends that may constitute
506 abuse and determine the direction of the investigation.

507 (5) Investigate different types of incidents, identify the
508 staff member responsible for the initial reporting, investigate
509 alleged violations, and report results to the proper
510 authorities. The licensee must analyze the occurrences to
511 determine what changes are needed, if any, to policies and
512 procedures to prevent further occurrences and to take all
513 necessary corrective action depending on the results of the
514 investigation.

515 (6) Protect clients from harm during an investigation.

516 (7) Report all alleged violations and all substantiated
517 incidents, as required under chapters 39 and 415, to the
518 licensing authorities and all other agencies as required and to
519 report any knowledge it has of any actions by a court of law
520 that would indicate an employee is unfit for service.

521 Section 10. Section 400.9978, Florida Statutes, is created
522 to read:

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400.9978 Restraints and seclusion; client safety.—

(1) The use of physical restraints must be ordered and documented by a physician and must be consistent with policies and procedures adopted by the facility. The client or, if applicable, the client's representative must be informed of the facility's physical restraint policies and procedures at the time of the client's admission.

(2) The use of chemical restraints is limited to prescribed dosages of medications as ordered by a physician and must be consistent with the client's diagnosis and the policies and procedures adopted by the facility. The client or, if applicable, the client's representative must be informed of the facility's chemical restraint policies and procedures at the time of the client's admission.

(3) Based on a physician's assessment, if a client exhibits symptoms that present an immediate risk of injury or death to self or others, a physician may issue an emergency treatment order to immediately administer rapid response psychotropic medications or other chemical restraints. Each emergency treatment order must be documented and maintained in the client's record.

(a) An emergency treatment order is effective for no more than 24 hours.

(b) Whenever a client is medicated in accordance with this subsection, the client's representative or responsible party and the client's physician must be notified as soon as practicable.

(4) A client who is prescribed and receiving a medication that can serve as a chemical restraint for a purpose other than an emergency treatment order must be evaluated by his or her

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552 physician at least monthly to assess the following:

553 (a) The continued need for the medication.

554 (b) The level of the medication in the client's blood, as
555 appropriate.

556 (c) The need for adjustments in the prescription.

557 (5) The licensee shall ensure that clients are free from
558 unnecessary drugs and physical restraints and are provided
559 treatment to reduce dependency on drugs and physical restraints.

560 (6) The licensee may use physical restraints only as an
561 integral part of a client's comprehensive treatment plan which
562 is intended to lead to less restrictive means of managing and
563 eliminating the behavior for which the restraint is applied.

564 (7) Interventions to manage inappropriate client behavior
565 must be employed with sufficient safeguards and supervision to
566 ensure that the safety, welfare, and civil and human rights of
567 each client are adequately protected.

568 Section 11. Section 400.9979, Florida Statutes, is created
569 to read:

570 400.9979 Background screening; administration and
571 management.—

572 (1) The agency shall require level 2 background screening
573 for personnel as required in s. 408.809(1)(e) pursuant to
574 chapter 435 and s. 408.809.

575 (2) The licensee shall maintain personnel records for each
576 staff member which contain, at a minimum, documentation of
577 background screening, if applicable, a job description,
578 documentation of compliance with all training requirements of
579 this part or applicable rule, the employment application,
580 references, a copy of all job performance evaluations, and, for

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each staff member who performs services for which licensure or
certification is required, a copy of all licenses or
certification held by the staff member.

(3) The licensee must:

(a) Develop and implement infection control policies and
procedures and include such policies and procedures in the
licensee's policy manual.

(b) Maintain liability insurance as defined in s. 624.605.

(c) Designate one person as an administrator who is
responsible and accountable for the overall management of the
facility.

(d) Designate a person in writing to be responsible for the
facility when the administrator is absent from the facility for
more than 24 hours.

(e) Designate in writing a program director who is
responsible for supervising the therapeutic and behavioral
staff, determining the levels of supervision, and determining
room placement for each client.

(f) Designate in writing a person to be responsible when
the program director is absent from the facility for more than
24 hours.

(g) Obtain approval of the comprehensive emergency
management plan, pursuant to s. 400.9981(2)(e), from the local
emergency management agency. Pending the approval of the plan,
the local emergency management agency shall ensure that the
following agencies, at a minimum, are given the opportunity to
review the plan: the Department of Health, the Agency for Health
Care Administration, and the Division of Emergency Management.
Appropriate volunteer organizations must also be given the

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610 opportunity to review the plan. The local emergency management
611 agency shall complete its review within 60 days and either
612 approve the plan or advise the licensee of necessary revisions.

613 (h) Maintain written records in a form and system that
614 comply with medical and business practices and make such records
615 available in the facility for review or submission to the agency
616 upon request. The records shall include:

617 1. A daily census record that indicates the number of
618 clients currently receiving services in the facility, including
619 information regarding any public funding of such clients.

620 2. A record of all accidents or unusual incidents involving
621 any client or staff member that caused, or had the potential to
622 cause, injury or harm to any person or property within the
623 facility. Such records must contain a clear description of each
624 accident or incident, the names of the persons involved, a
625 description of all medical or other services provided to these
626 persons specifying who provided such services, and the steps
627 taken to prevent recurrence of such accidents or incidents.

628 3. A copy of current agreements with third-party providers.

629 4. A copy of current agreements with each consultant
630 employed by the licensee and documentation of each consultant's
631 visits and required written, dated reports.

632 Section 12. Section 400.9980, Florida Statutes, is created
633 to read:

634 400.9980 Property and personal affairs of clients.—

635 (1) A client shall be given the option of using his or her
636 own belongings, as space permits; choosing his or her roommate
637 if practical and not clinically contraindicated; and, whenever
638 possible, unless the client is adjudicated incompetent or

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639 incapacitated under state law, managing his or her own affairs.

640 (2) The admission of a client to a facility and his or her
641 presence therein shall not confer on a licensee, administrator,
642 employee, or representative thereof any authority to manage,
643 use, or dispose of any property of the client, nor shall such
644 admission or presence confer on any of such persons any
645 authority or responsibility for the personal affairs of the
646 client except that which may be necessary for the safe
647 management of the facility or for the safety of the client.

648 (3) A licensee, administrator, employee, or representative
649 thereof may:

650 (a) Not act as the guardian, trustee, or conservator for
651 any client or any of such client's property.

652 (b) Act as a competent client's payee for social security,
653 veteran's, or railroad benefits if the client provides consent
654 and the licensee files a surety bond with the agency in an
655 amount equal to twice the average monthly aggregate income or
656 personal funds due to the client, or expendable for the client's
657 account, that are received by a licensee.

658 (c) Act as the power of attorney for a client if the
659 licensee has filed a surety bond with the agency in an amount
660 equal to twice the average monthly income of the client, plus
661 the value of any client's property under the control of the
662 attorney in fact.

663
664 The bond under paragraph (b) or paragraph (c) shall be executed
665 by the licensee as principal and a licensed surety company. The
666 bond shall be conditioned upon the faithful compliance of the
667 licensee with the requirements of licensure and shall be payable

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to the agency for the benefit of any client who suffers a financial loss as a result of the misuse or misappropriation of funds held pursuant to this subsection. Any surety company that cancels or does not renew the bond of any licensee shall notify the agency in writing not less than 30 days in advance of such action, giving the reason for the cancellation or nonrenewal. Any licensee, administrator, employee, or representative thereof who is granted power of attorney for any client of the facility shall, on a monthly basis, notify the client in writing of any transaction made on behalf of the client pursuant to this subsection, and a copy of such notification given to the client shall be retained in each client's file and available for agency inspection.

(4) A licensee, upon mutual consent with the client, shall provide for the safekeeping in the facility of the client's personal effects of a value not in excess of \$1,000 and the client's funds not in excess of \$500 cash and shall keep complete and accurate records of all such funds and personal effects received. If a client is absent from a facility for 24 hours or more, the licensee may provide for the safekeeping of the client's personal effects of a value in excess of \$1,000.

(5) Any funds or other property belonging to or due to a client or expendable for his or her account that is received by licensee shall be trust funds and shall be kept separate from the funds and property of the licensee and other clients or shall be specifically credited to such client. Such trust funds shall be used or otherwise expended only for the account of the client. At least once every month, unless upon order of a court of competent jurisdiction, the licensee shall furnish the client

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and the client's representative a complete and verified statement of all funds and other property to which this subsection applies, detailing the amount and items received, together with their sources and disposition. In any event, the licensee shall furnish such statement annually and upon the discharge or transfer of a client. Any governmental agency or private charitable agency contributing funds or other property to the account of a client shall also be entitled to receive such statement monthly and upon the discharge or transfer of the client.

(6) (a) In addition to any damages or civil penalties to which a person is subject, any person who:

1. Intentionally withholds a client's personal funds, personal property, or personal needs allowance, or who demands, beneficially receives, or contracts for payment of all or any part of a client's personal property or personal needs allowance in satisfaction of the facility rate for supplies and services; or

2. Borrows from or pledges any personal funds of a client, other than the amount agreed to by written contract under s. 429.24,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any licensee, administrator, employee, or representative thereof who is granted power of attorney for any client of the facility and who misuses or misappropriates funds obtained through this power commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s.

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726 775.084.

727 (7) In the event of the death of a client, a licensee shall
728 return all refunds, funds, and property held in trust to the
729 client's personal representative, if one has been appointed at
730 the time the licensee disburses such funds, or, if not, to the
731 client's spouse or adult next of kin named in a beneficiary
732 designation form provided by the licensee to the client. If the
733 client has no spouse or adult next of kin or such person cannot
734 be located, funds due the client shall be placed in an interest-
735 bearing account and all property held in trust by the licensee
736 shall be safeguarded until such time as the funds and property
737 are disbursed pursuant to the Florida Probate Code. Such funds
738 shall be kept separate from the funds and property of the
739 licensee and other clients of the facility. If the funds of the
740 deceased client are not disbursed pursuant to the Florida
741 Probate Code within 2 years after the client's death, the funds
742 shall be deposited in the Health Care Trust Fund administered by
743 the agency.

744 (8) The agency, by rule, may clarify terms and specify
745 procedures and documentation necessary to administer the
746 provisions of this section relating to the proper management of
747 clients' funds and personal property and the execution of surety
748 bonds.

749 Section 13. Section 400.9981, Florida Statutes, is created
750 to read:

751 400.9981 Rules establishing standards.—

752 (1) It is the intent of the Legislature that rules
753 published and enforced pursuant to this part and part II of
754 chapter 408 include criteria to ensure reasonable and consistent

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quality of care and client safety. Rules should make reasonable efforts to accommodate the needs and preferences of clients to enhance the quality of life in transitional living facilities.

(2) The agency may adopt and enforce rules to implement this part and part II of chapter 408, which shall include reasonable and fair criteria in relation to the following:

(a) The location of transitional living facilities.

(b) The number of qualifications of all personnel, including management, medical, nursing, and other professional personnel and nursing assistants and support personnel having responsibility for any part of the care given to clients. The licensee must have enough qualified professional staff available to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of each comprehensive treatment plan.

(c) Requirements for personnel procedures, insurance coverage, reporting procedures, and documentation necessary to implement this part.

(d) Services provided to clients of transitional living facilities.

(e) The preparation and annual update of a comprehensive emergency management plan in consultation with the Division of Emergency Management. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including provision of emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of clients and transfer of records; communication with families; and responses

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784 to family inquiries.

785 Section 14. Section 400.9982, Florida Statutes, is created
786 to read:

787 400.9982 Violations; penalties.—

788 (1) Each violation of this part and rules adopted pursuant
789 thereto shall be classified according to the nature of the
790 violation and the gravity of its probable effect on facility
791 clients. The agency shall indicate the classification on the
792 written notice of the violation as follows:

793 (a) Class "I" violations are defined in s. 408.813. The
794 agency shall issue a citation regardless of correction and
795 impose an administrative fine of \$5,000 for an isolated
796 violation, \$7,500 for a patterned violation, and \$10,000 for a
797 widespread violation. Violations may be identified and a fine
798 must be levied notwithstanding the correction of the deficiency
799 giving rise to the violation.

800 (b) Class "II" violations are defined in s. 408.813. The
801 agency shall impose an administrative fine of \$1,000 for an
802 isolated violation, \$2,500 for a patterned violation, and \$5,000
803 for a widespread violation. A fine must be levied
804 notwithstanding the correction of the deficiency giving rise to
805 the violation.

806 (c) Class "III" violations are defined in s. 408.813. The
807 agency shall impose an administrative fine of \$500 for an
808 isolated violation, \$750 for a patterned violation, and \$1,000
809 for a widespread violation. If a deficiency giving rise to a
810 class "III" violation is corrected within the time specified by
811 the agency, a fine may not be imposed.

812 (d) Class "IV" violations are defined in s. 408.813. The

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agency shall impose an administrative fine for a cited class IV violation in an amount not less than \$100 and not exceeding \$200 for each violation.

Section 15. Section 400.9983, Florida Statutes, is created to read:

400.9983 Receivership proceedings.—The agency may apply s. 429.22 with regard to receivership proceedings for transitional living facilities.

Section 16. Section 400.9984, Florida Statutes, is created to read:

400.9984 Interagency communication.—The agency, the department, the Agency for Persons with Disabilities, and the Department of Children and Families shall develop electronic systems to ensure that relevant information pertaining to the regulation of transitional living facilities and clients is timely and effectively communicated among agencies in order to facilitate the protection of clients. Electronic sharing of information shall include, at a minimum, a brain and spinal cord injury registry and a client abuse registry.

Section 17. Section 400.805, Florida Statutes, is repealed. Every transitional living facility licensed under s. 400.805 on or before July 1, 2013, shall be licensed under the provisions of this act.

Section 18. Subsection (9) of section 381.745, Florida Statutes, is amended to read:

381.745 Definitions; ss. 381.739–381.79.—As used in ss. 381.739–381.79, the term:

(9) "Transitional living facility" means a state-approved facility, as defined and licensed under chapter 400 ~~or chapter~~

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429, ~~or a facility approved by the brain and spinal cord injury program in accordance with this chapter.~~

Section 19. Section 381.75, Florida Statutes, is amended to read:

381.75 Duties and responsibilities of the department, ~~of transitional living facilities, and of residents.~~ Consistent with the mandate of s. 381.7395, the department shall develop and administer a multilevel treatment program for individuals who sustain brain or spinal cord injuries and who are referred to the brain and spinal cord injury program.

(1) Within 15 days after any report of an individual who has sustained a brain or spinal cord injury, the department shall notify the individual or the most immediate available family members of their right to assistance from the state, the services available, and the eligibility requirements.

(2) The department shall refer individuals who have brain or spinal cord injuries to other state agencies to assure that rehabilitative services, if desired, are obtained by that individual.

(3) The department, in consultation with emergency medical service, shall develop standards for an emergency medical evacuation system that will ensure that all individuals who sustain traumatic brain or spinal cord injuries are transported to a department-approved trauma center that meets the standards and criteria established by the emergency medical service and the acute-care standards of the brain and spinal cord injury program.

(4) The department shall develop standards for designation of rehabilitation centers to provide rehabilitation services for

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871 individuals who have brain or spinal cord injuries.

872 (5) The department shall determine the appropriate number
873 of designated acute-care facilities, inpatient rehabilitation
874 centers, and outpatient rehabilitation centers, needed based on
875 incidence, volume of admissions, and other appropriate criteria.

876 (6) The department shall develop standards for designation
877 of transitional living facilities to provide transitional living
878 services for individuals who participate in the brain and spinal
879 cord injury program ~~the opportunity to adjust to their~~
880 ~~disabilities and to develop physical and functional skills in a~~
881 ~~supported living environment.~~

882 ~~(a) The Agency for Health Care Administration, in~~
883 ~~consultation with the department, shall develop rules for the~~
884 ~~licensure of transitional living facilities for individuals who~~
885 ~~have brain or spinal cord injuries.~~

886 ~~(b) The goal of a transitional living program for~~
887 ~~individuals who have brain or spinal cord injuries is to assist~~
888 ~~each individual who has such a disability to achieve a higher~~
889 ~~level of independent functioning and to enable that person to~~
890 ~~reenter the community. The program shall be focused on preparing~~
891 ~~participants to return to community living.~~

892 ~~(c) A transitional living facility for an individual who~~
893 ~~has a brain or spinal cord injury shall provide to such~~
894 ~~individual, in a residential setting, a goal-oriented treatment~~
895 ~~program designed to improve the individual's physical,~~
896 ~~cognitive, communicative, behavioral, psychological, and social~~
897 ~~functioning, as well as to provide necessary support and~~
898 ~~supervision. A transitional living facility shall offer at least~~
899 ~~the following therapies: physical, occupational, speech,~~

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neuropsychology, independent living skills training, behavior analysis for programs serving brain-injured individuals, health education, and recreation.

~~(d) All residents shall use the transitional living facility as a temporary measure and not as a permanent home or domicile. The transitional living facility shall develop an initial treatment plan for each resident within 3 days after the resident's admission. The transitional living facility shall develop a comprehensive plan of treatment and a discharge plan for each resident as soon as practical, but no later than 30 days after the resident's admission. Each comprehensive treatment plan and discharge plan must be reviewed and updated as necessary, but no less often than quarterly. This subsection does not require the discharge of an individual who continues to require any of the specialized services described in paragraph (c) or who is making measurable progress in accordance with that individual's comprehensive treatment plan. The transitional living facility shall discharge any individual who has an appropriate discharge site and who has achieved the goals of his or her discharge plan or who is no longer making progress toward the goals established in the comprehensive treatment plan and the discharge plan. The discharge location must be the least restrictive environment in which an individual's health, well-being, and safety is preserved.~~

~~(7) Recipients of services, under this section, from any of the facilities referred to in this section shall pay a fee based on ability to pay.~~

Section 20. Subsection (4) of section 381.78, Florida Statutes, is amended to read:

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381.78 Advisory council on brain and spinal cord injuries.-

(4) The council shall:

~~(a)~~ provide advice and expertise to the department in the preparation, implementation, and periodic review of the brain and spinal cord injury program.

~~(b) Annually appoint a five-member committee composed of one individual who has a brain injury or has a family member with a brain injury, one individual who has a spinal cord injury or has a family member with a spinal cord injury, and three members who shall be chosen from among these representative groups: physicians, other allied health professionals, administrators of brain and spinal cord injury programs, and representatives from support groups with expertise in areas related to the rehabilitation of individuals who have brain or spinal cord injuries, except that one and only one member of the committee shall be an administrator of a transitional living facility. Membership on the council is not a prerequisite for membership on this committee.~~

~~1. The committee shall perform onsite visits to those transitional living facilities identified by the Agency for Health Care Administration as being in possible violation of the statutes and rules regulating such facilities. The committee members have the same rights of entry and inspection granted under s. 400.805(4) to designated representatives of the agency.~~

~~2. Factual findings of the committee resulting from an onsite investigation of a facility pursuant to subparagraph 1. shall be adopted by the agency in developing its administrative response regarding enforcement of statutes and rules regulating the operation of the facility.~~

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958 ~~3. Onsite investigations by the committee shall be funded~~
959 ~~by the Health Care Trust Fund.~~

960 ~~4. Travel expenses for committee members shall be~~
961 ~~reimbursed in accordance with s. 112.061.~~

962 ~~5. Members of the committee shall recuse themselves from~~
963 ~~participating in any investigation that would create a conflict~~
964 ~~of interest under state law, and the council shall replace the~~
965 ~~member, either temporarily or permanently.~~

966 Section 21. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR RENE GARCIA

38th District

COMMITTEES:

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

JOINT COMMITTEE:

Joint Committee on Administrative Procedures

March 8, 2013

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

Dear Chairman Bean:

This letter should serve as a request to have my bill *SB 1724 Transitional Living Facilities* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 38

RG:dm

CC: Sandra Stovall, Staff Director



REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013

Meeting Date

Topic Transitional Living Facilities

Bill Number SB 1724
(if applicable)

Name Dana Farmer

Amendment Barcode _____
(if applicable)

Job Title Director of Legislative Affairs

Address 2728 Centerview Drive, Suite 102
Street
Tallahassee FL 32301
City State Zip

Phone 850.488.9071 x 226
E-mail dana@disabilityrightsflorida.org

Speaking: ☒ For ☐ Against ☐ Information

Representing DISABILITY RIGHTS FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

APPEARANCE RECORD

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

4/9/2013

Meeting Date



Topic _____

Bill Number 1728
(if applicable)Name BRIAN PITTSAmendment Barcode _____
(if applicable)Job Title TRUSTEEAddress 1119 NEWTON AVNUE SOUTH
StreetPhone 727-897-9291SAINT PETERSBURG FLORIDA 33705
City State ZipE-mail JUSTICE2JESUS@YAHOO.COMSpeaking: ☐ For ☐ Against ☒ InformationRepresenting JUSTICE-2-JESUSAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/SB 1112

INTRODUCER: Health Policy Committee and Senator Garcia

SUBJECT: Background Screening

DATE: April 9, 2013

REVISED: _____

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

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1112 amends the Florida Statutes to:

- Allow the Department of Highway Safety and Motor Vehicles (DHSMV) to share the digital image and signature of driver licensees with the Agency for Health Care Administration (AHCA) for the purpose of verifying photographs in the Care Provider Background Screening Clearinghouse (CPBSC or Clearinghouse);
- Add certain monetary and fraud-based crimes to the list of crimes which disqualify an applicant subject to a background check from employment with a health care entity;¹
- Add conspiracy, attempt, and solicitation to commit listed crimes to the list of offenses which disqualify an applicant subject to a Level 2 background check from employment;²
- Authorize an agency head to grant an exemption to disqualification if 3 years have elapsed since the applicant has completed all nonmonetary conditions for a felony offense and the

¹ To be disqualified from employment, the applicant may not have the crime on their record as an unresolved arrest, been found guilty of the crime, or pled guilty or no lo contendere to the crime.

² Id.

applicant has paid all monetary costs associated with a disqualifying felony or misdemeanor; and

- Require certain employers to register and initiate all criminal history checks through the CPBSC before submitting fingerprints to the Florida Department of Law Enforcement (FDLE).

This bill substantially amends sections 322.142, 408.809, 435.04, 435.07, and 435.12 of the Florida Statutes.

II. Present Situation:

Previous Legislation

Florida has one of the largest vulnerable populations in the country with over 25 percent of the state's population over the age of 65, and many more children and disabled adults. These vulnerable populations require special care because they are at an increased risk of abuse.

In 2010, the Legislature substantially amended the requirements and procedures for background screening.³ Major changes made by the 2010 legislation include:

- No person who is required to be screened may begin work until the screening has been completed.
- All Level 1⁴ screenings were increased to Level 2⁵ screenings.
- By July 1, 2012, all fingerprints submitted to the FDLE must be submitted electronically.
- Certain personnel that were not being screened were required to begin Level 2 screening.
- The addition of serious crimes that disqualify an individual from employment working with vulnerable populations.
- Authorization for agencies to request the retention of fingerprints by FDLE.
- That an exemption for a disqualifying felony may not be granted until at least 3 years after the completion of all sentencing sanctions for that felony.
- That all exemptions from disqualification may be granted only by the agency head.

The Care Provider Background Screening Clearinghouse

In 2012, the Legislature passed CS/CS/CS/HB 943, which created the Clearinghouse. The Clearinghouse establishes a single data source for background screening results of persons required to be screened by law⁶ for employment in positions that provide services to children, the

³ Chapter 2010-114, L.O.F.

⁴ Section 435.03, F.S. Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through the FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. A person undergoing a Level 1 screening must not have been found guilty of any of the listed offenses.

⁵ Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of the FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the listed offenses.

⁶ Certain persons are required to be screened by specified agencies. "Specified agency" is defined in s. 435.02(5), F.S., and includes the Department of Health, the Department of Children and Family Services, the Division of Vocational

elderly, and disabled individuals.⁷ The Clearinghouse allows the results of criminal history checks to be shared among specified state agencies, thereby reducing duplicative screenings for individuals requiring screening across multiple state agencies. In addition applicants will now have their fingerprints retained for a period of 5 years. The retention of fingerprints will allow the FDLE to report any new arrest/registration information to the specified state agencies. In turn, if during that 5-year period the individual is arrested or added to a registry, a notification will be sent to the employing provider.⁸

The Clearinghouse also collects submitted photographs of applicants who are required to obtain Level 2 background checks. The requirement to submit a photograph was added to law during the 2012 Legislative Session. However, instead of being in the Clearinghouse statute of s. 435.12, F.S., the requirement currently exists in the general Level 2 screening standards of s. 435.04(1)(e), F.S.

Employers of individuals subject to screening by a specified agency⁹ are required to register with the Clearinghouse and maintain the employment status of all employees with the Clearinghouse for screenings conducted after the date the state agency begins participation in the Clearinghouse. Initial employment status and any change in status must be reported within 10 business days.¹⁰ Currently, there is no requirement that screenings be initiated through the Clearinghouse.

The Clearinghouse is in the process of being implemented by six designated state agencies and final implementation is required to be completed by October 1, 2013. Currently, the clearinghouse is active and being used by the AHCA and the Department of Health (DOH)¹¹

Current Background Screening Law

Florida licensure laws require providers licensed by AHCA to conduct Level 2 criminal background screening for:^{12,13}

- The licensee;
- Administrators and financial officers;
- Staff of health care providers who offer residential and home care services that provide personal care services or have access to client property, funds or living areas; and

Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Juvenile Justice, and the Agency for Persons with Disabilities.

⁷ *Clearinghouse FAQ*, found at:

http://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/docs/ClearinghouseFAQ.pdf, last visited on April 5, 2013.

⁸ *Supra* n. 7

⁹ *Supra* n. 6

¹⁰ Section 435.12(2), F.S.

¹¹ According to a phone conversation with Taylor Haddock, Unit Manager of the AHCA Background Screening Unit, on April 5, 2013.

¹² Section 408.809, F.S.

¹³ For a full list of all employees subject to background screening see, *Who is Required to be Screened*, found at: http://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/docs/BGS_WhoRequiredToBeScreened.pdf, last visited on April 5, 2013.

- Any person who is a controlling interest if there is reason to suspect they have committed a disqualifying criminal offense.

Current background screening standards in ch. 435, F.S., and s. 408.809, F.S., the general licensing provisions for health care providers licensed by the AHCA, include various disqualifying offenses pertaining, but not limited to, domestic violence, patient brokering, criminal use of personal identification information, fraudulent use of credit cards, forgery, and possession/sale of illegal drugs.

Some offenses that presently would disqualify an applicant from employment are very similar to certain offenses that presently do not disqualify an applicant from employment. For example, s. 408.809(4)(k), F.S., states that felonious fraudulent use of credit cards, as described in s. 817.61, F.S., is a disqualifying offense. However, using an expired or falsified credit card to obtain goods, as described in s. 817.841, F.S., is not a disqualifying offense.

Designated agencies have the authority to grant exemptions from disqualification.¹⁴ The exemptions enable people who have been convicted of a disqualifying criminal offense to present information as to why they should not be excluded from working with vulnerable individuals. This information includes: specifics of the offense, how long ago the offense occurred, work history, and rehabilitation. Current law states that an applicant who applies for an exemption for a felony offense must have had 3 years elapse since completion of any sentence or have been lawfully released from confinement, supervision, or sanction for the disqualifying felony.¹⁵ The 3-year waiting period would reset with even the smallest related sanction, such as an unpaid balance of a fine. The requirement is similar for disqualifying misdemeanors, except that there is no specific time frame mandated after being lawfully released from confinement, supervision, or sanction.^{16,17}

The DHSMV has the authority to maintain a record of driver license photographs, signature, and other data required for identification and retrieval.¹⁸ The DHSMV also has the authority to share those photographs, through interagency agreements, with specific state agencies.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 322.142, F.S., to allow the DHSMV to share a data file that includes a driver licensee's digital image and signature with the AHCA pursuant to an interagency agreement for the purpose of verifying photographs in the CPBSC.

¹⁴ Section 435.07, F.S.

¹⁵ *Id.*

¹⁶ The term "sanction" does not currently have a formal definition in ch. 435, F.S. Numerous state agencies are bound by chapter 435, F.S., and the interpretation of the term "sanction" varies widely among the agencies.

¹⁷ SB 1112 Bill Analysis and Economic Impact Statement, Agency for Health Care Administration, at page 4, Mar. 13, 2013 (on file with the Senate Health Policy Committee).

¹⁸ Section 322.142(4), F.S.

¹⁹ Section 322.142(4), F.S., provides that the Department of Highway Safety and Motor Vehicles may provide reproductions of the file or digital record to the Department of Business and Professional Regulation, the Department of State, the Department of Revenue, the Department of Children and Families, the Department of Financial Services, or to district medical examiners.

Section 2 amends s. 408.809, F.S., to add to the list of crimes which disqualify an applicant subject to a background check from employment with a health care entity. The added crimes include:

- Attempts, solicitation, and conspiracy to commit an offense listed in s. 408.809(4), F.S.;²⁰
- Felonies involving the use of false, counterfeit, or expired credit cards;²¹
- Fraudulently obtaining goods or services from a health care provider;²²
- Crimes related to racketeering and the collection of illegal debts;²³ and
- Violating the provisions in the Florida Money Laundering Act.²⁴

Section 3 amends s. 435.04, F.S., to require vendors who submit fingerprints on behalf of employers to provide the first, middle, and last name, social security number, date of birth, mailing address, sex, and race of an applicant. This section also adds attempts, solicitation, and conspiracy to commit any offense listed in s. 435.04(2), F.S.,²⁵ to the list of crimes which disqualify any applicant subject to a Level 2 background check from employment.

This section, in conjunction with section 5 of the bill, move the requirement to obtain a photograph of the applicant at the time when fingerprints are submitted from s. 435.04, F.S., regarding Level 2 screening standards, to s. 435.12, F.S., which creates the Clearinghouse.

Section 4 amends s. 435.07, F.S., to strike the term “sanction” from s. 435.07, F.S., and revise the conditions an agency head must consider when determining whether to grant an exemption to disqualification from employment. Under the bill, the 3-year waiting period for a felony offense applies to nonmonetary conditions imposed by the court and not to the satisfaction of monetary requirements. However, all court-ordered fees, fines, or other monetary requirements relating to a disqualifying felony or misdemeanor must be paid in full as a condition of eligibility for an exemption from disqualification of employment.

Section 5 amends s. 435.12, F.S., to require employers of persons subject to background screening by specified agencies²⁶ to register and initiate all criminal history checks through the CPBSC before referring an employee or potential employee for electronic fingerprint submission to the FDLE. The registration submitted must include the employee’s first, middle, and last name, social security number, date of birth, mailing address, sex, and race. This section now includes the requirement of a photograph to be submitted at the time fingerprints are submitted, which is transferred from s. 435.04, F.S.

Section 6 provides for an effective date of July 1, 2013.

²⁰ As detailed in s. 777.04, F.S.

²¹ As detailed in s. 817.481, F.S. The crime is a felony if the value of the goods or services obtained in violation of s. 817.481, F.S., is \$300 or more.

²² As detailed in s. 817.50, F.S.

²³ As detailed in s. 895.03, F.S.

²⁴ As detailed in s. 896.101, F.S.

²⁵ As detailed in s. 777.04, F.S.

²⁶ Supra n. 6

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Health Policy on April 9, 2013:

The CS :

- Adds into part II of ch. 408, F.S., (general licensing provisions for AHCA) attempts, solicitation, and conspiracy to commit offenses listed in s. 408.809(4), F.S., as disqualifying offenses if found on an applicant's background check;
- Specifies that attempts, solicitation, and conspiracy to commit a crime only disqualifies an applicant subject to a background check under s. 435.04, F.S., if the crime is listed in s. 435.04(2), F.S.;

- Clarifies that a vendor who submits fingerprints on behalf of an employer must submit certain personal identifying information of the person being fingerprinted; and
- Makes other technical changes.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

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

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) of section 322.142, Florida
Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print
file. The department shall maintain a record of the digital
image and signature of the licensees, together with other data
required by the department for identification and retrieval.
Reproductions from the file or digital record are exempt from



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the provisions of s. 119.07(1) and shall be made and issued only for departmental administrative purposes; for the issuance of duplicate licenses; in response to law enforcement agency requests; to the Department of Business and Professional Regulation pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the Department of Business and Professional Regulation; to the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters in accordance with ss. 98.045 and 98.075; to the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D cases; to the Department of Children and Family Services pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415; to the Department of Children and Family Services pursuant to an interagency agreement specifying the number of employees in each of that department's regions to be granted access to the records for use as verification of identity to expedite the determination of eligibility for public assistance and for use in public assistance fraud investigations; to the Agency for Health Care Administration pursuant to an interagency agreement for the purpose of verifying photographs in the Care Provider Background Screening Clearinghouse authorized in s. 435.12; to the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, and the identification of fraudulent or false claims; or to



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district medical examiners pursuant to an interagency agreement for the purpose of identifying a deceased individual, determining cause of death, and notifying next of kin of any investigations, including autopsies and other laboratory examinations, authorized in s. 406.011.

Section 2. Subsection (4) of section 408.809, Florida Statutes, is amended to read:

408.809 Background screening; prohibited offenses.—

(4) In addition to the offenses listed in s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction:

(a) Any authorizing statutes, if the offense was a felony.

(b) This chapter, if the offense was a felony.

(c) Section 409.920, relating to Medicaid provider fraud.

(d) Section 409.9201, relating to Medicaid fraud.

(e) Section 741.28, relating to domestic violence.

(f) Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.

(g)~~(f)~~ Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.

(h)~~(g)~~ Section 817.234, relating to false and fraudulent insurance claims.



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71 (i) Section 817.481, relating to obtaining goods by using
72 false, expired, etc., credit cards, if the offense was a felony.

73 (j) Section 817.50, relating to fraudulently obtaining
74 goods, services, etc., from a health care provider.

75 (k)~~(h)~~ Section 817.505, relating to patient brokering.

76 (l)~~(i)~~ Section 817.568, relating to criminal use of
77 personal identification information.

78 (m)~~(j)~~ Section 817.60, relating to obtaining a credit card
79 through fraudulent means.

80 (n)~~(k)~~ Section 817.61, relating to fraudulent use of credit
81 cards, if the offense was a felony.

82 (o)~~(l)~~ Section 831.01, relating to forgery.

83 (p)~~(m)~~ Section 831.02, relating to uttering forged
84 instruments.

85 (q)~~(n)~~ Section 831.07, relating to forging bank bills,
86 checks, drafts, or promissory notes.

87 (r)~~(o)~~ Section 831.09, relating to uttering forged bank
88 bills, checks, drafts, or promissory notes.

89 (s)~~(p)~~ Section 831.30, relating to fraud in obtaining
90 medicinal drugs.

91 (t)~~(q)~~ Section 831.31, relating to the sale, manufacture,
92 delivery, or possession with the intent to sell, manufacture, or
93 deliver any counterfeit controlled substance, if the offense was
94 a felony.

95 (u) Section 895.03, relating to racketeering and illegal
96 debts.

97 (v) Section 896.101, relating to the Florida Money
98 Laundering Act.

99 Section 3. Paragraphs (d) through (yy) of subsection (2) of



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section 435.04, Florida Statutes, are redesignated as paragraphs (e) through (zz), respectively, paragraph (e) of subsection (1) of that section is amended, and a new paragraph (d) is added to subsection (2) of that section, to read:

435.04 Level 2 screening standards.—

(1)

(e) Vendors who submit fingerprints on behalf of employers must:

1. Meet the requirements of s. 943.053; and

2. Have the ability to communicate electronically with the state agency accepting screening results from the Department of Law Enforcement and provide the first, middle, and last name; social security number; date of birth; mailing address; sex; and race of the applicant ~~a photograph of the applicant taken at the time the fingerprints are submitted.~~

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

(d) Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense.

Section 4. Subsections (1) and (2) of section 435.07, Florida Statutes, are amended to read:

435.07 Exemptions from disqualification.—Unless otherwise



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provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(1) (a) The head of the appropriate agency may grant to any employee otherwise disqualified from employment an exemption from disqualification for:

1. ~~(a)~~ Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court ~~sanction~~ for the disqualifying felony;

2. ~~(b)~~ Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court ~~sanction~~;

3. ~~(c)~~ Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court ~~sanction~~; or

4. ~~(d)~~ Findings of delinquency. For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement,



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supervision, or nonmonetary condition imposed by the court
~~sanction~~ for the disqualifying offense.

(b) A person who wishes to apply for an exemption who was
ordered to pay any amount for any fee, fine, fund, lien, civil
judgment, application, costs of prosecution, trust, or
restitution as part of the judgment and sentence for any
disqualifying felony or misdemeanor must have paid the court-
ordered amount in full before being eligible for an exemption.

For the purposes of this subsection, the term "felonies" means
both felonies prohibited under any of the statutes cited in this
chapter or under similar statutes of other jurisdictions.

(2) Persons employed, or applicants for employment, by
treatment providers who treat adolescents 13 years of age and
older who are disqualified from employment solely because of
crimes under s. 817.563, s. 893.13, or s. 893.147 may be
exempted from disqualification from employment pursuant to this
chapter without application of the waiting period in
subparagraph (1)(a)1 paragraph (1)(a).

Section 5. Subsection (2) of section 435.12, Florida
Statutes, is amended to read:

435.12 Care Provider Background Screening Clearinghouse.—

(2)(a) To ensure that the information in the clearinghouse
is current, the fingerprints of an employee required to be
screened by a specified agency and included in the clearinghouse
must be:

1. Retained by the Department of Law Enforcement pursuant
to s. 943.05(2)(g) and (h) and (3), and the Department of Law
Enforcement must report the results of searching those



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fingerprints against state incoming arrest fingerprint submissions to the Agency for Health Care Administration for inclusion in the clearinghouse.

2. Resubmitted for a Federal Bureau of Investigation national criminal history check every 5 years until such time as the fingerprints are retained by the Federal Bureau of Investigation.

3. Subject to retention on a 5-year renewal basis with fees collected at the time of initial submission or resubmission of fingerprints.

4. Submitted with a photograph of the person taken at the time the fingerprints are submitted.

(b) Until such time as the fingerprints are retained at the Federal Bureau of Investigation, an employee with a break in service of more than 90 days from a position that requires screening by a specified agency must submit to a national screening if the person returns to a position that requires screening by a specified agency.

(c) An employer of persons subject to screening by a specified agency must register with the clearinghouse and maintain the employment status of all employees within the clearinghouse. Initial employment status and any changes in status must be reported within 10 business days.

(d) An employer must register and initiate all criminal history checks through the clearinghouse before referring an employee or potential employee for electronic fingerprint submission to the Department of Law Enforcement. The registration must include the employee's full name (first, middle, last), social security number, date of birth, mailing



256948

address, sex, and race.

Section 6. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to background screening; amending s.
322.142, F.S.; allowing the Department of Highway
Safety and Motor Vehicles to share driver license
photographs with the Agency for Health Care
Administration pursuant to an interagency agreement;
amending s. 408.809, F.S.; adding additional
disqualifying offenses to background screening
provisions; amending s. 435.04, F.S.; revising
information to be submitted for a background
screening; adding additional disqualifying offenses;
amending s. 435.07, F.S.; revising terminology;
requiring that individuals seeking an exemption from
disqualification must have completed all nonmonetary
conditions imposed by the court for the disqualifying
felony; requiring that all persons seeking an
exemption from disqualification have paid any court-
ordered monetary penalty in full before being eligible
to apply; amending s. 435.12, F.S.; requiring that a
photograph of the person taken at the time the
fingerprints are processed be submitted to the Care
Provider Background Screening Clearinghouse before



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245 submission of the electronic fingerprints; requiring
246 specified information to be included with the
247 initiation of the screening registration within the
248 clearinghouse; providing an effective date.



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LEGISLATIVE ACTION

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

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

Senate Amendment to Amendment (256948)

Delete line 125
and insert:
conspiracy to commit an offense listed in this subsection.

By Senator Garcia

38-00779-13

20131112__

1 A bill to be entitled
2 An act relating to background screening; amending s.
3 322.142, F.S.; authorizing the Department of Highway
4 Safety and Motor Vehicles to share photographs or
5 digital images of driver licenses with the Agency for
6 Health Care Administration; amending s. 408.809, F.S.;
7 adding additional disqualifying theft offenses for
8 persons who must undergo background screening for
9 health care licensing; amending s. 435.04, F.S.;
10 revising the requirement that vendors who submit
11 fingerprints on behalf of employers must provide the
12 necessary information required by law, or the agency,
13 in order to process the submission; adding an
14 additional disqualifying offense; amending s. 435.07,
15 F.S.; requiring that individuals seeking an exemption
16 from disqualification must have completed all
17 nonmonetary conditions imposed by the court, rather
18 than sanctions, for a disqualifying felony or
19 misdemeanor; authorizing the head of the appropriate
20 agency to grant an exemption to an employee otherwise
21 disqualified from employment for payment in full of a
22 court-ordered fee, fine, fund, lien, civil judgment,
23 application, trust, restitution, or costs of
24 prosecution as part of the judgment and sentence for a
25 disqualifying felony or misdemeanor; amending s.
26 435.12, F.S.; requiring that a photograph be submitted
27 of the potential employee taken at the time the
28 fingerprints are processed; requiring an employer to
29 register and initiate criminal background checks

38-00779-13

20131112__

through the Care Provider Background Screening
Clearinghouse before submission of the electronic
fingerprints; providing requirements for the
registration; providing an effective date.

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

Section 1. Subsection (4) of section 322.142, Florida
Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print
file. The department shall maintain a record of the digital
image and signature of the licensees, together with other data
required by the department for identification and retrieval.
Reproductions from the file or digital record are exempt from
the provisions of s. 119.07(1) and may ~~shall~~ be made and issued
only for departmental administrative purposes; for the issuance
of duplicate licenses; in response to law enforcement agency
requests; to the Department of Business and Professional
Regulation pursuant to an interagency agreement for the purpose
of accessing digital images for reproduction of licenses issued
by the Department of Business and Professional Regulation; to
the Department of State pursuant to an interagency agreement to
facilitate determinations of eligibility of voter registration
applicants and registered voters in accordance with ss. 98.045
and 98.075; to the Department of Revenue pursuant to an
interagency agreement for use in establishing paternity and
establishing, modifying, or enforcing support obligations in
Title IV-D cases; to the Department of Children and Family

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Services pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415; to the Department of Children and Family Services pursuant to an interagency agreement specifying the number of employees in each of that department's regions to be granted access to the records for use as verification of identity to expedite the determination of eligibility for public assistance and for use in public assistance fraud investigations; to the Agency for Health Care Administration pursuant to an interagency agreement for the purpose of verifying photographs in the Care Provider Background Screening Clearinghouse authorized in s. 435.12; to the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, and the identification of fraudulent or false claims; or to district medical examiners pursuant to an interagency agreement for the purpose of identifying a deceased individual, determining cause of death, and notifying next of kin of ~~any~~ investigations, including autopsies and other laboratory examinations, authorized in s. 406.011.

Section 2. Subsection (4) of section 408.809, Florida Statutes, is amended to read:

408.809 Background screening; prohibited offenses.—

(4) In addition to the offenses listed in s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated

38-00779-13

20131112__

delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction:

(a) Any authorizing statutes, if the offense was a felony.

(b) This chapter, if the offense was a felony.

(c) Section 409.920, relating to Medicaid provider fraud.

(d) Section 409.9201, relating to Medicaid fraud.

(e) Section 741.28, relating to domestic violence.

(f) Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.

(g) Section 817.234, relating to false and fraudulent insurance claims.

(h) Section 817.481, relating to the use of false, counterfeit, or expired credit cards, if the offense was a felony.

(i) Section 817.50, relating to fraudulently obtaining goods or service from a health care provider.

(j)~~(h)~~ Section 817.505, relating to patient brokering.

(k)~~(i)~~ Section 817.568, relating to criminal use of personal identification information.

(l)~~(j)~~ Section 817.60, relating to obtaining a credit card through fraudulent means.

(m)~~(k)~~ Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.

(n)~~(l)~~ Section 831.01, relating to forgery.

(o)~~(m)~~ Section 831.02, relating to uttering forged instruments.

(p)~~(n)~~ Section 831.07, relating to forging bank bills,

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117 checks, drafts, or promissory notes.

118 (q)~~(e)~~ Section 831.09, relating to uttering forged bank
119 bills, checks, drafts, or promissory notes.

120 (r)~~(p)~~ Section 831.30, relating to fraud in obtaining
121 medicinal drugs.

122 (s)~~(q)~~ Section 831.31, relating to the sale, manufacture,
123 delivery, or possession with the intent to sell, manufacture, or
124 deliver any counterfeit controlled substance, if the offense was
125 a felony.

126 (t) Section 895.03, relating to racketeering and illegal
127 debts.

128 (u) Section 896.101, relating to the Florida Money
129 Laundering Act.

130 Section 3. Paragraph (e) of subsection (1) of section
131 435.04, Florida Statutes, is amended, present paragraphs (d)
132 through (yy) of subsection (2) of that section are redesignated
133 as (e) through (zz), respectively, and a new paragraph (d) is
134 added to that subsection, to read:

135 435.04 Level 2 screening standards.—

136 (1)

137 (e) Vendors who submit fingerprints on behalf of employers
138 must:

139 1. Meet the requirements of s. 943.053; and

140 2. Have the ability to communicate electronically with the
141 state agency accepting screening results from the Department of
142 Law Enforcement and provide the necessary information required
143 by law, or the agency, in order to process the submission a
144 ~~photograph of the applicant taken at the time the fingerprints~~
145 ~~are submitted.~~

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20131112__

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

(d) Section 777.04, relating to attempts, solicitation, and conspiracy.

Section 4. Subsection (1) of section 435.07, Florida Statutes, is amended to read:

435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(1) The head of the appropriate agency may grant to an ~~any~~ employee otherwise disqualified from employment an exemption from disqualification for:

(a) Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary conditions imposed by the court ~~sanction~~ for the disqualifying felony;

(b) Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions

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20131112__

for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary conditions imposed by the court for the disqualifying offense ~~sanction~~;

(c) Payment in full of a court-ordered fee, fine, fund, lien, civil judgment, application, trust, or restitution or the costs of prosecution as part of the judgment and sentence for a disqualifying felony or misdemeanor;

(d) ~~(e)~~ Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction; or

(e) ~~(d)~~ Findings of delinquency. For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may not be granted until at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense.

For the purposes of this subsection, the term "felonies" means both felonies prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions.

Section 5. Subsection (2) of section 435.12, Florida Statutes, is amended to read:

435.12 Care Provider Background Screening Clearinghouse.—

(2) (a) To ensure that the information in the clearinghouse is current, the fingerprints of an employee required to be screened by a specified agency and included in the clearinghouse must be:

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20131112__

1. Retained by the Department of Law Enforcement pursuant to s. 943.05(2)(g) and (h) and (3), and the Department of Law Enforcement must report the results of searching those fingerprints against state incoming arrest fingerprint submissions to the Agency for Health Care Administration for inclusion in the clearinghouse.

2. Resubmitted for a Federal Bureau of Investigation national criminal history check every 5 years until such time as the fingerprints are retained by the Federal Bureau of Investigation.

3. Subject to retention on a 5-year renewal basis with fees collected at the time of initial submission or resubmission of fingerprints.

4. Submitted with a photograph of the potential employee taken at the time the fingerprints are submitted.

(b) Until such time as the fingerprints are retained at the Federal Bureau of Investigation, an employee with a break in service of more than 90 days from a position that requires screening by a specified agency must submit to a national screening if the person returns to a position that requires screening by a specified agency.

(c) An employer of persons subject to screening by a specified agency must register with the clearinghouse and maintain the employment status of all employees within the clearinghouse. Initial employment status and any subsequent changes in status must be reported within 10 business days.

(d) An employer shall register and initiate all criminal history checks through the clearinghouse before referring an employee or potential employee for electronic fingerprint

38-00779-13

20131112__

233 submission to the Department of Law Enforcement. The
234 registration must include the employee's first name, middle
235 name, last name, social security number, date of birth, mailing
236 address, sex, and race.

237 Section 6. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR RENE GARCIA
40th District

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

JOINT COMMITTEE:
Joint Committee on Administrative Procedures

March 4, 2013

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

Dear Chairman Bean:

This letter should serve as a request to have my bill *SB 1112 Background Screening*
heard at the next possible committee meeting. If there is any other information needed
please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 40

RG:dm

CC: Sandra Stovall, Staff Director

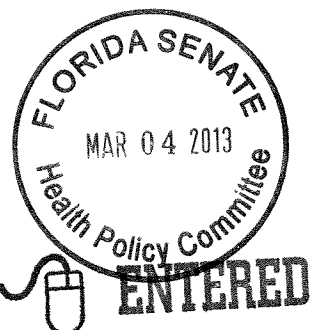
REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE
APPEARANCE RECORD

4-9-13

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

Meeting Date

Topic Background Screening Bill Number SB 1112
(if applicable)
Name Mark Fontaine Amendment Barcode _____
(if applicable)
Job Title Executive Director
Address 2868 Mahan Drive Phone 878-2196
Street
Tallahassee FL 32308 E-mail _____
City State Zip
Speaking: ☒ For ☐ Against ☐ Information
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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic background screening

Bill Number SB 1112
(if applicable)

Name Shane Messer

Amendment Barcode _____
(if applicable)

Job Title legislative affairs

Address 316 E Park Ave

Phone 850/224-6048

Street

Tampa, FL 32301

City

State

Zip

E-mail Shane@fccmh.org

Speaking: ☒ For ☐ Against ☐ Information

- wave in support

Representing FL Council for Community Mental Health

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013
Meeting Date

Topic BACKGROUND SCREENING

Bill Number SB1112
(if applicable)

Name DANA FARMER

Amendment Barcode _____
(if applicable)

Job Title DIRECTOR OF LEGISLATIVE AFFAIRS

Address 2728 Centerview DR, SUITE 102
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Speaking: ☒ For ☐ Against ☐ Information

Representing DISABILITY RIGHTS FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/CS/CS/SB 500

INTRODUCER: Health Policy Committee; Community Affairs Committee; Regulated Industries Committee; and Senators Clemens and Sobel

SUBJECT: Massage Establishments

DATE: April 10, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.	Anderson	Yeatman	CA	Fav/CS
3.	McElheney	Stovall	HP	Fav/CS
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/CS/CS/SB 500 strengthens the regulation of massage establishments. The bill requires the denial of a massage establishment license upon a finding that an owner, officer, director, or managing employee of an applicant has been arrested, is awaiting final disposition, or has been convicted, of certain offenses listed in s. 435.04(2), F.S., or a similar law in another jurisdiction. The bill provides that denial of a license or a disciplinary action may be based on advertising with the intent to induce a client to engage in sexual activity, or to engage or attempt to engage a client in sexual activity.

The bill creates s. 480.0475, F.S., to prohibit the operation of massage establishments between the hours of midnight and 5 a.m., with certain exemptions based on location of the facility or the type of supervision over those persons performing massages. This section also prohibits the use of a massage establishment as a principal domicile in areas that are not zoned for residential use by local ordinance. A first violation of these provisions is a misdemeanor of the first degree and a subsequent violation is a felony of the third degree.

Certain massage establishments that violate the bill's provisions pertaining to hours of operation or residential use or the identification provisions currently required of persons practicing massage in a massage establishment can be declared nuisances that may be abated or enjoined pursuant to Florida law.

The bill expands the definition of 'Board-approved massage school' to include a college or university that is eligible to participate in the Florida Resident Access Grant Program.

The bill provides an October 1, 2013 effective date.

The bill amends sections 480.033, 480.043, 480.046, 480.047, 480.052, and 823.05, Florida Statutes. The bill creates section 480.0475, Florida Statutes.

II. Present Situation:

Massage Practice Act

Chapter 480, F.S., the "Massage Practice Act," (Act) regulates the practice of massage. "Massage" is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.¹

A person must apply to the Board of Massage Therapy (Board) within the Department of Health (DOH) for approval to practice massage or to operate a massage establishment.² A massage therapist is a person licensed to administer massages for compensation,³ and a massage establishment is a site or premises, or portion thereof, wherein a massage therapist practices massage.⁴

Section 480.046(1), F.S., specifies numerous grounds for disciplinary action by the Board,⁵ including the following acts that are grounds for denial of a license or disciplinary action:

- Attempting to procure a license by bribery or fraudulent misrepresentation;
- Having a license to practice massage denied, revoked, suspended, or otherwise acted against by the licensing authority of another state, territory, or country;
- Being convicted, found guilty or entering a plea of nolo contendere, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage or to the ability to practice massage;
- False, deceptive, or misleading advertising;
- Aiding, assisting, procuring, or advising any unlicensed person to practice massage in violation of the act or a rule of the DOH or the Board;
- Making deceptive, untrue, or fraudulent representations in the practice of massage;

¹Section 480.033(3), F.S.

²See ss. 480.041 and 480.043, F.S.

³Section 480.033(4), F.S.

⁴Section 480.033(7), F.S.

⁵Section 480.046, F.S.

- Being unable to practice massage with reasonable skill and safety because of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or due to any mental or physical condition;
- Gross or repeated malpractice or the failure to practice massage with that level of care, skill, and treatment which is recognized by a reasonably prudent massage therapist as being acceptable under similar conditions and circumstances;
- Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent to perform;
- Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure to perform;
- Violating a lawful order of the Board or the DOH previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the DOH;
- Refusing to permit the DOH to inspect the business premises of the licensee during regular business hours;
- Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition;
- Practicing massage at a site, location, or place which is not licensed as a massage establishment, excepting certain services permitted by Board rule, at the residence or office of a client, at a sports event, at a convention, or at a trade show; or
- Violating any provision of the Act, ch. 456, F.S., regarding Health Professions and Occupations, or any rules adopted pursuant to these laws.

Pursuant to s. 480.046(2), F.S., licensure may also be denied, or certain penalties imposed, against licensees found guilty of violating any of the provisions of s. 480.046(1) and s. 456.072(1), F.S. The penalties include:

- Refusal to certify, or to certify with restrictions, an application for a license.
- Suspension or permanent revocation of a license.
- Restriction of practice or license, including, but not limited to, restricting the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare.
- Imposition of an administrative fine not to exceed \$10,000 for each count or separate offense. If the violation is for fraud or making a false or fraudulent representation, the Board must impose a fine of \$10,000 per count or offense.
- Issuance of a reprimand or letter of concern.
- Placement of the licensee on probation for a period of time and subject to such conditions as the Board may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.
- Corrective action.

- Imposition of an administrative fine in accordance with s. 381.0261, F.S., for violations regarding patient rights.
- Refund of fees billed and collected from the patient or a third party on behalf of the patient.
- Requirement that the practitioner undergo remedial education.

The Board also has the power to revoke or suspend the license of a massage establishment or deny subsequent licensure if the license was obtained by fraud or misrepresentation or the licensee was found guilty of fraud, deceit, gross negligence, incompetency, or misconduct in the operation of the establishment.⁶

Disciplinary proceedings shall be conducted pursuant to the provisions of ch. 120, F.S., the Administrative Procedure Act.⁷

Sexual misconduct in the practice of massage therapy is prohibited, and is defined as violation of the massage therapist-patient relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient.⁸

Violations of the law or rules associated with practices of massage therapists and massage establishments are investigated by the DOH.⁹ Sexual activity by any person or persons in any massage establishment is also prohibited.¹⁰

In an attempt to address human trafficking, the 2012 Legislature enacted ch. 2012-97, Laws of Florida, requiring employees and persons performing massages in a massage establishment to present a valid government identification upon request by a DOH investigator or a law enforcement officer and requiring the person operating the massage establishment to ensure that the identification is available. A person who violates this provision, faces criminal prosecution with increasing penalties for subsequent violation.

Nuisances

Section 823.01, F.S., provides that all nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are second degree misdemeanors punishable by up to 60 days in jail and a fine not exceeding \$500, and that a violation of s. 823.10, F.S., regarding certain places where controlled substances are illegally kept, sold, or used, is a third degree felony punishable by a term of imprisonment not to exceeding 5 years and a fine not exceeding \$5,000.

⁶Section 480.046(3), F.S.

⁷Section 480.046(4), F.S.

⁸Section 480.0485, F.S. Section 456.063, F.S., which applies to all licensed health care practitioners, prohibits violation of the professional relationship through which the health care practitioner uses such relationship to engage or attempt to engage the patient or client, or an immediate family member, guardian, or representative of the patient or client in, or to induce or attempt to induce such person to engage in, verbal or physical sexual activity outside the scope of the professional practice of such health care profession.

⁹Section 480.039, F.S.

¹⁰See Rule 64B7-26.010, F.A.C., which provides a definition of sexual activity.

Section 60.05, F.S., provides that when a nuisance defined in s. 823.05, F.S., exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists. In accordance with s. 60.06, F.S., the court shall enter orders to abate the nuisance, and has the authority to enforce injunctions by contempt.

Florida Human Trafficking

Labor trafficking is the most prevalent type of human trafficking that occurs in Florida. The largest number of trafficking victims identified in Florida between 2004 and 2010 involved persons exploited for forced labor, and debt servitude is often the preferred means of coercion. The two sectors of Florida's economy where forced labor appears most prevalent are the agricultural sector and the tourism and hospitality industries. Massage establishment have been noted as sites where trafficking occurs.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 480.033, F.S., to revise the definition of the term "Board-approved massage school" to include a college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program.

Section 2 amends s. 480.043, F.S., to require the Board to deny a massage establishment license upon a finding that an owner, officer, director, or managing employee of an applicant has been arrested, is awaiting final disposition, or has been convicted, of certain offenses listed in s. 435.04(2), F.S., or a similar law in another jurisdiction. Section 435.04(2), F.S., includes offenses relating to sexual misconduct, abuse of aged or disabled adults, murder, certain manslaughter offenses, vehicular homicide, certain offenses against minors, kidnapping, false imprisonment, prostitution, lewd and lascivious behavior, indecent exposure, arson, burglary, certain firearms offenses, and certain felony offenses.

Section 3 amends s. 480.046, F.S., to provide that denial of a license or a disciplinary action may be based on advertising with the intent to induce a client to engage in sexual activity, or to engage or attempt to engage a client in sexual activity.

Section 4 amends s. 480.047, F.S., to conform penalties for massage therapy to changes made in the bill.

Section 5 creates s. 480.0475, F.S., to restrict the time of operations for certain massage establishments, by prohibiting operations between midnight and 5 a.m. The bill creates exclusions from the time restrictions for the following massage establishments:

- Located on the premises of an ambulatory surgical center, a hospice, a nursing home, a hospital, a diagnostic-imaging center, a freestanding or hospital-based therapy center, a

¹¹ Florida Strategic Plan on Human Trafficking. October 2010. Last visited April 7, 2013 *available at*: http://www.cahr.fsu.edu/sub_category/floridastrategicplanonhumantrafficking.pdf

clinical laboratory, a home health agency, a cardiac catheterization laboratory, a medical equipment supplier, an alcohol or chemical dependency treatment center, a physical rehabilitation center, a lithotripsy center, an ambulatory care center, a birth center, or certain licensed nursing home components.¹²

- Located on the premises of a clinic defined in part X of ch. 400, F.S.;
- Located on the premises of a hotel, motel or bed and breakfast as defined in s. 509.242, F.S., or a timeshare property as defined in s. 721.05, F.S.;
- Located on the premises of a public airport as defined in s. 330.27, F.S.;
- Located on the premises of a pari-mutuel facility as defined in s. 550.002, F.S.;
- Located on the premises of an independent postsecondary educational institution licensed and approved by the Commission for Independent Education pursuant to ch. 1005, F.S.;
- In which every massage performed between midnight and 5 a.m. is performed by a massage therapist acting under the prescription of licensed persons such as physicians, physicians' assistants, chiropractic physicians, podiatric physicians, advanced registered nurse practitioners or dentists.

The bill prohibits the use of a massage establishment as a principal domicile unless the establishment is zoned for residential use by local ordinance. The phrase "principal domicile" is not defined, however, a legal domicile in Florida may be evidenced in accordance with s. 222.17, F.S., by a person filing a sworn statement at the office of the Clerk of Circuit Court showing that he or she "resides in and maintains a place of abode in that county which he or she recognizes and intends to maintain as his or her permanent home."

A person convicted of a first degree misdemeanor for violating s. 480.0475, F.S., may be sentenced to up to 1 year in jail and a fine not exceeding \$1,000.¹³ A person may be convicted of a third degree felony for a second or subsequent violation, and may be sentenced to a term of imprisonment not exceeding 5 years and a fine not to exceed \$5,000.¹⁴ More severe consequences result for offenders classified as habitual felony offenders, habitual violent felony offenders, or three-time violent felony offenders.¹⁵

Section 6 amends s. 480.052, F.S., to allow counties or municipalities to waive the restriction on the hours of operation of massage establishments for special local events within their jurisdiction.

Section 7 amends s. 823.05, F.S., to declare that a massage establishment that operates in violation of the restrictions on hours of operation, or that fails to immediately present to an investigator of the DOH or a law enforcement officer, all required government identification for each employee or for any person performing massage in the establishment is a nuisance and may be abated¹⁶ or enjoined pursuant to ss. 60.06 and 60.06, F.S.

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

¹²Section 408.07(24), F.S.

¹³See ss. 775.082 and 775.083, F.S.

¹⁴*Id.*

¹⁵See s. 775.084, F.S.

¹⁶Abated is defined as eliminated or put an end to (Black's Law Dictionary (9th ed. 2009)).

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/CS/CS/SB 500 will limit the operating hours of massage establishments that are not otherwise excluded from the time restriction between midnight and 5 a.m. Since the use of a massage establishment as a principal domicile is no longer permitted unless the location of the establishment is zoned for residential use by local ordinance, operators will be required to discontinue any existing use and monitor their locations for compliance by its employees in the future unless the establishment is located in a zoning classification that includes residential use.

C. Government Sector Impact:

The DOH will incur non-recurring costs for rulemaking which current budget authority is adequate to absorb. The DOH and Board may also experience a recurring increase in workload associated with additional complaints, investigations and prosecution due to non-compliance of the new requirements of this legislation. The impact is indeterminate at this time, but may require additional resources.¹⁷

The Criminal Justice Impact Conference has not yet determined the impact of the bill. The Department of Corrections anticipates that the impact of the bill will be insignificant on the prison population and minimal on the community supervision population.¹⁸

¹⁷ The DOH Bill Analysis for HB7005, dated January 25, 2013, on file with the Senate Health Policy Committee

¹⁸ See 2013 Legislative Analysis for SB 500, Office of Legislative Affairs, Florida Department of Corrections, January 31, 2013

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS/CS/CS by Health Policy on April 9, 2013:

The committee substitute clarifies that the license application for a massage establishment must be denied when an *owner, officer, director, or managing employee* of an applicant has been arrested or committed certain offenses and clarifies the grounds for denial of a license or disciplinary action relating to advertising to induce a client to engage in sexual activity.

CS/CS by Community Affairs on April 2, 2013:

The committee substitute adds that an independent postsecondary educational institution licensed and approved by the Commission for Independent Education pursuant to chapter 1005 may operate between midnight and 5 a.m. Also, adds that a college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program may be a 'Board-approved massage school'.

CS by Regulated Industries on March 14, 2013:

The committee substitute requires the Board to deny a massage establishment license upon a finding that an applicant has been arrested, is awaiting final disposition, or has been convicted of offenses listed in s. 435.04(2), F.S., or a similar law in another jurisdiction, which include offenses relating to sexual misconduct, abuse of aged or disabled adults, murder, certain manslaughter offenses, vehicular homicide, certain offenses against minors, kidnapping, false imprisonment, prostitution, lewd and lascivious behavior, indecent exposure, arson, burglary, certain firearms offenses, and certain felony offenses.

The committee substitute provides that denial of a license or a disciplinary action may be based upon the act of advertising to induce or attempt to induce a client to engage in sexual activity, or to engage or attempt to engage a client in sexual activity.

The committee substitute revises the restriction on hours of operation for massage establishments to the range of midnight to 5 a.m. It exempts from the restriction on hours of operation those massage establishments located on the premises of a clinic defined in part X of ch. 400, F.S., a timeshare property defined in s. 721.05, F.S., a public airport defined in s. 330.27, F.S., or a pari-mutuel facility defined in s. 550.002, F.S. It clarifies the exemption for massages performed pursuant to prescriptions of certain licensees.

The committee substitute amends s. 480.052, F.S., to allow counties and municipalities to waive the restriction on hours of operation of massage establishments for special local events within their jurisdiction. It amends the title to conform to the provisions of the bill.

B. Amendments:

None.

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



339206

LEGISLATIVE ACTION

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

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

Senate Amendment

Delete lines 46 - 49
and insert:
application shall be denied upon finding that an owner, officer, director, or managing employee of an applicant has been arrested for and is awaiting final disposition of, or has been convicted of, regardless of adjudication, an offense under s. 435.04(2) or a similar law of another jurisdiction.



772488

LEGISLATIVE ACTION

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

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

Senate Amendment

Delete lines 57 - 58
and insert:

(e) Advertising with the intent to induce a client to
engage in sexual activity, or to engage or attempt to engage a

By the Committees on Community Affairs; and Regulated Industries; and Senators Clemens and Sobel

578-03423A-13

2013500c2

A bill to be entitled
An act relating to massage practice; amending s.
480.033, F.S.; revising the definition of the term
"board-approved massage school"; amending s. 480.043,
F.S.; requiring an application to be denied upon
specified findings; amending s. 480.046, F.S., adding
additional grounds for denial of a license; amending
s. 480.047, F.S.; revising penalties; creating s.
480.0475, F.S.; prohibiting the operation of a massage
establishment during specified times; providing
exceptions; prohibiting the use of a massage
establishment as a principal domicile unless the
establishment is zoned for residential use under a
local ordinance; providing criminal penalties;
amending s. 480.052, F.S., authorizing a county or
municipality to waive the restriction on operating
hours of a massage establishment in certain instances;
amending s. 823.05, F.S.; declaring that a massage
establishment operating in violation of specified
statutes is a nuisance that may be abated or enjoined;
providing an effective date.

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

Section 1. Subsection (9) of section 480.033, Florida Statutes, is amended to read:

480.033 Definitions.—As used in this act:

(9) "Board-approved massage school" means a facility that
~~which~~ meets minimum standards for training and curriculum as

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30 determined by rule of the board and that ~~which~~ is:

31 (a) Licensed by the Department of Education pursuant to
32 chapter 1005 or the equivalent licensing authority of another
33 state; ~~or is~~

34 (b) Within the public school system of this state; or

35 (c) A college or university that is eligible to participate
36 in the William L. Boyd, IV, Florida Resident Access Grant
37 Program.

38 Section 2. Subsection (2) of section 480.043, Florida
39 Statutes, is amended to read:

40 480.043 Massage establishments; requisites; licensure;
41 inspection.—

42 (2) The board shall adopt rules governing the operation of
43 establishments and their facilities, personnel, safety and
44 sanitary requirements, financial responsibility, insurance
45 coverage, and the license application and granting process. An
46 application shall be denied upon a finding that an applicant has
47 been arrested for and is awaiting final disposition of, or has
48 been convicted of, regardless of adjudication, an offense in s.
49 435.04(2) or a similar law of another jurisdiction.

50 Section 3. Present paragraphs (e) through (o) of subsection
51 (1) of section 480.046, Florida Statutes, are redesignated as
52 paragraphs (f) through (p), respectively, and a new paragraph (e)
53 is added to that subsection, to read:

54 480.046 Grounds for disciplinary action by the board.—

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

57 (e) Advertising to induce or attempt to induce a client to
58 engage in sexual activity, or to engage or attempt to engage a

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59 client in sexual activity.

60 Section 4. Section 480.047, Florida Statutes, is amended to
61 read:

62 480.047 Penalties.—

63 (1) It is unlawful for any person to:

64 (a) Hold himself or herself out as a massage therapist or
65 to practice massage unless duly licensed under this chapter or
66 unless otherwise specifically exempted from licensure under this
67 chapter.

68 (b) Operate any massage establishment unless it has been
69 duly licensed as provided herein, except that nothing herein
70 shall be construed to prevent the teaching of massage in this
71 state at a board-approved massage school.

72 (c) Permit an employed person to practice massage unless
73 duly licensed as provided herein.

74 (d) Present as his or her own the license of another.

75 (e) Allow the use of his or her license by an unlicensed
76 person.

77 (f) Give false or forged evidence to the department in
78 obtaining any license provided for herein.

79 (g) Falsely impersonate any other licenseholder of like or
80 different name.

81 (h) Use or attempt to use a license that has been revoked.

82 (i) Otherwise violate any of the provisions of this act.

83 (2) Except as otherwise provided in this chapter, any
84 person violating the provisions of this section is guilty of a
85 misdemeanor of the first degree, punishable as provided in s.
86 775.082 or s. 775.083.

87 Section 5. Section 480.0475, Florida Statutes, is created

578-03423A-13

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88 to read:

89 480.0475 Massage establishments; prohibited practices.—

90 (1) A person may not operate a massage establishment
91 between the hours of midnight and 5 a.m. This subsection does
92 not apply to a massage establishment:

93 (a) Located on the premises of a health care facility as
94 defined in s. 408.07; a clinic as defined in part X of chapter
95 400; a hotel, motel, or bed and breakfast inn as defined in s.
96 509.242; a timeshare property as defined in s. 721.05; a public
97 airport as defined in s. 330.27; a pari-mutuel facility as
98 defined in s. 550.002; or an independent postsecondary
99 educational institution licensed and approved by the Commission
100 for Independent Education pursuant to chapter 1005; or

101 (b) In which every massage performed between the hours of
102 midnight and 5 a.m. is performed by a massage therapist acting
103 under the prescription of a physician or physician assistant
104 licensed under chapter 458, an osteopathic physician or
105 physician assistant licensed under chapter 459, a chiropractic
106 physician licensed under chapter 460, a podiatric physician
107 licensed under chapter 461, an advanced registered nurse
108 practitioner licensed under part I of chapter 464, or a dentist
109 licensed under chapter 466.

110 (2) A person who operates a massage establishment may not
111 use the establishment or allow it to be used as a principal
112 domicile unless the establishment is zoned for residential use
113 under a local ordinance.

114 (3) A person who violates the provisions of this section
115 commits a misdemeanor of the first degree, punishable as
116 provided in s. 775.082 or s. 775.083. A second or subsequent

578-03423A-13

2013500c2

117 violation of this section is a felony of the third degree,
118 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

119 Section 6. Section 480.052, Florida Statutes, is amended to
120 read:

121 480.052 Power of county or municipality to regulate
122 massage.—

123 (1) A county or municipality, within its jurisdiction, may
124 regulate persons and establishments licensed under this chapter.
125 Such regulation shall not exceed the powers of the state under
126 this act or be inconsistent with this act. This section shall
127 not be construed to prohibit a county or municipality from
128 enacting any regulation of persons or establishments not
129 licensed pursuant to this act.

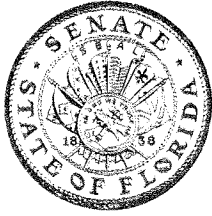
130 (2) A county or municipality may waive the restriction on
131 the hours of operation of a massage establishment provided in s.
132 480.0475 during special events that occur within the county's or
133 municipality's jurisdiction.

134 Section 7. Subsection (3) is added to section 823.05,
135 Florida Statutes, to read:

136 823.05 Places and groups engaged in criminal gang-related
137 activity declared a nuisance; may be abated and enjoined.—

138 (3) A massage establishment as defined in s. 480.033(7)
139 which operates in violation of s. 480.0475 or s. 480.0535(2) is
140 declared a nuisance and may be abated or enjoined as provided in
141 ss. 60.05 and 60.06.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Transportation

SENATOR JEFF CLEMENS

27th District

April, 2013

Chair Bean
530 Knott
404 S. Monroe St
Tallahassee, Fl 32399

Dear Chair Bean:

I respectfully request that SB 500, An Act Relating to Massage Establishments, be placed on the agenda for the Health Policy Committee.

Please feel free to contact myself or my staff, should you have any questions.

Best Regards,

Jeff Clemens
Senate District 27

Cc: Sandra Stovall

REPLY TO:

- ☐ 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- ☐ 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



APPEARANCE RECORD

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

4 / 9 / 2013

Meeting Date

Topic _____

Bill Number 500
(if applicable)Name BRIAN PITTSAmendment Barcode _____
(if applicable)Job Title TRUSTEEAddress 1119 NEWTON AVNUE SOUTH
StreetPhone 727-897-9291SAINT PETERSBURG FLORIDA 33705
City State ZipE-mail JUSTICE2JESUS@YAHOO.COMSpeaking: ☒ For ☐ Against ☒ InformationRepresenting JUSTICE-2-JESUSAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic MASSAGE PRACTICE Bill Number SB 0500
(if applicable)

Name TOM TATUM Amendment Barcode _____
(if applicable)

Job Title SERGEANT w/ VOLUSIA COUNTY SHERIFF'S OFFICE

Address 123 W. INDIANA AVE Phone 386-736-5961

Street

DELAND

FL

City

State

Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing VOLUSIA COUNTY SHERIFF'S OFFICE AND FSA.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

11-9-13
Meeting Date

Topic _____

Bill Number 500
(if applicable)

Name JANET MABRY

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2866 Bay Heather Cir.
Street
Gulf Breeze FL 32563
City State Zip

Phone 850-501-2502

E-mail MABRYJP@CS.COM

Speaking: ☐ For ☐ Against ☐ Information

Representing Florida State Massage Therapy Assoc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2013
Meeting Date

Topic Massage Practice

Bill Number SB 500
(if applicable)

Name Christina Hirz

Amendment Barcode _____
(if applicable)

Job Title social work student advocate

Address 2366 NW 29th Rd
Street

Phone 561-213-5289

Boca Raton FL 33431
City State Zip

E-mail chirz@fau.edu

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)



PLEASE FILL OUT THE ENTIRE FORM AND SUBMIT TWO COPIES
TO THE COMMITTEE/SUBCOMMITTEE ADMINISTRATIVE
ASSISTANT AT THE MEETING

TYPE OR PRINT CLEARLY

COMMITTEE/SUBCOMMITTEE APPEARANCE RECORD

Bill Number HB 500 ~~HB 9069~~ Date 4-9-13
Name Jon Miller
Title Government Affairs
Address 1900 W Commercial Blvd
City Fort Lauderdale State/Zip FL 33309
Phone Number 954-646-6083
Representing Keiser University

Lobbyist (registered) YES ☒ NO ☐

State Employee YES ☐ NO ☒

If you are testifying regarding an amendment, please indicate if your position as a
proponent or an opponent is the same as on the bill as a whole.

		<u>Amendment</u>	<u>Bill</u>
I wish to speak	☒	Proponent ☐	☒
I have been requested to speak	☐	Opponent ☐	☐
		Information ☐	☐

Subject matter: Support Bill

Committee/Subcommittee: Senate Health Policy

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 808

INTRODUCER: Health Policy Committee and Senator Margolis

SUBJECT: Needle and Syringe Exchange Program

DATE: April 10, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	Fav/CS
2.			CJ	
3.			AHS	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 808 requires the Department of Health (DOH) to establish a needle and syringe exchange and education pilot program in Miami-Dade County to prevent the transmission of HIV, AIDS, viral hepatitis and other blood-borne diseases. The bill provides criteria for the pilot program and provides conditions in which a staff member, volunteer, or participant may be immune from criminal prosecution or prosecuted for acting outside the pilot program. The pilot program expires on July 1, 2018, and requires the Office of Program Policy Analysis and Government Accountability to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

This bill substantially amends section 381.0038 of the Florida Statutes.

II. Present Situation:

Florida Comprehensive Drug Abuse Prevention and Control Act

The term drug paraphernalia is defined in s. 893.145, F.S., 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.¹

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 this chapter.

Any person who violates this provision is guilty of a misdemeanor of the first degree.²

This section of law also provides that 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 is guilty of a felony of the third degree.³

Intravenous Drug Use (IDU) in Florida

Geographically, the majority of Florida counties with high rates of persons living with HIV/AIDS (PLWHA) with an IDU-associated risk through 2011 are primarily in the southeast or central part of the state.⁴ Researchers from the University of Miami recently estimated that there are more than 10,000 IDUs in Miami and that one in five of these IDUs are HIV positive and one in three are Hepatitis C Virus positive.⁵ The chart below contains data from 2011 of eleven

¹ Section 893.145, F.S.

² A misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year, or a fine of up to \$1,000, or both. See Section 775.082, F.S., and Section 775.083, F.S.

³ A felony of the third degree is punishable by imprisonment not to exceed 5 years or a fine not to exceed \$5,000, or both. See Section 775.082, F.S. and Section 775.083, F.S.

⁴ HIV/AIDS and Hepatitis Program, Florida Department of Health, revised 10/17/12, *HIV Infection among Those with an Injection Drug Use-Associated Risk, Florida, 2011*. Retrieved 4/07/13 from [http://www.doh.state.fl.us/disease_ctrl/aids/updates/facts/11Facts/IDU_2011.ppt#370,17,Persons Living with HIV/AIDS \(PLWHA\)* with an Injection Drug Use-Associated Risk, for Selected Counties, Reported through 2011, Florida](http://www.doh.state.fl.us/disease_ctrl/aids/updates/facts/11Facts/IDU_2011.ppt#370,17,Persons Living with HIV/AIDS (PLWHA)* with an Injection Drug Use-Associated Risk, for Selected Counties, Reported through 2011, Florida).

⁵ Tookes, HE, Kral, AH, Wenger, LD, Cardenas, GA, Martinez, AN, Sherman, RL, Pereyra, M, Forrest, DW, LalLota, M, Metsch, LR. "A comparison of syringe disposal practices among injection drug users in a city with versus a city without needle and syringe programs." *Drug and Alcohol Dependence*, June 2012, Vol. 123, Issue 1,

counties with the highest incidence of people living in Florida with HIV/AIDS with an IDU associated risk.⁶

County	Total PLWHA Cases	Total IDU	Percent IDU
Miami-Dade	25,381	2,608	10%
Broward	16,466	1,643	10%
Palm Beach	7,789	733	9%
Orange	7,012	1,027	15%
Hillsborough	5,889	828	14%
Duval	5,263	753	14%
Pinellas	3,529	584	17%
Lee	1,648	238	14%
St. Lucie	1,520	177	12%
Volusia	1,348	264	20%
Brevard	1,231	220	18%
STATE TOTAL*	97,174	13,037	13%

7

HIV/AIDS

HIV is a sexually transmitted infection. It can also be spread by contact with infected blood, or from mother to child during pregnancy, childbirth or breast-feeding. It can take years before HIV weakens your immune system to the point that you have AIDS. AIDS is a chronic, potentially life-threatening condition caused by the HIV. By damaging your immune system, HIV interferes with your body's ability to fight the organisms that cause disease. There's no cure for HIV/AIDS, but there are medications that can dramatically slow the progression of the disease.⁸

HIV can be transmitted through needles and syringes contaminated with infected blood. Sharing intravenous drug paraphernalia puts you at high risk of HIV and other infectious diseases such as hepatitis. People who use intravenous drugs often share needles and syringes. This exposes them to droplets of other people's blood.⁹

Disposal of Sharps

According to the Food and Drug Administration (FDA) there are many people who use needles, syringes and lancets—called “sharps”—to manage their medical conditions at home. These conditions include diabetes, allergies, infertility, arthritis, hepatitis, HIV, blood clotting disorders, migraines and cancer. Sharps are also used to give medication to pets and farm animals. The haphazard disposal of these devices is putting a lot of other people, including waste-disposal workers, housekeepers, family members and children, at risk of injury and serious infections.

pp 255-259. Retrieved 4/07/13 from [http://www.drugandalcoholdependence.com/article/S0376-8716\(11\)00522-9/fulltext](http://www.drugandalcoholdependence.com/article/S0376-8716(11)00522-9/fulltext).

⁶ *Supra* fn. 5.

⁷ *Supra* fn.5.

⁸ HIV/AIDS by the Mayo Clinic Staff, available at: <http://www.mayoclinic.com/health/hiv-aids/DS00005> (last visited April 7, 2013).

⁹ *Id.*

The Environmental Protection Agency estimates that 9 million people in the U.S. use sharps at home and that equates to more than 3 billion disposable needles and syringes and 900 million lancets each year. Many sharps used outside of healthcare facilities are disposed of in household trashcans. This is a hazard because a person who is accidentally pricked by a discarded sharp is at risk of exposure to blood borne viruses such as hepatitis and HIV.¹⁰

Needle-collection programs exist in many Florida counties, but differ county to county. These programs help with the disposing of needles, syringes with needles, and lancets that have been used to treat, in a home, an allergy, acute illness, or chronic disease such as diabetes.¹¹

National Data & Survey Results

According to the Centers for Disease Control and Prevention (CDC), Needle Syringe Exchange Programs (NSEP) can help prevent blood borne pathogen transmission by increasing access to sterile syringes among IDUs and enabling safe disposal of used syringes. Often, programs also provide other public health services, such as HIV testing, risk-reduction education, and referrals for substance-abuse treatment.¹²

In 2002, staff from the Beth Israel Medical Center in New York City and the North American Syringe Exchange Network mailed surveys asking the directors of 148 NSEPs about syringes exchanged and returned, services provided, budgets, and funding. The survey found for the first time in 8 years, the number of NSEPs, the number of localities with NSEPs, and that public funding for NSEPs decreased nationwide however, the number of syringes exchanged and total budgets across all programs continued to increase.¹³

The survey identified the largest NSEPs are: Chicago Recovery Alliance (2.7 million syringes), Chicago, Illinois; San Francisco AIDS Foundation HIV Prevention Project (2.5 million), San Francisco, California; Seattle-King County Department of Public Health Needle Exchange Program, Seattle, Washington (1.0 million); Harm Reduction Institute, Indianapolis, Indiana (1.0 million); Point Defiance AIDS Project, Tacoma, Washington (0.9 million); San Diego Clean Needle Exchange Program, San Diego, California (0.9 million); Street Outreach Services, Seattle, Washington (0.8 million); Prevention Point Philadelphia, Pennsylvania (0.7 million); HIV Education and Prevention Project of Alameda, Oakland, California (0.6 million); Needle Exchange Emergency Distribution, Berkeley, California (0.5 million); and one NSEP that wanted program information kept confidential.¹⁴

¹⁰Food and Drug Administration, Improperly Discarded “Sharps” Can Be Dangerous, *available at*: <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm278763.htm> (last visited April 5, 2013)

¹¹ Florida Department of Health, Local Florida County Sharps and Needle-Collection Program, *available at*: <http://www.doh.state.fl.us/environment/community/biomedical/sharps.htm> (last visited on April 5, 2013)

¹² The Centers for Disease Control, MMWR Weekly, Update: Syringe Exchange Programs in US, 2002, *available at*: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5427a1.htm> (last visited April 5, 2013)

¹³ *Id.*

¹⁴ *Id.*

III. Effect of Proposed Changes:

Section 1 adds a new subsection to s. 381.0038, F.S., authorizing the DOH to establish a needle and syringe exchange pilot program in Miami-Dade County. The pilot program is provided to prevent the transmission of the HIV, AIDS, and other blood-borne diseases by offering free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes in a one-for-one exchange. The pilot program must be administered by the department or department's designee. The bill identifies the entities that might be designated to administer the program to include:

- a hospital,
- a licensed health care clinic,
- a substance abuse treatment program,
- an HIV or AIDS service organization, or
- another nonprofit entity designated by the department.

The pilot program must:

- Provide for maximum security of exchange sites and equipment, including an accounting of the number of needles and syringes in use, the number of needles and syringes in storage, safe disposal of returned needles, and any other measure that may be required to control the use and dispersal of sterile needles and syringes.
- Strive for one-to-one exchange (one sterile needle and syringe unit for each used one).
- Make available educational materials; HIV counseling and testing; referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and drug use prevention and treatment.

The program must be funded through grants and donations from private resources and funds, without the use of state funds.

The bill provides an exemption from criminal prosecution for the possession, distribution, or exchange of needles or syringes under this program. However, a NSEP staff member, volunteer, or participant is not immune from criminal prosecution for possessing needles or syringes that are not part of this exchange program or for redistributing needles or syringes if acting outside the program.

The pilot program must collect data regarding the number of participants served, the number of needles and syringes exchanged and distributed, the number of participants entering drug counseling and treatment, the number of participants receiving HIV, AIDS, or viral hepatitis testing, and demographic profiles of participants served, but no personal identifying information. The pilot program will expire on July 1, 2018, and by January 1, 2018, the Office of Program Policy Analysis and Government Accountability (OPPAGA) must submit a report to the Legislature that includes this data and a recommendation on whether the pilot program should continue.

Section 2 adds that if any provision of this act or its application to a person is invalid, the invalidity would not affect other provisions or applications of the act which can be given effect without the invalid provision, and the provisions of this act are severable.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private grants and donations will be needed to operate the pilot program.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Health Policy on April 9, 2013:

The CS requires the DOH to establish a needle and syringe exchange pilot program in

Miami-Dade County. The program may be administered by the DOH or a designee. The pilot program expires on July 1, 2018, and the OPPAGA is directed to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue. The pilot program must be funded through private grants and donations.

B. Amendments:

None.



428062

LEGISLATIVE ACTION

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

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) is added to section 381.0038,
Florida Statutes, to read:

381.0038 Education; needle and syringe exchange pilot
program.—The Department of Health shall establish a pilot
program to educate the public about the threat of acquired
immune deficiency syndrome.

(4) The department shall establish a sterile needle and
syringe exchange pilot program in Miami-Dade County. The pilot



428062

program shall be administered by the department or the department's designee. The department is authorized to designate one of the following entities to operate the pilot program at a fixed location or through a mobile health unit: a hospital licensed under chapter 395, a health care clinic licensed under part X of chapter 400, a substance abuse treatment program, an HIV or AIDS service organization, or another nonprofit entity designated by the department. The pilot program shall offer the free exchange of clean unused needles and hypodermic syringes for used needles and hypodermic syringes as a means to prevent the transmission of HIV, AIDS, viral hepatitis, or other blood-borne diseases among intravenous drug users and their sexual partners and offspring.

(a) The pilot program shall:

1. Provide for maximum security of exchange sites and equipment, including an accounting of the number of needles and syringes in use, the number of needles and syringes in storage, safe disposal of returned needles, and any other measure that may be required to control the use and dispersal of sterile needles and syringes.

2. Strive for a one-to-one exchange, whereby the participant shall receive one sterile needle and syringe unit in exchange for each used one.

3. Make available educational materials; HIV counseling and testing; referral services to provide education regarding HIV, AIDS, and viral hepatitis transmission; and drug use prevention and treatment.

(b) Notwithstanding any other provision of law, the possession, distribution, or exchange of needles or syringes as



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42 part of a needle and syringe exchange pilot program established
43 by the department or the department's designee is not a
44 violation of any part of chapter 893 or any other law.

45 (c) A needle and syringe exchange pilot program staff
46 member, volunteer, or participant is not immune from criminal
47 prosecution for:

48 1. The possession of needles or syringes that are not a
49 part of the exchange pilot program; or

50 2. Redistribution of needles or syringes in any form, if
51 acting outside the pilot program.

52 (d) The pilot program shall collect data for annual and
53 final reporting purposes, which shall include information on the
54 number of participants served, the number of needles and
55 syringes exchanged and distributed, the demographic profiles of
56 the participants served, the number of participants entering
57 drug counseling and treatment, the number of participants
58 receiving HIV, AIDS, or viral hepatitis testing, and other data
59 deemed necessary for the pilot program. However, no personal
60 identifying information may be collected from a participant for
61 any purpose.

62 (e) State funds may not be used to operate the pilot
63 program. The pilot program shall be funded through grants and
64 donations from private resources and funds.

65 (f) The pilot program shall expire July 1, 2018. Six months
66 before the pilot program expires, the Office of Program Policy
67 Analysis and Government Accountability shall submit a report to
68 the President of the Senate and the Speaker of the House of
69 Representatives that includes the data collection requirements
70 established in this subsection; the rates of HIV, AIDS, viral



428062

hepatitis, or other blood-borne diseases before the pilot
program began and every subsequent year thereafter; and a
recommendation on whether to continue the pilot program.

(g) The department has the authority to adopt and develop
rules to implement the provisions of this subsection.

Section 2. If any provision of this act or its application
to any person or circumstance is held invalid, the invalidity
does not affect other provisions or applications of the act that
can be given effect without the invalid provision or
application, and to this end the provisions of this act are
severable.

Section 3. This act shall take effect July 1, 2013.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to a needle and syringe exchange pilot
program; amending s. 381.0038, F.S.; requiring the
Department of Health to establish a needle and syringe
exchange pilot program in Miami-Dade County; providing
for administration of the pilot program by the
department or a designee; establishing pilot program
criteria; providing that the distribution of needles
and syringes under the pilot program is not a
violation of the Florida Comprehensive Drug Abuse
Prevention and Control Act or any other law; providing
conditions under which a pilot program staff member or



428062

100 participant may be prosecuted; prohibiting the
101 collection of participant identifying information;
102 providing for the pilot program to be funded through
103 private grants and donations; providing for expiration
104 of the pilot program; requiring a report to the
105 Legislature; providing rulemaking authority; providing
106 for severability; providing an effective date.

By Senator Margolis

35-00485-13

2013808__

1 A bill to be entitled
2 An act relating to a needle and syringe exchange
3 program; amending s. 381.0038, F.S.; authorizing the
4 Department of Health to establish a needle and syringe
5 exchange program; providing criteria for the program;
6 providing that the distribution of needles and
7 syringes under the program is not a violation of the
8 Florida Comprehensive Drug Abuse Prevention and
9 Control Act or any other law; providing conditions
10 under which a program staff member or participant may
11 be prosecuted; providing for severability; providing
12 an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Subsection (4) is added to section 381.0038,
17 Florida Statutes, to read:

18 381.0038 Education; needle and syringe exchange program.-
19 The Department of Health shall establish a program to educate
20 the public about the threat of acquired immune deficiency
21 syndrome.

22 (4) The department may establish a program offering the
23 free exchange of clean, unused needles and hypodermic syringes
24 for used needles and hypodermic syringes as a means to prevent
25 the transmission of the human immunodeficiency virus (HIV),
26 AIDS, and other blood-borne diseases among intravenous drug
27 users.

28 (a) The needle and syringe exchange program must meet the
29 following criteria:

35-00485-13

2013808__

30 1. The program shall provide for maximum security of
31 exchange sites and equipment, including an accounting of the
32 number of needles and syringes in use, the number of needles and
33 syringes in storage, and any other measure that may be required
34 to control the use and dispersal of sterile needles and
35 syringes.

36 2. The program shall strive for a one-to-one exchange,
37 whereby the participant shall receive one sterile needle and
38 syringe unit in exchange for each used one.

39 3. The department shall make available educational
40 materials, HIV counseling and testing, and referral services
41 targeted to education regarding HIV/AIDS transmission and drug
42 use prevention and treatment.

43 (b) Notwithstanding any other provision of law, the
44 possession, distribution, or exchange of needles or syringes as
45 part of a needle and syringe exchange program established by the
46 department is not a violation of any part of chapter 893 or any
47 other law.

48 (c) A needle and syringe exchange program staff member or
49 participant is not immune from criminal prosecution for:

50 1. The possession of needles or syringes that are not a
51 part of the exchange program; or

52 2. Redistribution of needles or syringes in any form.

53 Section 2. If any provision of this act or its application
54 to any person or circumstance is held invalid, the invalidity
55 does not affect other provisions or applications of the act
56 which can be given effect without the invalid provision or
57 application, and to this end the provisions of this act are
58 severable.

35-00485-13

2013808__

59

Section 3. This act shall take effect July 1, 2013.



The Florida Senate

Committee Agenda Request

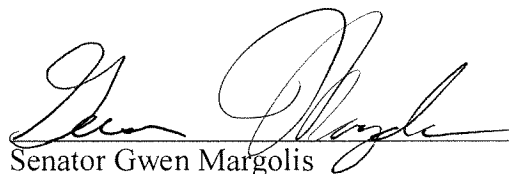
To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: February 22, 2013

I respectfully request that **SB 808**, relating to Need Exchange, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.



Senator Gwen Margolis
Florida Senate, District 35

 **ENTERED**



File signed original with committee office

①

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Syringe Exchange Program

Bill Number 808
(if applicable)

Name Hansel Tookes

Amendment Barcode _____
(if applicable)

Job Title Medical Student - University of Miami

Address 475 Brickell Ave #4114
Street

Phone 917.446.1887

Miami FL 33131
City State Zip

E-mail hanseltokes@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing University of Miami / 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.

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S-001 (10/20/11)

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THE FLORIDA SENATE
APPEARANCE RECORD

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4/9/13

Meeting Date

Topic Syringe Exchange

Bill Number S 808
(if applicable)

Name Marek Hirsch

Amendment Barcode _____
(if applicable)

Job Title UMiami Medical Student

Address NW 10th Ave

Phone 781 711 4285

Street

Miami FL 33132

City

State

Zip

E-mail MHirsch@med.miami.edu

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Medical Association and UMiami

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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04/09/2013

Meeting Date

Topic Syringe Exchange Programs

Bill Number 808
(if applicable)

Name Dyani Loo

Amendment Barcode _____
(if applicable)

Job Title UMiami medical student

Address 333 NE 24 St Apt 809

Phone 805-701-6706

Street

Miami FL 33137

City

State

Zip

E-mail dlloo@med.miami.edu

Speaking: ☒ For ☐ Against ☐ Information

Representing University of Miami and 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/12

Meeting Date

Topic Needles Exchange Program

Name Karine Goedike

Job Title Drug Court Therapist

Address 165 Sea Hawk dr

Street

Daytona FL 32119

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

Bill Number SB 808
(if applicable)

Amendment Barcode _____
(if applicable)

Phone 386-334-7069

E-mail Karine.Goedike@Knights.
ucf.edu

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Needle Exchange Program

Bill Number SB 808
(if applicable)

Name Shira Kastan

Amendment Barcode _____
(if applicable)

Job Title Asst. Vice President

Address 1320 S. Dixie Hwy #325
Street

Phone 305-284-2618

Coral Gables FL 33146
City State Zip

E-mail skastan@miami.edu

Speaking: ☒ For ☐ Against ☐ Information

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.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Needle and Syringe Exchange Program Bill Number HB735 (SB808)
(if applicable)
Name Robert Batie Amendment Barcode _____
(if applicable)
Job Title substance abuse / mental Health Counselor
Address 165 Seahawk DR Phone 386 334 5492
Street
Daytona Bch FL 32119 E-mail RNB013@gmail.com
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Recovery Community

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

412-K
1:30 pm

THE FLORIDA SENATE
APPEARANCE RECORD

WAIVE IN SUPPORT

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

4-9-2013
Meeting Date

Topic NEEDLE EXCHANGE

Bill Number SB 808
(if applicable)

Name STEPHEN R. WINN

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHEE PARKWAY

Phone 878-7463

TALLAHASSEE FL 32301
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

* Waive in support of
amendment

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

4-9-13

Meeting Date

Topic Syringe + Needle Exchange

Bill Number 808

Name Michelle Jacquis

Amendment Barcode 428062
(if applicable)

Job Title Director of Legislative Advocacy

Address PO BOX 10269

Phone 850-251-2288

Street

Tallahassee, FL 32302

City

State

Zip

E-mail mjacquis@fimedical.org

Speaking: ☒ For ☐ Against ☐ Information

Representing FL 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 (10/20/11)

APPEARANCE RECORD

* WAIVE IN SUPPORT of
BILL

4.9.13

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

Meeting Date

Topic Syringe & Needle ExchangeBill Number 808
(if applicable)Name Michelle JacquisAmendment Barcode _____
(if applicable)Job Title Director of Legislative AffairsAddress PO Box 102609Phone 850.251.2288

Street

Tallahassee, FL 32302

City

State

Zip

E-mail mjacquis@fimedical.orgSpeaking: ☒ For ☐ Against ☐ InformationRepresenting FL Medical AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-9-13

Meeting Date

Topic Needle Exchange Bill Number SB 808
(if applicable)
Name Allison DeFoor Amendment Barcode _____
(if applicable)
Job Title Chairman - Project on Accountable Justice - FSU
Address 949 Alachua Ave Phone 850/508-9212
Street
City Tall. State FL Zip 32308
E-mail allisonpj@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

Representing Proj. on Accountable Justice - FSU

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No
Not on this issue

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-13

Meeting Date

Topic Needle Exchange Bill Number SB 808
Name MARK FONTAINE Amendment Barcode _____ (if applicable)
Job Title Executive Director (if applicable)
Address 2868 Mahan Drive Phone 878-2196
Street
City TALLAHASSEE State FL Zip 32308 E-mail _____
Speaking: ☒ For ☐ Against ☐ Information
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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

APRIL 9 2013

Meeting Date

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

Topic NEEDLE EXCHANGE Bill Number SB 808
(if applicable)

Name PAUL ARONS Amendment Barcode _____
(if applicable)

Job Title RETIRED - FORMER MEDICAL DIRECTOR

Address 1706 BEECHWOOD CIRCLE Phone 850-656-7870
Street

TALLAHASSEE FL E-mail parons@embargmail.com
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing SELF

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: CS/SB 1636

INTRODUCER: Health Policy Committee and Senator Flores

SUBJECT: Infants Born Alive

DATE: April 9, 2013

REVISED: _____

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

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 1636 amends the Florida Statutes to:

- Create a definition for “born alive” under chapter 390, F.S., relating to termination of pregnancies;
- Grant an infant who is born alive during or immediately after an attempted abortion the same rights as infants born naturally;
- Require healthcare professionals to apply the same level of care towards the infant born alive as they would for an infant born naturally of the same gestational age;
- Require that the infant born alive as part of an attempted abortion be immediately transported and admitted to a hospital;
- Require health care practitioners to report violations to the Department of Health (DOH); and
- Cause violations of these requirements to be punishable as a first degree misdemeanor.
- Require facilities that perform abortions to report monthly the number of infants born alive to the Agency for Health Care Administration (AHCA).

This bill substantially amends sections 390.011, 390.0111, and 390.0112 of the Florida Statutes.

II. Present Situation:

Case Law on Abortion

In 1973, the foundation of modern abortion jurisprudence, *Roe v. Wade*, was decided by the U.S. Supreme Court.¹ Using strict scrutiny, the Court determined that a woman's right to terminate a pregnancy is part of a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.² Further, the Court reasoned that state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.³ The Court established the trimester framework for the regulation of termination – holding that in the third trimester, a state could prohibit termination to the extent that the woman's life or health was not at risk.⁴

In *Planned Parenthood v. Casey*, the U.S. Supreme Court, while upholding the fundamental holding of *Roe*, recognized that medical advancement could shift determinations of fetal viability away from the trimester framework.⁵

Abortion in Florida

Article I, Section 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized the Florida's constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."⁶

In *In re T.W.*, the Florida Supreme Court, determined that:

[p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests....Under our Florida Constitution, the state's interest becomes compelling upon viability....Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical procedures.

The court recognized that after viability, the state can regulate termination in the interest of the unborn child so long as the mother's health is not in jeopardy.⁷

In Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.⁸ A termination of pregnancy must be

¹ 410 U.S. 113 (1973).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ 505 U.S. 833 (1992).

⁶ See *In re T.W.*, 551 So.2d 1186, 1192 (Fla. 1989)(holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).

⁷ *Id.*

⁸ s. 390.011(1), F.S.

performed by a physician⁹ licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.¹⁰

A termination of pregnancy may not be performed in the third trimester unless there is a medical emergency.¹¹ Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week.¹² A medical emergency is a situation in which:

- To a reasonable degree of medical certainty, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman,¹³ and is a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate termination of her pregnancy to avert her death; or
- In the good faith clinical judgment of the physician, a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function.¹⁴

Section 390.0111(4), F.S., provides that if a termination of pregnancy is performed during viability, the person who performs or induces the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. Viability is defined in this provision to mean that stage of fetal development when the life of the unborn child may with a reasonable degree of medical probability be continued indefinitely outside the womb. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when such concerns are in conflict.

Born Alive

The federal Born Alive Infants Protection Act (BAIPA) of 2002 states that in determining the meaning of any Act of Congress or of any ruling, regulation, or interpretation of the various federal administrative bureaus and agencies, the words "person," "human being," "child" and "individual" shall include every infant member of the species homo sapiens who is born alive at any stage of development.¹⁵ The Act defined "born alive" as:

the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of

⁹ s. 390.0111(2), F.S.

¹⁰ s. 390.011(7), F.S.

¹¹ s. 390.0111(1), F.S.

¹² s. 390.011(7), F.S.

¹³ s. 390.0111(1)(a), F.S.

¹⁴ s. 390.01114(2)(d), F.S.

¹⁵ 1 U.S.C. 8(a).

whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section or induced abortion.¹⁶

The BAIPA was initially viewed as a symbolic act which did not alter the treatment that physicians already provided to extremely premature infants.¹⁷ A change occurred in 2005 when the U.S. Department of Health and Human Services (HHS) issued a Program Instruction to state and territorial agencies administering or supervising the administration of the federal Child Abuse Prevention and Treatment Act (CAPTA) Program. The Program Instruction stated that regulations affected by the BAIPA were to be enforced under CAPTA.¹⁸ Specifically, states must ensure that implementation of section 106(b)(2)(B) of CAPTA, which requires states to have procedures for responding to reports of medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions), applies to born-alive infants.¹⁹ This created an obligation to provide medical services to a born alive infant as well as an obligation to report when such treatment was withheld.²⁰ Thus, the failure to provide medical services to a born-alive infant may subject a physician to criminal neglect and abuse charges under applicable state law.²¹ However, since the applicable portions of CAPTA do not have specific provisions requiring the prosecution of child abusers, it is unclear whether or not BAIPA would apply to the prosecution of physicians who do not treat infants born alive under Florida's child abuse laws.

The federal Emergency Medical Treatment and Labor Act (EMTALA) places potential provider obligations on hospitals and physicians when presented with an individual who may have an emergency medical condition, irrespective of that individual's ability to pay.²² The Centers for Medicare and Medicaid Services (CMS), a subunit of the HHS, issued its "Guidance on the interaction of the BAIPA and the EMTALA" in 2005. According to the CMS, born alive infants as "individuals" were entitled to protection under the EMTALA.²³ Thus, individuals who failed to provide stabilizing treatment to a born alive infant may be subject to penalties under the EMTALA.²⁴

¹⁶ 1 U.S.C. 8(b).

¹⁷ Am. Acad. of Ped. Neonatal Resuscitation Prog. Steering Comm., *Born-Alive Infants Protection Act of 2001*, Public Law No. 107-207, 111 PEDIATRICS 680 (Mar. 2003).

¹⁸ U.S. Department of Health and Human Services, Administration of Children, Youth and Families- Program Instruction; Log No- ACYF-CB-PI-05-01; Issuance Date- April 22, 2005.

¹⁹ Id.

²⁰ Conway, Craig, *What Will Become of the Born-Alive Infants Protection Act?* [www.law.uh.edu/healthlaw/perspectives/2009/\(CC\)%20BAIPA.pdf](http://www.law.uh.edu/healthlaw/perspectives/2009/(CC)%20BAIPA.pdf) (last visited on April 5, 2013).

²¹ Hermer, Laura, *The "Born-Alive Infants Protection Act" and its Potential Impact on Medical Care and Practice*. [www.law.uh.edu/healthlaw/perspectives/2006/\(LH\)BAIPA.pdf](http://www.law.uh.edu/healthlaw/perspectives/2006/(LH)BAIPA.pdf) (last visited on April 5, 2013).

²² See Sadath A. Sayeed, *Baby Doe Redux? The Department of Health and Human Services and the Born-Alive Infants Protection Act of 2002: A Cautionary Note on Normative Neonatal Practice*, 116:4 PEDIATRICS e576 (Oct. 2005). <http://pediatrics.aappublications.org/content/116/4/e576.full.pdf+html> (last visited on April 5, 2013).

²³ Id.

²⁴ Id. n. 21.

Voluntary Surrender of Infants

Florida law provides for the treatment and protection of a surrendered newborn.²⁵ Under Florida law a “newborn infant” means a child who a licensed physician reasonably believes is approximately 7 days old or younger at the time the child is left at a hospital, emergency medical services (EMS) station, or a fire station.²⁶ Hospitals are authorized to admit and provide all necessary services and care to a surrendered new born infant.²⁷ Likewise, EMS technicians, paramedics and firefighters are also authorized to render EMS to a newborn infant.²⁸ However, EMS technicians, paramedics and firefighters have a secondary obligation of arranging for the immediate transport of the newborn infant to a hospital for admittance.²⁹

III. Effect of Proposed Changes:

Section 1 amends s. 390.011, F.S., to define “born alive” as the complete expulsion or extraction from the mother of a human infant, at any stage of development, who, after such expulsion or extraction, breathes or has a beating heart, or definite and voluntary movement of muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induces labor, Cesarean section, induced abortion, or other method.

Section 2 amends s. 390.0111, F.S., to:

- Grant an infant who is born alive during or immediately after an attempted abortion the same rights as infants born naturally;
- Require healthcare professionals to apply the same level of skill, care, and diligence towards the infant as they would for an infant born naturally at the same gestational age;
- Require that the infant born alive during or immediately after an attempted abortion be immediately transported and admitted to a hospital;³⁰
- Require health care practitioners and employees of hospitals, physician’s offices, and abortion clinics with knowledge of a violation of these provisions to report the violation to the DOH;
- Cause violations of these requirements to be punishable as a first degree misdemeanor;
- Clarify that these provisions do not preclude the prosecution of a more general offense; and
- Clarify that these provisions do not affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive.

Section 3 amends s. 390.0112, F.S., to require medical facilities that terminate pregnancies to add the number of infants born alive during or immediately after an attempted abortion to a monthly report of all abortions currently required to be reported to the AHCA.

²⁵ s. 383.50, F.S.

²⁶ s. 383.50(1), F.S.

²⁷ s. 383.50(4), F.S.

²⁸ s. 383.50(3)(a), F.S.

²⁹ s. 383.50(3)(b), F.S.

³⁰ Pursuant to s. 390.012(3)(c), F.S., which requires abortion clinics to designate a medical director who is a physician with privileges at a licensed hospital or has a transfer agreement with a licensed hospital in place.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1636 may have an indeterminate negative fiscal impact on hospitals by requiring that hospitals provide for medical care for infants who fall under the definition of “born alive.”

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on the State of Florida by requiring that the State provide for medical care and social services for infants who fall under the definition of “born alive.”

VI. Technical Deficiencies:

Lines 61-64 of CS/SB 1636 specify that the provisions in s. 390.0111(12), F.S., do not affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive as “defined in this subsection.” However, the definition of “born alive” is in s. 390.011, F.S., and not contained within s. 390.0111(12), F.S.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Health Policy on April 9, 2013:

The CS:

- Clarifies that practitioners must exercise the same efforts to preserve the life and health of an infant born alive as they would for a infant born naturally at the same gestational age;
- Removes provisions related to the presumed surrender of the infant upon transportation to a hospital.
- Clarifies that the provisions in the section 2 of the bill do not preclude prosecution of more general provisions of law.
- Clarifies that the provisions in section 2 of the bill do not affect the legal status or legal rights of the species homo sapiens at any point prior to being born alive.
- Requires health care facilities performing abortions to include the number of infants born alive during or immediately after an attempted abortion in the monthly report of abortions submitted to the AHCA.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2013	.	
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The Committee on Health Policy (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (4) through (8) of section 390.011,
Florida Statutes, are renumbered as subsections (5) through (9),
respectively, and a new subsection (4) is added to that section
to read:

390.011 Definitions.—As used in this chapter, the term:
(4) "Born alive" means the complete expulsion or extraction
from the mother of a human infant, at any stage of development,
who, after such expulsion or extraction, breathes or has a



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beating heart, or definite and voluntary movement of muscles,
regardless of whether the umbilical cord has been cut and
regardless of whether the expulsion or extraction occurs as a
result of natural or induced labor, Cesarean section, induced
abortion, or other method.

Section 2. Subsections (12) and (13) of section 390.0111, Florida Statutes, are renumbered as subsections (13) and (14), respectively, subsection (10) is amended, and a new subsection (12) is added to that section to read:

390.0111 Termination of pregnancies.—

(10) PENALTIES FOR VIOLATION.—Except as provided in subsections (3), ~~and~~ (7), and (12):

(a) Any person who willfully performs, or actively participates in, a termination of pregnancy procedure in violation of the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who performs, or actively participates in, a termination of pregnancy procedure in violation of the provisions of this section which results in the death of the woman commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) INFANTS BORN ALIVE.—

(a) An infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as are granted by the laws of this state to any other child born alive in the course of natural birth.

(b) If an infant is born alive during or immediately after an attempted abortion, any health care practitioner present at



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the time shall humanely exercise the same degree of professional skill, care, and diligence to preserve the life and health of the infant as a reasonably diligent and conscientious health care practitioner would render to an infant born alive at the same gestational age in the course of natural birth.

(c) An infant born alive during or immediately after an attempted abortion must be immediately transported and admitted to a hospital pursuant to s. 390.012(3)(c) or rules adopted thereunder. Upon such hospital admittance, the infant is presumed to be surrendered under s. 383.50(2) and must receive the medical care and social services provided under s. 383.50(4), (7), and (8).

(d) A health care practitioner or any employee of a hospital, a physician's office, or an abortion clinic who has knowledge of a violation of this subsection must report the violation to the department.

(e) A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This subsection shall not be construed as a specific provision of law relating to a particular subject matter that would preclude prosecution of a more general offense, regardless of the penalty.

(f) This subsection does not affirm, deny, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive as defined in this subsection.

Section 3. Subsection (1) of section 390.0112, Florida Statutes, is amended to read:

390.0112 Termination of pregnancies; reporting.-



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(1) The director of any medical facility in which any pregnancy is terminated shall submit a monthly report to the agency which contains the number of procedures performed, the reason for same, ~~and~~ the period of gestation at the time such procedures were performed, and the number of infants born alive during or immediately after an attempted abortion to the agency. The agency shall be responsible for keeping such reports in a central place from which statistical data and analysis can be made.

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

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

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to infants born alive; amending s.
390.011, F.S.; defining the term "born alive";
amending s. 390.0111, F.S.; providing that an infant
born alive during or immediately after an attempted
abortion is entitled to the same rights, powers, and
privileges as any other child born alive in the course
of natural birth; requiring health care practitioners
to preserve the life and health of such an infant born
alive, if possible; providing for the transport and
admittance of an infant born alive to a hospital;
providing a presumption that the infant has been
surrendered; providing for certain medical and social
services for the infant; requiring a health care



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100 practitioner or certain employees who have knowledge
101 of any violations with respect to infants born alive
102 after an attempted abortion to report those violations
103 to the Department of Health; providing a penalty;
104 providing for construction; amending s. 390.0112,
105 F.S.; revising a reporting requirement; providing an
106 effective date.



524038

LEGISLATIVE ACTION

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

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (4) through (8) of section 390.011,
Florida Statutes, are renumbered as subsections (5) through (9),
respectively, and a new subsection (4) is added to that section
to read:

390.011 Definitions.—As used in this chapter, the term:
(4) "Born alive" means the complete expulsion or extraction
from the mother of a human infant, at any stage of development,
who, after such expulsion or extraction, breathes or has a



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beating heart, or definite and voluntary movement of muscles,
regardless of whether the umbilical cord has been cut and
regardless of whether the expulsion or extraction occurs as a
result of natural or induced labor, Cesarean section, induced
abortion, or other method.

Section 2. Subsections (12) and (13) of section 390.0111, Florida Statutes, are renumbered as subsections (13) and (14), respectively, subsection (10) is amended, and a new subsection (12) is added to that section to read:

390.0111 Termination of pregnancies.—

(10) PENALTIES FOR VIOLATION.—Except as provided in subsections (3), ~~and~~ (7), and (12):

(a) Any person who willfully performs, or actively participates in, a termination of pregnancy procedure in violation of the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who performs, or actively participates in, a termination of pregnancy procedure in violation of the provisions of this section which results in the death of the woman commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) INFANTS BORN ALIVE.—

(a) An infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as are granted by the laws of this state to any other child born alive in the course of natural birth.

(b) If an infant is born alive during or immediately after an attempted abortion, any health care practitioner present at



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the time shall humanely exercise the same degree of professional skill, care, and diligence to preserve the life and health of the infant as a reasonably diligent and conscientious health care practitioner would render to an infant born alive at the same gestational age in the course of natural birth.

(c) An infant born alive during or immediately after an attempted abortion must be immediately transported and admitted to a hospital pursuant to s. 390.012(3)(c) or rules adopted thereunder.

(d) A health care practitioner or any employee of a hospital, a physician's office, or an abortion clinic who has knowledge of a violation of this subsection must report the violation to the department.

(e) A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This subsection shall not be construed as a specific provision of law relating to a particular subject matter that would preclude prosecution of a more general offense, regardless of the penalty.

(f) This subsection does not affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive as defined in this subsection.

Section 3. Subsection (1) of section 390.0112, Florida Statutes, is amended to read:

390.0112 Termination of pregnancies; reporting.—

(1) The director of any medical facility in which any pregnancy is terminated shall submit a monthly report to the agency which contains the number of procedures performed, the



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reason for same, ~~and~~ the period of gestation at the time such procedures were performed, and the number of infants born alive during or immediately after an attempted abortion to the agency. The agency shall be responsible for keeping such reports in a central place from which statistical data and analysis can be made.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to infants born alive; amending s. 390.011, F.S.; defining the term "born alive"; amending s. 390.0111, F.S.; providing that an infant born alive during or immediately after an attempted abortion is entitled to the same rights, powers, and privileges as any other child born alive in the course of natural birth; requiring health care practitioners to preserve the life and health of such an infant born alive, if possible; providing for the transport and admittance of an infant born alive to a hospital; requiring a health care practitioner or certain employees who have knowledge of any violations with respect to infants born alive after an attempted abortion to report those violations to the Department of Health; providing a penalty; providing for construction; amending s. 390.0112, F.S.; revising a



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100

reporting requirement; providing an effective date.

By Senator Flores

37-01057C-13

20131636__

1 A bill to be entitled
2 An act relating to infants born alive; amending s.
3 390.011, F.S.; defining the term "born alive";
4 amending s. 390.0111, F.S.; providing that an infant
5 born alive during or immediately after an attempted
6 abortion is entitled to the same rights, powers, and
7 privileges as any other child born alive in the course
8 of natural birth; requiring health care practitioners
9 to preserve the life and health of such an infant born
10 alive, if possible; providing for the transport and
11 admittance of an infant born alive to a hospital;
12 providing a presumption that the infant has been
13 surrendered; providing for certain medical and social
14 services for the infant; requiring a health care
15 practitioner or certain employees who have knowledge
16 of any violations with respect to infants born alive
17 after an attempted abortion to report those violations
18 to the Department of Health; providing a penalty;
19 providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsections (4) through (8) of section 390.011,
24 Florida Statutes, are renumbered as subsections (5) through (9),
25 respectively, and a new subsection (4) is added to that section
26 to read:

27 390.011 Definitions.—As used in this chapter, the term:
28 (4) "Born alive" means the complete expulsion or extraction
29 from the mother of a human infant, at any stage of development,

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20131636__

30 who, after such expulsion or extraction, breathes or has a
31 beating heart, or definite and voluntary movement of muscles,
32 regardless of whether the umbilical cord has been cut and
33 regardless of whether the expulsion or extraction occurs as a
34 result of natural or induced labor, Cesarean section, induced
35 abortion, or other method.

36 Section 2. Subsections (12) and (13) of section 390.0111,
37 Florida Statutes, are renumbered as subsections (13) and (14),
38 respectively, subsection (10) is amended, and a new subsection
39 (12) is added to that section to read:

40 390.0111 Termination of pregnancies.—

41 (10) PENALTIES FOR VIOLATION.—Except as provided in
42 subsections (3), ~~and~~ (7), and (12):

43 (a) Any person who willfully performs, or actively
44 participates in, a termination of pregnancy procedure in
45 violation of the requirements of this section commits a felony
46 of the third degree, punishable as provided in s. 775.082, s.
47 775.083, or s. 775.084.

48 (b) Any person who performs, or actively participates in, a
49 termination of pregnancy procedure in violation of the
50 provisions of this section which results in the death of the
51 woman commits a felony of the second degree, punishable as
52 provided in s. 775.082, s. 775.083, or s. 775.084.

53 (12) INFANTS BORN ALIVE.—

54 (a) An infant born alive during or immediately after an
55 attempted abortion is entitled to the same rights, powers, and
56 privileges as are granted by the laws of this state to any other
57 child born alive in the course of natural birth.

58 (b) If an infant is born alive during or immediately after

37-01057C-13

20131636__

59 an attempted abortion, any health care practitioner present at
60 the time shall humanely exercise the same degree of professional
61 skill, care, and diligence to preserve the life and health of
62 the infant as a reasonably diligent and conscientious health
63 care practitioner would render to an infant born alive in the
64 course of natural birth.

65 (c) An infant born alive during or immediately after an
66 attempted abortion must be immediately transported and admitted
67 to a hospital pursuant to s. 390.012(3)(c) or rules adopted
68 thereunder. Upon such hospital admittance, the infant is
69 presumed to be surrendered under s. 383.50(2) and must receive
70 the medical care and social services provided under s.
71 383.50(4), (7), and (8).

72 (d) A health care practitioner or any employee of a
73 hospital, a physician's office, or an abortion clinic who has
74 knowledge of a violation of this subsection must report the
75 violation to the department.

76 (e) A person who violates this subsection commits a
77 misdemeanor of the first degree, punishable as provided in s.
78 775.082 or s. 775.083.

79 Section 3. This act shall take effect July 1, 2013.



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: April 3, 2013

I respectfully request that **Senate Bill #1636**, relating to Infants Born Alive, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 37



THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13

Meeting Date

Topic Infants Born Alive

Bill Number 1636 ^{as} amended
(if applicable)

Name Shaile Hopkins

Amendment Barcode _____
(if applicable)

Job Title Director of Social Concerns/Respect Life

Address 201 W. Park Ave.
Street

Phone 205-6826

Tallahassee FL 32301
City State Zip

E-mail shopkins@flacathconf.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Fl. Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

APRIL 9, 2013

Meeting Date

Topic INFANTS BORN ALIVE PROTECTION ACT

Bill Number 1636
(if applicable)

Name NATHANIEL J. WILCOX

Amendment Barcode _____
(if applicable)

Job Title _____

Address 3111 N.W. 135 ST
Street

Phone (786) 488-2979

OPA-LOCKA FL 33054
City State Zip

E-mail nwilcox2@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Representing CHRISTIAN FAMILY COALITION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Infants Born Alive

Bill Number SB1636
(if applicable)

Name Maureen Ahern

Amendment Barcode _____
(if applicable)

Job Title _____

Address 9783-52nd Ave. N.
Street
St. Petersburg, FL 33708
City State Zip

Phone 727-381-2166

E-mail mahern@tampabay.com

Speaking: ☐ For ☐ Against ☐ Information

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.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.9.13

Meeting Date

Topic INFANTS BORN ALIVE

Bill Number 1636
(if applicable)

Name William (Bill) Bunkley

Amendment Barcode _____
(if applicable)

Job Title President

Address P O Box 341644
Street
Tampa FL 33694
City State Zip

Phone 813-264-2977

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing The Florida Ethics & Religious Liberty Commission, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 1 9 /201

Meeting Date

Topic _____

Bill Number 1636
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/13
Meeting Date

Topic Infants Born Alive Bill Number 1636
(if applicable)

Name Sara Johnson Amendment Barcode _____
(if applicable)

Job Title Legislative Assistant to the President

Address 4853 S. Orange Ave. Phone (850) 567-8143
Street
Orlando FL 32806 E-mail saraj@family.org
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

Representing Florida Family Action

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.9.2013

Meeting Date

Topic Infants Born Alive

Bill Number 1636
(if applicable)

Name Dr. Charmaine Yoest

Amendment Barcode _____
(if applicable)

Job Title President and CEO of Americans United for Life

Address 655 15th St NW Suite 410

Phone 202.289.1478

Street

Washington

DC

20005

City

State

Zip

E-mail info@aul.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Americans United for 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.

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Transportation, *Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Education
Health Policy

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR JEFF BRANDES

22nd District

April 8, 2013

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

Chair Bean,

Please accept this letter for my tardy tomorrow, April 9, 2013, in the Health Policy Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal flourish extending to the right.

Senator Jeff Brandes
Florida Senate, District 22

CC: Sandra Stovall,
Staff Director

REPLY TO:

- ☐ 3637 Fourth Street North, Suite 101, St. Petersburg, Florida 33704-1300 (727) 552-2745
- ☐ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: KN 412

Caption: Senate Health Policy Committee

Case:

Judge:

Type:

Started: 4/9/2013 1:31:53 PM

Ends: 4/9/2013 3:30:27 PM **Length:** 01:58:35

1:32:12 PM	Roll call
1:33:19 PM	Opening remarks by Chair Bean
1:34:59 PM	SB 1368 by Sen. Ring
1:35:24 PM	Sen. Ring presents his bill
1:35:33 PM	AM 532980 by Sen. Sobel
1:35:49 PM	AM withdrawn
1:35:58 PM	AM 702850 by Sen. Sobel
1:36:24 PM	Chair Bean
1:36:53 PM	Public Testimony
1:36:59 PM	Brian Pitts - Justice 2 Jesus
1:39:10 PM	Jim Akin, Executive Director, National Association of Social Workers- waives in support
1:39:23 PM	Melinda Piller, Gov. Relations Director for FL Assoc for Marriage & Family Therapy- waives in support
1:39:58 PM	Roll call on SB 1368
1:40:07 PM	Chair Bean
1:40:34 PM	SB 648 by Sen. Hukill
1:41:15 PM	Sen. Joyner
1:41:53 PM	Sen. Hukill
1:42:34 PM	Sen. Joyner
1:43:23 PM	Sen. Hukill
1:43:53 PM	Sen. Flores
1:44:28 PM	Sen. Hukill
1:45:38 PM	Public Testimony
1:45:43 PM	Michael Garner, Pres & CEO, Florida Assoc of Health Plans- waives in support
1:45:51 PM	Tammy Perdue, General Counsel, AIF- waives in support
1:46:00 PM	Jennifer Green, President, Humana, Inc.- waives in support
1:46:15 PM	Joy Ryan - AHIP - waives in support
1:46:29 PM	Sen. Flores
1:46:54 PM	Brian Pitts
1:48:38 PM	Michael Garner
1:49:16 PM	Sen. Flores
1:49:21 PM	Michael Garner
1:49:34 PM	Sen. Joyner
1:51:30 PM	Michael Garner
1:52:23 PM	Chair Bean
1:52:29 PM	Sen. Joyner in debate
1:52:54 PM	Sen. Hukill waives close
1:53:16 PM	Roll call on SB 648
1:53:35 PM	Chair Bean
1:54:26 PM	Sen. Galvano
1:54:44 PM	Chair Bean
1:54:55 PM	SB 894 by Sen. Braynon
1:55:03 PM	Sen. Braynon presents his bill
1:55:28 PM	AM 950250
1:55:46 PM	AM 308534
1:56:07 PM	AM 363828
1:56:36 PM	Chair Bean
1:56:42 PM	Public Testimony
1:56:47 PM	Brian Pitts waives in support
1:57:19 PM	Roll call on SB 894
1:57:35 PM	Chair Bean
1:57:52 PM	SB 1724 by Sen. Garcia
1:58:33 PM	AM 731698

2:00:13 PM AM 962202 withdrawn
 2:00:38 PM Public Testimony
 2:00:54 PM Dana Farmer, Legislative Affairs Director, Disability Rights Florida- waives in support
 2:01:06 PM Chair Bean
 2:01:11 PM Brian Pitts
 2:03:19 PM Chair Bean
 2:03:22 PM Sen. Joyner
 2:03:55 PM Sen. Brandes w question
 2:04:47 PM Roll call on SB 1724
 2:05:18 PM Chair Bean
 2:05:24 PM SB 1112 by Sen. Garcia
 2:05:50 PM Sen. Garcia presents his bill
 2:06:30 PM AM 256948
 2:06:58 PM AM to the AM 105300
 2:07:30 PM Chair Bean
 2:07:55 PM Sen. Joyner
 2:09:19 PM Sen. Garcia
 2:09:25 PM Chair Bean
 2:09:52 PM Public Testimony
 2:09:56 PM Dana Farmer
 2:10:03 PM Shane Messer, Legislative Affairs, FL Council for Community Mental Health
 2:10:23 PM Mark Fontaine, Executive Director, Florida Alcohol & Drug Abuse Assoc
 2:10:58 PM Chair Bean
 2:11:23 PM Roll call on SB 1112
 2:11:45 PM Chair Bean
 2:12:04 PM SB 1636 by Sen. Flores
 2:13:23 PM Chair Bean
 2:13:37 PM Sen. Sobel
 2:14:47 PM Public Testimony
 2:15:12 PM Sheila Hopkins, FL Conference of Catholic Bishops
 2:15:24 PM Nathaniel Wilcox, Christian Family Coalition
 2:15:45 PM Dr. Charmaine Yoest, President & CEO of American United for Life
 2:20:04 PM Sara Johnson, Leg Asst to Pres, Florida Family Action
 2:20:19 PM Brian Pitts waives in support!
 2:20:30 PM Bill Bunkley, President, The Florida Ethics & Religious Liverty Commission, Inc.
 2:20:38 PM Maureen Ahern, Florida Right to Life
 2:21:05 PM Roll call on SB 1636
 2:21:36 PM Chair Bean
 2:21:44 PM SB 662 by Sen. Hays
 2:21:54 PM Sen. Hays presents his bill
 2:22:34 PM Sen. Joyner
 2:23:10 PM Sen. Hays
 2:24:05 PM Sen. Joyner
 2:24:49 PM Sen. Hays
 2:25:23 PM Sen. Joyner
 2:26:13 PM Sen. Hays
 2:26:39 PM Sen. Joyner
 2:26:44 PM Sen. Hays
 2:27:04 PM Sen. Joyner
 2:28:13 PM Chair Bean
 2:28:17 PM Public Testimony
 2:28:33 PM Tammy Perdue
 2:28:40 PM Gene Adams, Attorney, Florida Sheriff's Risk Management Fund
 2:28:55 PM Bob Asztalos, Florida Health Care Assoc
 2:29:04 PM Lance Lozano, Florida United Businesses Assoc.
 2:29:22 PM Tom Panza, Automated Health Care Solutions, speaks in opposition
 2:30:34 PM Larry Gonzalez, General Counsel, FSHP
 2:30:53 PM Cam Fentriss, Legislative Counsel, Florida Roofing, Sheet Metal & Air Cond. Contractors
 2:31:02 PM Kari Hebrank, Florida Home Builders Assoc
 2:31:10 PM Melissa Joiner, Director of Gov't Affairs, Florida Retail Federation
 2:31:22 PM Jim Brainerd, Florida Assoc of Insurance Agents
 2:31:31 PM Carolyn Johnson, Policy Director, FL Chamber of Commerce

2:31:52 PM Roll call on SB 662
2:32:22 PM SB 500 by Sen. Clemens
2:32:58 PM Sen. Clemens presents his bill
2:33:12 PM AM 339206 by Sen. Braynon
2:33:39 PM Chair Bean
2:34:04 PM AM 772488
2:34:21 PM Public Testimony
2:34:48 PM Tom Tatum, Sgt w/Volusia County Sheriff's Office, rep for FSA
2:35:06 PM Brian Pitts waives in support!
2:35:15 PM Janet Mabry, Florida State Massage Therapy Assoc.
2:35:28 PM Christina Hirz, Social Work Student Advocate, Boca Raton
2:35:44 PM Jon Miller, Government Affairs, Keiser University, Ft. Lauderdale
2:36:11 PM Chair Bean
2:36:29 PM Roll call on SB 500
2:37:05 PM Chair Bean
2:37:08 PM SB 808 by Sen. Margolis
2:37:29 PM AM 428062
2:38:13 PM Chair Bean
2:38:56 PM Public Testimony
2:39:25 PM Hansel Tookes, Medical Student-University of Miami/FMA
2:41:58 PM Marek Hirsch, Medical Student-University of Miami/FMA
2:43:51 PM Dyani Loo, Medical Student-University of Miami/FMA
2:44:25 PM Karine Goedike, Drug Court Therapist, Daytona
2:45:24 PM Shira Kastan, Asst. Vice President, University of Miami
2:45:30 PM Robert Batie, Substance Abuse/Mental Health Counselor, Daytona Beach
2:45:32 PM Stephen Winn, Executive Director, FL Osteopathic Medical Assoc.-waives in support
2:45:33 PM Michelle Jacquis, Legislative Affairs Director, FL Medical Assoc.
2:46:51 PM Chair Bean
2:47:27 PM Allison DeFoor, Chairman-Project on Accountable Justice-FSU
2:48:59 PM Mark Fontaine
2:49:05 PM Paul Arons, retired, former Medical Director, DOH Bureau of HIV/AIDS & Hepatitis
2:49:33 PM Sen. Joyner in debate
2:50:12 PM Chair Bean
2:50:23 PM Roll call on SB 808
2:50:54 PM SB 1358 by Sen. Flores
2:51:43 PM Sen. Flores presents her bill
2:54:55 PM Chair Bean
2:55:23 PM Public Testimony
2:55:27 PM Joy Ryan
2:55:29 PM Michael Garner
2:55:39 PM Steve McCall, R.Ph. Director Pharmacy Audit, CVS Caremark
2:56:39 PM Chair Bean
2:56:50 PM Mike Ayotte, Sr. Director, Governmental Affairs, CVS Caremark
2:58:15 PM Jim Koivisto, Pharmacist, Jacksonville
2:58:36 PM Jim Powers, Pharmacist Consultant, Tallahassee
2:58:40 PM Bill Napier, Pharmacist, Jacksonville
3:00:55 PM Preston McDonald, Pharmacist, Milton
3:01:48 PM Bill Mincy, VP, PPSC, Tallahassee
3:01:57 PM Greg Toole, Pharmacist, Jacksonville
3:02:04 PM Bob Parrado, Pharmacist, Tampa
3:02:11 PM Larry Gonzalez
3:02:17 PM George Malone, Pharmacist, Tampa
3:02:31 PM Larry Williams, Attorney, American Pharmacy Cooperative
3:02:38 PM Bernadette Brown, Director of Pharmacy, Tallahassee
3:02:46 PM Brian Pitts
3:04:43 PM Jorge Chamizo, Attorney, Independent Pharmacy Cooperative
3:04:57 PM Sen. Flores
3:05:08 PM Chair Bean
3:05:12 PM Roll call on SB 1358
3:06:01 PM SB 818 by Sen. Garcia
3:06:09 PM Sen. Joyner
3:06:54 PM Sen. Garcia

3:07:19 PM	Sen. Joyner
3:08:38 PM	Sen. Sobel
3:09:18 PM	Sen. Garcia
3:10:26 PM	Sen. Sobel
3:11:10 PM	Sen. Garcia
3:11:29 PM	Sen. Sobel
3:11:45 PM	Sen. Garcia
3:12:34 PM	Sen. Joyner
3:13:05 PM	Sen. Garcia
3:13:13 PM	Sen. Joyner
3:13:20 PM	Chair Bean
3:13:36 PM	Michael Ayotte
3:13:48 PM	Bill Mincy
3:15:44 PM	Michael Ayotte
3:19:05 PM	Chair Bean
3:19:54 PM	Public Testimony
3:20:06 PM	Preston McDonald
3:21:09 PM	Jim Powers
3:21:29 PM	Bob Parrado
3:24:09 PM	Dan Luce, National Director, Pharmacy Affairs, Walgreens
3:29:46 PM	Roll call on SB 818
3:30:12 PM	Meeting Adjourned