The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Bean, Chair
Senator Sobel, Vice Chair

MEETING DATE: Wednesday, March 5, 2014
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 872** Richter (Similar H 709, Compare H 711, Link S 840)	Alzheimer's Disease; Exempting grant programs administered by the Alzheimer's Disease Research Grant Advisory Board from the Administrative Procedure Act; requiring the Division of Emergency Management, in coordination with local emergency management agencies, to maintain a registry of persons with special needs; providing additional staffing requirements for special needs shelters; authorizing the Department of Health, in coordination with the division, to adopt rules relating to standards for the special needs registration program; establishing the Ed and Ethel Moore Alzheimer's Disease Research Program within the department, etc. HP 03/05/2014 Temporarily Postponed GO AP	Temporarily Postponed
2	**SB 840** Richter (Similar H 711, Compare H 709, Link S 872)	Public Records and Meetings/Alzheimer's Disease Research Grant Advisory Board; Providing an exemption from public records requirements for research grant applications submitted to the Alzheimer's Disease Research Grant Advisory Board under the Ed and Ethel Moore Alzheimer's Disease Research Program and records generated by the board relating to the review of the applications; providing an exemption from public meetings requirements for those portions of meetings of the board during which the research grant applications are discussed; authorizing disclosure of such confidential information under certain circumstances, etc. HP 03/05/2014 Temporarily Postponed GO RC	Temporarily Postponed

Consideration of proposed committee bill:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SPB 7028**	Telemedicine; Citing this act as the "Florida Telemedicine Act"; creating licensure and registration requirements; providing health insurer and health plan reimbursement requirements for telemedicine; providing requirements for reimbursement of telemedicine services under the Medicaid program, etc.	Submitted as Committee Bill Yeas 7 Nays 2
4	**SB 918** Flores (Identical H 1047)	Termination of Pregnancies; Revising the circumstances under which a pregnancy in the third trimester may be terminated; authorizing administrative discipline for a violation of certain provisions by certain licensed professionals; requiring a physician to perform certain examinations to determine the viability of a fetus; prohibiting an abortion of a viable fetus outside of a hospital, etc. HP 03/05/2014 Temporarily Postponed JU RC	Temporarily Postponed
5	**SB 1036** Grimsley (Similar H 1059)	Nursing Education Programs; Revising definitions of the terms “clinical training” and “practice of practical nursing”; exempting nurses who are certified by an accredited program from continuing education requirements; removing the limitation on the percentage of clinical training that may consist of clinical simulation; requiring nursing education programs that prepare students for the practice of professional nursing to be accredited, etc. HP 03/05/2014 Fav/CS ED	Fav/CS Yeas 9 Nays 0
6	**SB 976** Bean (Similar H 1179)	Nurse Registries; Providing that registered nurses, licensed practical nurses, certified nursing assistants, and home health aides are independent contractors and not employees of the nurse registries that referred them; specifying that a nurse registry is not responsible for monitoring, supervising, managing, or training a registered nurse, licensed practical nurse, certified nursing assistant, or home health aide referred by the nurse registry, etc. HP 03/05/2014 Fav/CS JU AHS AP	Fav/CS Yeas 8 Nays 1
	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 872
INTRODUCER:	Senator Richter
SUBJECT:	Alzheimer's Disease
DATE:	March 3, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	**Pre-meeting**
2.			GO	
3.			AP	

I. Summary:

SB 872 makes a number of changes related to Alzheimer's disease that implement recommendations of the Purple Ribbon Task Force which was created by the Legislature in 2012.

The bill requires the Division of Emergency Management (DEM), in coordination with local emergency management agencies, to maintain a registry of persons with special needs using an electronic registration form and database. The bill requires memory disorder clinics, and authorizes licensed physicians and pharmacies, to provide information and assistance to individuals with special needs and their caregivers regarding special needs shelter registration.

The bill requires county health departments to staff special needs shelters with a person who is familiar with the needs of persons with Alzheimer's disease, and requires that all special needs shelters establish designated sheltering areas for persons with Alzheimer's disease or related dementia.

The bill creates the Ed and Ethel Moore Alzheimer's Disease Research Program (Program) to fund research for the prevention and cure of Alzheimer's disease. The bill establishes Program goals and provides for the award of grants and fellowships through a competitive, peer-reviewed process based on scientific merit. The bill also creates the Alzheimer's Disease Research Grant Advisory Board (Board), which is a 12-member board of clinical professionals, to advise the State Surgeon General on the Program and funding awards made under it. The bill requires the Board to report annually on a number of measures related to the Program.

Finally, the bill requires the Department of Elder Affairs (DOEA) to develop performance standards for memory disorder clinics and to condition contract funding on compliance with the standards.

II. Present Situation:

Alzheimer's Disease

Alzheimer's disease is a progressive, degenerative disorder that attacks the brain's nerve cells and results in loss of memory, thinking, and language skills, and behavioral changes.[1] Alzheimer's disease was named after Dr. Alois Alzheimer, a German physician, who in the early 1900's cared for a 51-year-old woman suffering from severe dementia. Upon the woman's death, Dr. Alzheimer conducted a brain autopsy and found bundles of neurofibers and plaques in her brain, which are distinguishing characteristics of what we call Alzheimer's disease today.[2]

More than 5 million Americans currently live with Alzheimer's disease, and that number is projected to rise to 16 million by 2050.[3] As the life expectancy for Americans has continued to rise, so has the number of new cases of Alzheimer's disease. For instance, in 2000 there were an estimated 411,000 new cases of Alzheimer's disease in the United States, and in 2010 that number was estimated to be 454,000 – a 10 percent increase.[4] The number is expected to rise to 959,000 new cases of Alzheimer's disease by 2050, a 130 percent increase from 2000.[5] Specifically in Florida, approximately 360,000 people age 65 or older had Alzheimer's disease in 2000 and in 2010 that number had risen to 450,000.[6]

As the number of people with Alzheimer's disease increases, so does the cost of caring for these individuals. In 2013, the aggregate cost for health care, long-term care, and hospice for persons with Alzheimer's and other dementias was estimated to be $203 billion. That number is projected to be $1.2 trillion by 2050.[7] A major contributing factor to the cost of care for persons with Alzheimer's disease is that these individuals have more hospital stays, skilled nursing home stays, and home health care visits than older persons who do not have Alzheimer's disease. Research shows that 29 percent of individuals with Alzheimer's disease who have Medicare also have Medicaid coverage, which pays for nursing home care and other long-term care services.[8] The total Medicaid spending for people with Alzheimer's disease (and other dementia) in 2013 is projected to be $37 billion.[9]

In addition to the cost of health care, there is a significant cost associated with unpaid caregivers. An unpaid caregiver is primarily a family member, but can also be other relatives or friends. These caregivers often provide assistance with daily activities, such as shopping for groceries, preparing meals, bathing, dressing, grooming, assisting with mobility, helping the person take

---

[1] Alzheimer's Foundation of America, *About Alzheimer's, Definition of Alzheimer's*, http://www.alzfdn.org/AboutAlzheimers/definition.html (last visited Feb. 25, 2014).
[2] Michael Plontz, *A Brief History of Alzheimer's Disease*, TODAY'S CAREGIVER, http://www.caregiver.com/channels/alz/articles/a_brief_history.htm (last visited Feb. 25, 2014).
[3] Alzheimer's Association., *Fact Sheet: 2013 Alzheimer's Disease Facts and Figures* (March 2013), *available at* http://www.alz.org/documents_custom/2013_facts_figures_fact_sheet.pdf (last visited Feb. 25, 2014).
[4] Alzheimer's Association., *2013 Alzheimer's Disease Facts and Figures*, 9 ALZHEIMER'S & DEMENTIA (Issue 2) at 20, *available at* http://www.alz.org/downloads/facts_figures_2013.pdf (last visited Feb. 25, 2014).
[5] *Id*.
[6] *Id*. at 21.
[7] *Id*. at 49.
[8] *Id*. at 39
[9] *Id*. at 49.

medications, making arrangements for medical care, and performing other household chores. In 2012, 15.4 million unpaid caregivers provided an estimated 17.5 billion hours of unpaid care, valued at $216.4 billion.[10] In 2010, there were 1,015,000 million caregivers in Florida who provided an estimated value of unpaid care reaching nearly $14.3 million.[11]

Florida Purple Ribbon Task Force

In 2012, the Legislature established the Purple Ribbon Task Force (Task Force) within the DOEA to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on a comprehensive set of issues related to Alzheimer's disease and related forms of dementia. Specifically, the Task Force was required to:

- Submit an interim study on state trends on persons with Alzheimer's disease and their needs;
- Assess the current and future impact of Alzheimer's disease and related forms of dementia on the state;
- Examine the existing industries, services, and resources addressing the needs of persons having Alzheimer's disease or a related form of dementia and their family caregivers;
- Examine the needs of persons of all cultural backgrounds having Alzheimer's disease or a related form of dementia and how their lives are affected by the disease from younger-onset, through mid-stage, to late-stage;
- Develop a strategy to mobilize a state response to Alzheimer's disease; and
- Hold public meetings and employ technological means to gather feedback on the recommendations submitted by persons having Alzheimer's disease or a related form of dementia and their family caregivers and by the general public.

Other issues to be addressed by the Task Force included:

- The role of the state in providing community-based care, long-term care, family caregiver support, and assistance to persons who are in the early stages of Alzheimer's disease, who have younger-onset Alzheimer's disease, or who have a related form of dementia;
- The development of state policy with respect to persons having Alzheimer's disease or a related form of dementia;
- Surveillance of persons having Alzheimer's disease or a related form of dementia for the purpose of accurately estimating the number of such persons in the state;
- Existing services, resources, and capacity; including:
    - The type, cost, and availability of dementia services in the state;
    - Policy requirements and effectiveness for dementia-specific training for professionals providing care;
    - Quality care measures employed by providers of care;
    - The capability of public safety workers and law enforcement officers to respond to persons having Alzheimer's disease or a related form of dementia;

[10] This number was established by using an average of 21.9 hours of care a week with a value of $12.33 per hour. (*Id.* at 30).
[11] *Id*. at 32.

- The availability of home and community-based services and respite care for persons having Alzheimer's disease or a related form of dementia and education and support services to assist their families and caregivers;
- An inventory of long-term care facilities and community-based services serving persons having Alzheimer's disease or a related form of dementia;
- The adequacy and appropriateness of geriatric-psychiatric units for persons having behavior disorders associated with Alzheimer's disease or other dementia;
- Residential assisted living options for persons having Alzheimer's disease or a related form of dementia;
- The level of preparedness of service providers before, during, and after a catastrophic emergency involving a person having Alzheimer's disease or a related form of dementia; and
- Needed state policies or responses.

As its final responsibility, the Task Force was required to submit final, date-specific recommendations in the form of an Alzheimer's disease state plan to the Governor and Legislature by August 1, 2013.[12]

The Task Force has issued its final report and recommendations.[13] Pertinent to this bill are the following recommendations:

- To allocate $10 million annually to support Alzheimer's disease research through a peer-reviewed grant program;[14]
- To develop a well-coordinated and dementia-capable emergency management system, including reforms to the special needs shelter and registry function;[15] and,
- To fund memory disorder clinics according to performance standards and benchmark goals related to base level and incentive funding.[16]

Alzheimer's Research Funding

The 2014 budget passed by Congress and signed into law by the President on January 17, 2014 contains increased funding for Alzheimer's disease initiatives. The new federal funding includes a $100 million increase for the National Institute on Aging (NIA)[17] for Alzheimer's research, which will be added to what the National Institutes of Health (NIH) estimates will be $484 million in Alzheimer's research funding across NIH in the 2013 fiscal year.[18]

[12] Ch. 2012-172, Laws of Fla.
[13] Florida Department of Elder Affairs, *Purple Ribbon Task Force Final Report and Recommendations* (2013), *available at* http://elderaffairs.state.fl.us/doea/purple_ribbon/PRTF_final_report.pdf (last visited Feb. 26, 2014).
[14] *Id*. at 30.
[15] *Id*. at 64 – 66.
[16] *Id*. at 72 – 73.
[17] NIA is one of the 27 institutes and centers of the National Institutes of Health. NIA is the primary federal agency supporting and conducting Alzheimer's research.
[18] Alzheimer's Association, *Record $122 million increase for Alzheimer's disease signed into law by President Obama*, http://www.alz.org/news_and_events_law_by_obama.asp (last visited Feb. 26, 2014).

The NIA funds Alzheimer's Disease Centers (ADC) at major medical institutions with the goal of improving diagnosis and care, and ultimately finding a way to cure and possibly prevent Alzheimer's disease. Although each center has its own unique area of emphasis, a common goal of the ADCs is to enhance research on Alzheimer's disease by providing a network for sharing new ideas as well as research results. Collaborative studies draw upon the expertise of scientists from many different disciplines. Currently, there are 29 NIA-funded centers, including one at the Mayo Clinic in Jacksonville.[19]

In 2002, the Legislature created the Florida Alzheimer's Center and Research Institute (Institute) at the University of South Florida (USF).[20] The Institute was governed by a not-for-profit corporation, acting as an instrumentality of the state, under the direction of its 16-member Board of Directors. Its mission related to research, education, treatment, prevention, and early detection of Alzheimer's disease.[21] In 2004, the Legislature renamed the Institute the Johnnie B. Byrd, Sr. Alzheimer's Center and Research and funded it with a $15 million distribution from alcoholic beverage tax collections for the purposes of conducting research, developing and operating integrated data projects, and providing assistance to memory disorder clinics.[22] The 2006 Legislature replaced the automatic distribution with a recurring appropriation from General Revenue, and clarified that researchers from any university or established research institution were eligible for funding from the Institute.[23] The recurring appropriation was reduced to $13.5 million in 2007[24] and eliminated in 2008.[25] In 2009, the statute authorizing the Institute was substantially revised to establish the Institute as an entity within and operated by the USF and provided that its budget included any money specifically appropriated in the General Appropriations Act, or otherwise provided to it from private, local, state, or federal sources, or income generated by activities at the Institute.[26]

Finally, s. 430.501, F.S., creates the Alzheimer's Disease Advisory Committee, appointed by the Governor, to advise the DOEA in the performance of its duties. The committee also has responsibility for awarding research grants to qualified entities from any funds made available to the DOEA through gifts, grants, or other sources.

Special Needs Shelters

The Comprehensive Emergency Management Plan (CEMP) is the master operations document for the state in responding to all emergencies, and all catastrophic disasters, whether major or minor.[27] The CEMP, which is developed and maintained by the DEM, in coordination with local governments and agencies and organizations with emergency management responsibilities,

[19] U.S. Department of Health & Human Services, National Institute on Aging, *Alzheimer's Disease Research Centers*, http://www.nia.nih.gov/alzheimers/alzheimers-disease-research-centers#florida (last visited Feb. 26, 2014).
[20] Ch. 2002-387, s. 191, Laws of Fla.; ch. 2002-389, s. 2, Laws of Fla.
[21] *Id.*
[22] Ch. 2004-2, ss. 3 & 5, Laws of Fla.
[23] Ch. 2006-182, s.12, Laws of Fla.
[24] Ch. 2007-332, Laws of Fla.
[25] Ch. 2008-113, Laws of Fla. Although the recurring appropriation was repealed, the Institute has continued to receive state funding via an allocation to the USF Medical Center in the Department of Education's budget. Funding provided to the Institute is now at the discretion of the USF.
[26] Ch. 2009-60, s. 5, Laws of Fla.
[27] Section 252.35(2)(a), F.S.

defines the responsibilities of all levels of government and private, volunteer, and non-governmental organizations that make up the State Emergency Response Team. In general, the CEMP assumes that all emergencies and disasters are local, but local governments may require state assistance.[28]

The CEMP includes a shelter component which provides policy guidance for sheltering people with special needs.[29] Specifically, it states: [30]

> All shelters must meet physical and programmatic accessibility requirements as defined by the Americans with Disabilities Act and Florida Accessibility Codes. Special Needs Shelters provide a higher level of attendant care than general population shelters. Any facility designated as a shelter must meet minimum safety requirements. To ensure consistency with state and national standards, guidelines and best practices, the Division has adopted the American Red Cross (ARC) 4496 Standards for Hurricane Evacuation Shelter Selection.[31]

Each local emergency management agency is required to maintain a registry of persons with special needs.[32] The DEM has lead responsibility for community outreach and education about registration and shelter stays.[33] However, community-based service providers, including home health agencies, hospices, nurse registries, and home medical equipment providers, and state agencies likely to serve individuals with special needs, including the Department of Children and Families, the Department of Health (DOH), the Agency for Health Care Administration, the Department of Education, the Agency for Persons with Disabilities, and the DOEA, are directed to provide registration information to all of their special needs clients and to collect registration information during the client intake process.[34]

The law further requires agencies that contract with providers for the care of people with disabilities or who are otherwise dependent on others for care to include emergency and disaster planning conditions in their service contracts. Among other provisions, the contract must include a requirement for the provider to have a procedure to help its clients register for special needs sheltering.[35]

The DOH, through the county public health units, is tasked with lead responsibility, in coordination with the local emergency management agency, to recruit and staff special needs shelters with

---

[28] Florida Division of Emergency Management, *The State of Florida Comprehensive Emergency Management Plan*, 11, (Feb. 2012), *available at* http://floridadisaster.org/documents/CEMP/2012/2012%20State%20CEMP%20Basic%20Plan%20-%20Final.pdf (last visited Feb. 26, 2014). "Initial response is by local jurisdictions working with county emergency management agencies. It is only after local emergency response resources are exhausted, or local resources do not exist to address a given emergency or disaster that state emergency response resources and assistance may be requested by local authorities." (*Id.* at 19).

[29] A "person with special needs" means someone, who during periods of evacuation or emergency, requires sheltering assistance, due to physical impairment, mental impairment, cognitive impairment, or sensory disabilities. (Rule 64-3.010(1), F.A.C.)

[30] Florida Division of Emergency Management, *supra* note 28 at 35.

[31] *Available at* http://www.floridadisaster.org/Response/engineers/documents/newarc4496.pdf (last visited Feb. 26, 2014).

[32] Section 252.355(1) F.S.

[33] Section 252.355(2), F.S.

[34] Sections 252.355(1) & (6), F.S.

[35] Section 252.356(3), F.S.

appropriate health care personnel, pursuant to a staffing plan developed at the local level.[36] Designation and operation of the shelter, however, remains the responsibility of the local emergency management agency, [37] although subject to operational standards established by rule of the DOH.[38]

Admission to a special needs shelter is subject to an assessment of the person's eligibility. A person is eligible if he or she:[39]

- Has special needs;
- Has care needs that exceed basic first aid that is available at the general emergency shelters; and
- Has impairments that are medically stable and do not exceed the capacity, staffing, and equipment of the shelter.

A shelter may accept someone whose needs exceed the eligibility criteria. Decisions related to shelter capacity, both available skills and equipment, are made by the local emergency management agency and the county public health department.[40]

Alzheimer's Disease Initiative

In 1985, the Florida Legislature created the Alzheimer's Disease Initiative (ADI) to provide a continuum of services to individuals with Alzheimer's disease and their families.[41] The ADI has four objectives: (1) to provide supportive services; (2) to establish memory disorder clinics; (3) to provide model day care programs to test new care alternatives; and (4) to establish a research database and brain bank to support research.[42] There are 15 memory disorder clinics throughout the state, 13 of which are state funded.[43] The purpose of these clinics is to conduct research related to diagnostic technique, therapeutic interventions, and supportive services for persons with Alzheimer's disease and to develop caregiver-training materials.[44] According to the ADI, the memory disorder clinics are required to:

- Provide services to persons suspected of having Alzheimer's disease or other related dementia;
- Provide 4 hours of in-service training during the contract year to all ADI respite and model day care service providers and develop and disseminate training models to service providers and the DOEA;

[36] Section 381.0303(1) & (2), F.S.
[37] Section 381.0303(2)(c), F.S.
[38] Section 381.0303(6), F.S. requires the DOH to adopt rules for the following: the definition of "person with special needs;" shelter services; practitioner and facility reimbursement; staffing levels; supplies and equipment; registration procedures; family and caretaker needs; and pre-event planning.
[39] Rule 64-3.020, F.A.C.
[40] *Id*.
[41] *See* ss. 430.501 – 430.504, F.S.
[42] Florida Department of Elder Affairs, *Summary of Programs & Services, Alzheimer's Disease Initiative* (Jan. 2013) at 91, *available at* http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2013/2013%20SOPS%20Section%20D.pdf (last visited Feb. 25, 2014).
[43] *Id*.
[44] Section 430.502(2), F.S.

- Develop training materials and educational opportunities for lay and professional caregivers and provide specialized training for caregivers and caregiver organizations;
- Conduct service-related applied research;
- Establish a minimum of one annual contact with each respite care and model day care service provider to discuss, plan, develop, and conduct service-related research projects; and
- Plan for the public dissemination of research findings through professional papers and to the general public.[45]

Individuals diagnosed with or suspected of having Alzheimer's disease are eligible for memory disorder clinic services. In the 2012-2013 fiscal year, Florida's memory disorder clinics received nearly $3 million in state funds and served a projected 6,722 clients.[46]

Model day care programs have been established in conjunction with memory disorder clinics to test therapeutic models and provide day care services. These programs provide a safe environment where Alzheimer's patients can socialize with each other, as well as receive therapeutic interventions designed to maintain or improve their cognitive functioning. Model day care programs also provide training for health care and social service personnel in the care of individuals with Alzheimer's disease or related memory disorders. There are currently four model day care programs in the state.[47]

The ADI also includes respite care services, which includes in-home, facility-based, emergency and extended care respite for caregivers who serve individuals with memory disorders.[48] In addition to respite care services, caregivers and consumers may receive supportive services essential to maintaining individuals with Alzheimer's disease or related dementia in their own homes. The supportive services may include caregiver training and support groups, counseling, consumable medical supplies, and nutritional supplements. Services are authorized by a case manager based on a comprehensive assessment. Alzheimer's Respite Care programs are established in all of Florida's 67 counties.[49]

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.

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

[45] Florida Department of Elder Affairs, *supra* note 42 at 90-91.
[46] *Id*. at 96.
[47] *Id*. at 92.
[48] *Id*. at 91.
[49] *Id*.

Governor, must be confirmed by the Senate, and are subject to the dual-office-holding prohibition of s. 5(a), Art. II 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.

III. Effect of Proposed Changes:

Section 1 exempts grant programs administered by the Alzheimer's Disease Research Grant Advisory Board (the Board) from chapter 120 of the Florida Administrative Procedure Act.[50]

Section 2 shifts responsibility for maintaining a special needs registry from the local emergency management agencies to the DEM, working in coordination with the local agencies. In effect, the bill centralizes the registry into a single agency, although still providing access to the local emergency management agencies. The bill directs the DEM to develop a uniform electronic registration form and database which the local agencies can use to upload registration information they receive. The DEM is directed to develop and post on its website a brochure describing the registration procedures.

The bill adds memory disorder clinics to the existing list of providers and agencies that are required to give registration information to their special needs clients and to assist emergency management by collecting registration information for persons with special needs during their program intake procedures and establishing education programs for their clients about the registration process and disaster preparedness. These duties are expanded by the bill to require the providers and agencies also to provide registration information to client caregivers and to register their special needs clients annually. The bill specifies that physicians and pharmacies may, but are not required to, perform all of these same duties.

Section 3 requires county health departments to ensure that special needs shelters are staffed with a person who is familiar with the needs of persons with Alzheimer's disease. In addition, the bill requires that all special needs shelters designate areas within the shelter for persons with Alzheimer's disease or related dementia to maximize their normal routines to the greatest extent possible. The bill specifies that the DOH must work in conjunction with the DEM to adopt rules related to the special needs shelters and includes forms within the scope of the DOH's rulemaking authority.

Section 4 creates the Ed and Ethel Moore Alzheimer's Disease Research Program (Program) within the DOH to fund research leading to prevention of or a cure for Alzheimer's disease. Long-term goals of the program are to:

- Enhance the health of Floridians by researching improved prevention, diagnosis, treatment, and cure of Alzheimer's disease.

[50] The APA establishes comprehensive and standardized administrative procedures pertaining to executive branch agency actions.

- Expand the foundation of knowledge relating to the prevention, diagnosis, treatment, and cure of Alzheimer's disease.
- Stimulate activity in the state related to Alzheimer's disease research.

The Program is modeled after the James and Esther King Biomedical Research Program that is established in s. 215.5602, F.S.

The bill specifies that:

- Program funds may be used only for awards of grants and fellowships through a competitive, peer-reviewed process and expenses related to Program administration. Grants will be awarded by the State Surgeon General on the basis of scientific merit.
- Funding applications may be submitted from any university or established research institute[51] in the state and qualified investigators, regardless of institution, will have equal access to compete for funding.
- Implementation of the Program is contingent upon a legislative appropriation.

In addition, the bill creates the 12-member Alzheimer's Disease Research Grant Advisory Board within the DOH, as follows:

- The Board consists of three gerontologists, three geriatric psychiatrists, three geriatricians, and three neurologists appointed by the State Surgeon General to 4-year terms, except that six of the initial appointees shall serve 2-year terms. Initial appointments must be made by October 1, 2014. Appointees must have experience in Alzheimer's disease or related biomedical research. The Board chair is elected by the members to serve as chair for 2 years. No Board member may serve on the Board more than two consecutive terms.
- The Board must adopt internal organization procedures, as necessary, for its organization and establish and follow guidelines for ethical conduct to avoid conflicts of interest. A member may not participate in any discussion or decision related to a research proposal by any entity with which the member has a relationship, whether as governing board member, employee, or contracted party.
- Members of the Board serve without compensation.
- The DOH must provide staff to the Board.
- The Board's role is to:
    - Advise the State Surgeon General on the scope of the Program and proposals to be funded;
    - Advise on Program priorities and emphases;
    - Assist in the development of appropriate linkages to nonacademic entities; and

[51] Currently, the DOH defines an "established research institute" as an organization that is any Florida nonprofit or foreign nonprofit covered under Chapter 617, *F.S.*, with a physical location in Florida, whose stated purpose and powers are scientific, biomedical or biotechnological research and/or development and is legally registered with the Florida Department of State, Division of Corporations. This includes federal government and non-profit medical and surgical hospitals including Veteran's Administration hospitals. Florida Department of Health, *James and Esther King Biomedical Research Program, Announcement of Funding Opportunity and Call for Applications* (2013-2014), *available at* http://www.research.fsu.edu/newsletters/2013/July/documents/2013-2014%20SUMMER%20CALL%20King%20Program.pdf (last visited Feb. 25, 2014).

- Develop and provide oversight of mechanisms for disseminating research results.

- The Board must submit a fiscal year progress report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General by February 15 annually that includes:

  - A list of funded projects;
  - A list of funded researchers;
  - A list of publications in peer-reviewed journals involving research supported by grants or fellowships awarded under the Program;
  - The state ranking and total amount of Alzheimer's disease research funding received from the National Institutes of Health;
  - New grants for Alzheimer's disease research which were based on researched funded by the Program;
  - Progress toward the goals of the Program; and
  - Recommendations to further the mission of the Program.

Section 5 directs the DOEA to develop performance standards for memory disorder clinics; to include the standards as a condition of each clinic's funding contract; and to measure and score each clinic based on the standards.

Base-level funding standards must address, at a minimum, quality of care, comprehensiveness of services, and access to services.

Standards for incentive funding beyond base-level funding, subject to legislative appropriation, include:

- A significant increase in the volume of clinical services;
- A significant increase in public outreach to low-income and minority populations;
- A significant increase in the acceptance of Medicaid and commercial insurance policies; and
- Significant institutional financial commitments.

Section 6 provides an effective date of July 1, 2014.

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 research program created by the bill, if funded, will have a positive fiscal impact on any private institutions or researchers who are awarded grants or fellowships under the program.

It is not clear; however, whether incentive funding for the Memory Disorder Clinics, as contemplated by the bill, would be the result of a supplemental appropriation for the program, or a redistribution of the existing appropriation. Thus, it is not possible to determine the economic impact on the programs at this time.

C. Government Sector Impact:

The DEM is expected to incur an indeterminate cost to develop and implement the electronic registry required by SB 872. The DEM bill analysis was not available at the time this analysis was finalized.

Local governments may incur costs related to facilities they may now designate as special needs shelters due to the requirement to provide dedicated space at each for persons with Alzheimer's disease.

The research program created by the bill, if funded, will have a positive fiscal impact on any public institutions or researchers employed at public institutions who are awarded grants or fellowships under the program.

The requirement for performance standards for the memory disorder clinics[52] may enable more effective administration of the Memory Disorder Clinic funding.

VI. Technical Deficiencies:

It may be appropriate to add language to line 302 expressly requiring that awards under the program be pursuant to a competitive, peer-reviewed process. This is a stated element of the Program, but not part of the portion of the bill that specifically addresses awards. Similar language appears in s. 215.5602(5)(b) (6), F.S., relating to the James and Esther King

[52] The DOEA indicates it has already begun including performance standards for base level funding. Conversation with Mary Hodges, Chief, Bureau of Community& Support Services, Florida Department of Elder Affairs (Feb. 28, 2014).

Biomedical Research Program, s. 381.922(3)(a), F.S., relating to the William G. "Bill" Bankhead, Jr. and David Coley Cancer Research Program, and s. 381.84(6), F.S., relating to contracts awarded under the Comprehensive Statewide Tobacco Education and Use Prevention Program. Line 302 could be amended with the language that appears in Florida's other competitive grant programs to read: "consultation with the board, on the basis of scientific merit as determined by an open, competitive, peer-reviewed process to ensure objectivity, consistency, and high quality."

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.80, 252.355, 381.0303, and 430.502.

This bill creates section 381.82 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Richter

23-01006-14 2014872__

A bill to be entitled

An act relating to Alzheimer's disease; amending s. 120.80, F.S.; exempting grant programs administered by the Alzheimer's Disease Research Grant Advisory Board from the Administrative Procedure Act; amending s. 252.355, F.S.; requiring the Division of Emergency Management, in coordination with local emergency management agencies, to maintain a registry of persons with special needs; requiring the division to develop and maintain a special needs shelter registration program; requiring specified agencies and authorizing specified health care providers to provide registration information to special needs clients or their caregivers and to assist emergency management agencies in registering persons for special needs shelters; amending s. 381.0303, F.S.; providing additional staffing requirements for special needs shelters; requiring special needs shelters to establish designated shelter areas for persons with Alzheimer's disease or related forms of dementia; authorizing the Department of Health, in coordination with the division, to adopt rules relating to standards for the special needs registration program; creating s. 381.82, F.S.; establishing the Ed and Ethel Moore Alzheimer's Disease Research Program within the department; requiring the program to provide grants and fellowships for research relating to Alzheimer's disease; creating the Alzheimer's Disease Research Grant Advisory Board; providing for

23-01006-14 2014872__

appointment and terms of members; providing for organization, duties, and operating procedures of the board; requiring the department to provide staff to assist the board in carrying out its duties; requiring the board to annually submit recommendations for proposals to be funded; requiring a report to the Governor, Legislature, and State Surgeon General; providing that implementation of the program is subject to appropriation; amending s. 430.502, F.S.; requiring the Department of Elderly Affairs to develop minimum performance standards for memory disorder clinics to receive base-level annual funding; requiring the department to provide incentive-based funding, subject to appropriation, for certain memory disorder clinics; providing an effective date.

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

Section 1. Subsection (15) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(15) DEPARTMENT OF HEALTH.—

(a) Notwithstanding s. 120.57(1)(a), formal hearings may not be conducted by the State Surgeon General, the Secretary of Health Care Administration, or a board or member of a board within the Department of Health or the Agency for Health Care Administration for matters relating to the regulation of professions, as defined by chapter 456. Notwithstanding s. 120.57(1)(a), hearings conducted within the Department of Health

in execution of the Special Supplemental Nutrition Program for Women, Infants, and Children; Child Care Food Program; Children's Medical Services Program; the Brain and Spinal Cord Injury Program; and the exemption from disqualification reviews for certified nurse assistants program need not be conducted by an administrative law judge assigned by the division. The Department of Health may contract with the Department of Children and Families ~~Family Services~~ for a hearing officer in these matters.

(b) This chapter does not apply to grant programs administered by the Alzheimer's Disease Research Grant Advisory Board pursuant to s. 381.82.

Section 2. Section 252.355, Florida Statutes, is amended to read:

252.355 Registry of persons with special needs; notice; registration program.—

(1) In order to meet the special needs of persons who would need assistance during evacuations and sheltering because of physical, mental, cognitive impairment, or sensory disabilities, the division, in coordination with each local emergency management agency in the state, shall maintain a registry of persons with special needs located within the jurisdiction of the local agency. The registration shall identify those persons in need of assistance and plan for resource allocation to meet those identified needs.

(2) In order to ensure that all persons with special needs may register, the division shall develop and maintain a special needs shelter registration program.

(a) The registration program shall include, at a minimum, a

uniform electronic registration form and a database for uploading and storing submitted registration forms which may be accessed by the appropriate local emergency management agency. The link to the registration form shall be easily accessible on each local emergency management agency's website. Upon receipt of a paper registration form, the local emergency management agency shall enter the person's registration information into the database.

(b) To assist ~~the local emergency management agency~~ in identifying ~~such~~ persons with special needs, home health agencies, hospices, nurse registries, home medical equipment providers, the Department of Children and Families ~~Family Services~~, the Department of Health, the Agency for Health Care Administration, the Department of Education, the Agency for Persons with Disabilities, the ~~and~~ Department of Elderly Affairs, and memory disorder clinics shall, and any physician licensed under chapter 458 or chapter 459 and any pharmacy licensed under chapter 465 may, annually ~~shall~~ provide registration information to all of their special needs clients or their caregivers ~~and to all persons with special needs who receive services~~. The division shall develop a brochure that provides information regarding special needs shelter registration procedures. The brochure shall be published on the division's website. All appropriate agencies and community-based service providers, including memory disorder clinics, home health care providers, hospices, nurse registries, and home medical equipment providers shall, and any physician licensed under chapter 458 or chapter 459 may, assist emergency management agencies by annually registering persons with special

needs for special needs shelters, collecting registration information for persons with special needs as part of the program intake process, and establishing programs to educate clients about the registration process and disaster preparedness safety procedures. A client of a state-funded or federally funded service program who has a physical, mental, or cognitive impairment or sensory disability and who needs assistance in evacuating or while in a shelter must register as a person with special needs. ~~The registry shall be updated annually.~~ The registration program shall give persons with special needs the option of preauthorizing emergency response personnel to enter their homes during search and rescue operations if necessary to ensure ~~assure~~ their safety and welfare following disasters.

(c) ~~(2)~~ The division shall be the designated lead agency responsible for community education and outreach to the public, including special needs clients, regarding registration and special needs shelters and general information regarding shelter stays.

(d) ~~(4)(a)~~ On or before May 31 of each year, each electric utility in the state shall annually notify residential customers in its service area of the availability of the registration program available through their local emergency management agency by:

1. An initial notification upon the activation of new residential service with the electric utility, followed by one annual notification between January 1 and May 31; or

2. Two separate annual notifications between January 1 and May 31.

~~(b)~~ The notification may be made by any available means, including, but not limited to, written, electronic, or verbal notification, and may be made concurrently with any other notification to residential customers required by law or rule.

(3) A person with special needs must be allowed to bring his or her service animal into a special needs shelter in accordance with s. 413.08.

(4) ~~(5)~~ All records, data, information, correspondence, and communications relating to the registration of persons with special needs as provided in subsection (1) are confidential and exempt from ~~the provisions of~~ s. 119.07(1), except that such information shall be available to other emergency response agencies, as determined by the local emergency management director. Local law enforcement agencies shall be given complete shelter roster information upon request.

~~(6) All appropriate agencies and community-based service providers, including home health care providers, hospices, nurse registries, and home medical equipment providers, shall assist emergency management agencies by collecting registration information for persons with special needs as part of program intake processes, establishing programs to increase the awareness of the registration process, and educating clients about the procedures that may be necessary for their safety during disasters. Clients of state or federally funded service programs with physical, mental, cognitive impairment, or sensory disabilities who need assistance in evacuating, or when in shelters, must register as persons with special needs.~~

Section 3. Present subsections (3) through (7) of section 381.0303, Florida Statutes, are redesignated as subsections (4)

through (8), respectively, paragraph (b) of subsection (2) and present subsection (6) are amended, and a new subsection (3) is added to that section, to read:

381.0303 Special needs shelters.—

(2) SPECIAL NEEDS SHELTER PLAN; STAFFING; STATE AGENCY ASSISTANCE.—If funds have been appropriated to support disaster coordinator positions in county health departments:

(b) County health departments ~~shall~~, in conjunction with the local emergency management agencies, have the lead responsibility for coordination of the recruitment of health care practitioners to staff local special needs shelters. County health departments shall assign their employees to work in special needs shelters when those employees are needed to protect the health and safety of persons with special needs. County governments shall assist the department with nonmedical staffing and the operation of special needs shelters. The local health department and emergency management agency shall coordinate these efforts to ensure appropriate staffing in special needs shelters, including a staff member who is familiar with the needs of persons with Alzheimer's disease.

(3) SPECIAL CARE FOR PERSONS WITH ALZHEIMER'S DISEASE OR RELATED FORMS OF DEMENTIA.—All special needs shelters must establish designated shelter areas for persons with Alzheimer's disease or related forms of dementia to enable those persons to maintain their normal habits and routines to the greatest extent possible.

(7) ~~(6)~~ RULES.—The department, in coordination with the Division of Emergency Management, may ~~has the authority to~~ adopt rules ~~necessary~~ to implement this section. Rules shall include:

(a) The definition of a "person with special needs," including eligibility criteria for individuals with physical, mental, cognitive impairment, or sensory disabilities and the services a person with special needs can expect to receive in a special needs shelter.

(b) The process for special needs shelter health care practitioners and facility reimbursement for services provided in a disaster.

(c) Guidelines for special needs shelter staffing levels to provide services.

(d) The definition of and standards for special needs shelter supplies and equipment, including durable medical equipment.

(e) Standards for the special needs shelter registration program ~~process~~, including all necessary forms and guidelines for addressing the needs of unregistered persons in need of a special needs shelter.

(f) Standards for addressing the needs of families where only one dependent is eligible for admission to a special needs shelter and the needs of adults with special needs who are caregivers for individuals without special needs.

(g) The requirement of the county health departments to seek the participation of hospitals, nursing homes, assisted living facilities, home health agencies, hospice providers, nurse registries, home medical equipment providers, dialysis centers, and other health and medical emergency preparedness stakeholders in pre-event planning activities.

Section 4. Section 381.82, Florida Statutes, is created to read:

381.82 Ed and Ethel Moore Alzheimer's Disease Research Program.—

(1) There is established the Ed and Ethel Moore Alzheimer's Disease Research Program within the Department of Health. The purpose of the program is to fund research leading to prevention of or a cure for Alzheimer's disease. The long-term goals of the program are to:

(a) Enhance the health of Floridians by researching improved prevention, diagnosis, treatment, and cure of Alzheimer's disease.

(b) Expand the foundation of knowledge relating to the prevention, diagnosis, treatment, and cure of Alzheimer's disease.

(c) Stimulate economic activity in the state in areas related to Alzheimer's disease research.

(2)(a) Funds appropriated for the Ed and Ethel Moore Alzheimer's Disease Research Program shall be used exclusively for the award of grants and fellowships through a competitive, peer-reviewed process for research relating to the prevention, diagnosis, treatment, and cure of Alzheimer's disease and for expenses incurred in the administration of this section. Priority shall be granted to research designed to prevent or cure Alzheimer's disease.

(b) Applications for Alzheimer's disease research funding under the program may be submitted from any university or established research institute in the state. All qualified investigators in the state, regardless of institution affiliation, shall have equal access and opportunity to compete for research funding. The following types of applications may be

considered for funding:

1. Investigator-initiated research grants.

2. Institutional research grants.

3. Predoctoral and postdoctoral research fellowships.

4. Collaborative research grants, including those that advance the finding of cures through basic or applied research.

(3) There is created the Alzheimer's Disease Research Grant Advisory Board within the Department of Health.

(a) The board shall consist of 12 members appointed by the State Surgeon General. The board shall be composed of three gerontologists, three geriatric psychiatrists, three geriatricians, and three neurologists. Initial appointments to the board shall be made by October 1, 2014. The board members shall serve 4-year terms, except that, to provide for staggered terms, six of the initial appointees shall serve 2-year terms and six shall serve 4-year terms. All subsequent appointments shall be for 4-year terms. The chair of the board shall be elected from the membership of the board and shall serve as chair for 2 years. An appointed member may not serve more than two consecutive terms. Appointed members must have experience in Alzheimer's disease or related biomedical research. The board shall adopt internal organizational procedures as necessary for its organization. The board shall establish and follow guidelines for ethical conduct and adhere to a policy established to avoid conflicts of interest. A member of the board may not participate in any discussion or decision of the board or a panel with respect to a research proposal by any firm, entity, or agency with which the member is associated as a member of the governing body or as an employee or with which the

member has entered into a contractual arrangement.

(b) The department shall provide such staff, information, and other assistance as necessary to assist the board in carrying out its responsibilities. Members of the board shall serve without compensation and may not receive reimbursement for per diem or travel expenses.

(c) The board shall advise the State Surgeon General as to the scope of the research program and shall submit its recommendations for proposals to be funded to the State Surgeon General by December 15 of each year. Grants and fellowships shall be awarded by the State Surgeon General, after consultation with the board, on the basis of scientific merit. Other responsibilities of the board may include, but are not limited to, providing advice on program priorities and emphases; assisting in the development of appropriate linkages to nonacademic entities, such as voluntary organizations, health care delivery institutions, industry, government agencies, and public officials; and developing and providing oversight regarding mechanisms for the dissemination of research results.

(4) The board shall submit a fiscal-year progress report on the programs under its purview to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General by February 15 of each year. The report must include:

(a) A list of research projects supported by grants or fellowships awarded under the program.

(b) A list of recipients of program grants or fellowships.

(c) A list of publications in peer-reviewed journals involving research supported by grants or fellowships awarded

under the program.

(d) The state ranking and total amount of Alzheimer's disease research funding allocated to the state from the National Institutes of Health.

(e) New grants for Alzheimer's disease research which were funded based on research supported by grants or fellowships awarded under the program.

(f) Progress toward programmatic goals, particularly in the prevention, diagnosis, treatment, and cure of Alzheimer's disease.

(g) Recommendations to further the mission of the program.

(5) Implementation of the Ed and Ethel Moore Alzheimer's Disease Research Program is subject to legislative appropriation.

Section 5. Present subsections (3) through (9) of section 430.502, Florida Statutes, are redesignated as subsections (6) through (12), respectively, new subsections (3), (4), and (5) are added to that section, and present subsections (4), (5), (8), and (9) of that section are amended, to read:

430.502 Alzheimer's disease; memory disorder clinics and day care and respite care programs.—

(3) The department shall develop minimum performance standards for memory disorder clinics and include those standards in each memory disorder clinic contract as a condition for receiving base-level funding. The performance standards must address, at a minimum, quality of care, comprehensiveness of services, and access to services.

(4) The department shall develop performance goals that exceed the minimum performance standards developed under

subsection (3) which must be achieved in order for a memory disorder clinic to be eligible for incentive funding above the base level, subject to legislative appropriation. Incentive funding shall be based on criteria including, but not limited to:

(a) A significant increase in the volume of clinical services.

(b) A significant increase in public outreach to low-income and minority populations.

(c) A significant increase in the acceptance of Medicaid and commercial insurance policies.

(d) Significant institutional financial commitments.

(5) The department shall measure and score each memory disorder clinic based on minimum performance standards and incentive performance goals.

(7)~~(4)~~ Pursuant to ~~the provisions of~~ s. 287.057, the department ~~of Elderly Affairs~~ may contract for the provision of specialized model day care programs in conjunction with the memory disorder clinics. The purpose of each model day care program must be to provide service delivery to persons suffering from Alzheimer's disease or a related memory disorder and training for health care and social service personnel in the care of persons having Alzheimer's disease or a related memory disorder ~~disorders~~.

(8)~~(5)~~ Pursuant to s. 287.057, the department ~~of Elderly Affairs~~ shall contract for the provision of respite care. All funds appropriated for the provision of respite care shall be distributed annually by the department to each funded county according to an allocation formula. In developing the formula,

the department shall consider the number and proportion of the county population of individuals who are 75 years of age and older. Each respite care program shall be used as a resource for research and statistical data by the memory disorder clinics established in this part. In consultation with the memory disorder clinics, the department shall specify the information to be provided by the respite care programs for research purposes.

(11)~~(8)~~ The department shall implement the waiver program specified in subsection (10) ~~(7)~~. The agency and the department shall ensure the selection of ~~that~~ providers who have a history of successfully serving persons with Alzheimer's disease ~~are selected~~. The department and the agency shall develop specialized standards for providers and services tailored to persons in the early, middle, and late stages of Alzheimer's disease and designate a level of care determination process and standard that is most appropriate to this population. The department and the agency shall include in the waiver services designed to assist the caregiver in continuing to provide in-home care. The department shall implement this waiver program subject to a specific appropriation or as provided in the General Appropriations Act.

(12)~~(9)~~ Authority to continue the waiver program specified in subsection (10) ~~(7)~~ shall be automatically eliminated at the close of the 2010 Regular Session of the Legislature unless further legislative action is taken to continue it before ~~prior to~~ such time.

Section 6. This act shall take effect July 1, 2014.

GEORGIADES.CELIA

From: KOKKINOS.REBECCA
Sent: Tuesday, February 11, 2014 12:39 PM
To: BEAN.AARON
Cc: STOVALL.SANDRA; GEORGIADES.CELIA; Hudson, Matt
Subject: agenda request from Sen. Richter for SB 872 & 840

Thank you for your consideration,

Becky Kokkinos
Chief Legislative Aide to
Senator Garrett Richter
850-487-5023
404 Senate Office Building

ENTERED

THE FLORIDA SENATE

APPEARANCE RECORD

3/5/14 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

Topic Alzheimer's Disease Bill Number 872 *(if applicable)*

Name Layne Smith Amendment Barcode – *(if applicable)*

Job Title Director, State Government Relations

Address 4500 San Pablo Road *Street* Phone 904-953-7334

Jacksonville *City* FL *State* 32224 *Zip* E-mail smith.layne@mayo.edu

Speaking: ☑ For ☐ Against ☐ Information

Representing Mayo Clinic

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/14
Meeting Date

Topic Alzheimer's Disease

Bill Number SB 872 *(if applicable)*

Name Mark Sexton

Amendment Barcode _____ *(if applicable)*

Job Title Alachua County Legislative Affairs Director

Address 12 SE 1st Street
Street
Gainesville, FL 32601
City *State* *Zip*

Phone 352-283-2317

E-mail MSexton@alachuacounty.us

Speaking: ☐ For ☐ Against ☑ Information

Representing Alachua County

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

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)

3/5/14
Meeting Date

Topic Alzheimer's bill

Bill Number 872 *(if applicable)*

Name Elizabeth Giannini

Amendment Barcode _____ *(if applicable)*

Job Title Sanford-Burnham Medical Research

Address 6400 Sanger Road
Street
Orlando FL 32827
City *State* *Zip*

Phone 4075951919

E-mail EGIANNINI@Burnham.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Sanford-Burnham Medical Research Institute

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

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 840
INTRODUCER:	Senator Richter
SUBJECT:	Public Records and Meetings/Alzheimer's Disease Research Grant Advisory Board
DATE:	March 3, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	**Pre-meeting**
2.			GO	
3.			RC	

I. Summary:

SB 840, which is tied to SB 872, creates a public records exemption for information related to the Alzheimer's Disease Research Grant Advisory Board's (Board) receipt and review of research grant applications. The information is designated confidential and exempt, but may be disclosed under certain circumstances. The bill also exempts from the public meetings laws those portions of the Board's meetings at which the grant applications are discussed.

The exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

Because this bill creates new public records and public meetings exemptions, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Ed and Ethel Moore Alzheimer's Disease Research Program

SB 872, which is tied to SB 840, creates the Ed and Ethel Moore Alzheimer's Disease Research Program to fund research to help prevent or cure Alzheimer's disease. Awards must be made through a competitive, peer-reviewed process in any of the following categories:

- Investigator-initiated research.
- Institutional research.
- Predoctoral and postdoctoral research fellowships.
- Collaborative research.

The bill creates a 12-member Alzheimer's Disease Research Grant Advisory Board (Board) to provide the State Surgeon General input on the scope of the research program and its recommendations for proposals to be funded. The State Surgeon General, in turn, awards grants, after consulting with the Board, on the basis of scientific merit. The Board may also advise on program priorities; assist in developing linkages with nonacademic entities; and develop and provide oversight of mechanisms for disseminating research results.

The Board reports annually to the Governor, President of the Senate, Speaker of the House of Representatives, and the State Surgeon General on elements of the program's implementation, its impact on leveraging additional funding, progress towards its goals, and recommendations to further its mission.

Implementation of the program is contingent upon an appropriation.

Public Records and Public Meetings Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The records of the legislative, executive, and judicial branches are specifically included.[2]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

The Florida Constitution also requires that all meetings of any board or commission of any agency or authority of the state or of any county, municipal corporation, or political subdivision at which official acts are to be taken or public business of such body is to be transacted or discussed be open and noticed to the public.[6] In addition, the Sunshine Law[7] requires all

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)
[5] Section 119.07(1)(a), F.S.
[6] Article I, Section 24(b), of the Florida Constitution.
[7] Section 286.011, F.S. Section 286.011, F.S., has been construed to apply to any gathering, formal or informal, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by that board or commission. *See generally Hough v. Stembridge*, 278 So.2d 288 (Fla. 3rd DCA 1973).

meetings of any board or commission of any local agency or authority at which official acts are to be taken to be noticed and open to the public.[8]

Only the Legislature may create an exemption to public records or public meetings requirements.[9] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[10] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[11] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[12]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[13] It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[14] The Act provides that a public records or open meetings exemption may be maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[15]

III. Effect of Proposed Changes:

The bill creates a public records exemption for grant applications submitted to the Alzheimer's Disease Research Grant Advisory Board and the records, except the final recommendations, generated by the Board during its review. The information is confidential and exempt.[16] The records may be released, however, with the express written consent of the person to whom the information pertains or the person's legally authorized representative, or by court order upon a showing of good cause.

The bill further provides that those portions of the Board's meeting at which the grant applications are discussed are exempt from the public meetings law.

---

[8] Section 286.011(1)-(2), F.S. The intent of the Legislature is to "extend application of the 'open meeting' concept so as to bind every 'board or commission' of the state, or of any county or political subdivision over which it has dominion or control." *City of Miami Beach v. Berns*, 245 So.2d 38, 40 (Fla. 1971).

[9] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

[10] FLA. CONST., art. I, s. 24(c).

[11] The bill may, however, contain multiple exemptions that relate to one subject.

[12] FLA. CONST., art. I, s. 24(c).

[13] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

[14] Section 119.15(3), F.S.

[15] Section 119.15(6)(b), F.S.

[16] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. *See supra* note 9.

The bill provides for repeal of the exemptions pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill provides a public necessity statement, which is required by the Florida Constitution. The bill states that the public records exemption is necessary to protect the intellectual property of the applicants, to promote scientific innovation, and to ensure a peer review process that conforms to national practices. It states that the public meetings exemption is necessary to ensure candid exchanges among reviewers, thereby ensuring that decisions are based on merit and not subject to bias or undue influence.

The bill takes effect on the same date SB ___ or similar legislation takes effect, if adopted during the 2014 Session. SB 262 takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. This bill creates a new public records exemption; therefore, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 840 protects sensitive, intellectual data, which if released, could result in economic harm to the applicants if it were obtained and used by others who might be competing for similar grants or to develop pharmaceuticals or other treatments of a proprietary nature.

C. Government Sector Impact:

The impact would be the same for applications from public institutions as described above for applications from private researchers.

In addition, the bill could create a minimal fiscal impact for the DOH, because staff responsible for complying with public records requests may need training related to the new public records exemption.

VI. Technical Deficiencies:

The directory language in Section 1 and the effective date in Section 3 need to be amended to add the number of the companion bill that creates the Alzheimer's Disease Research Program.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.82 of the Florida Statutes, as created by SB 872.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Richter

23-00989-14 2014840__

A bill to be entitled

An act relating to public records and meetings; amending s. 381.82, F.S.; providing an exemption from public records requirements for research grant applications submitted to the Alzheimer's Disease Research Grant Advisory Board under the Ed and Ethel Moore Alzheimer's Disease Research Program and records generated by the board relating to the review of the applications; providing an exemption from public meetings requirements for those portions of meetings of the board during which the research grant applications are discussed; authorizing disclosure of such confidential information under certain circumstances; providing for legislative review and repeal of the exemptions under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (d) is added to subsection (3) of section 381.82, Florida Statutes, as created by SB ____, 2014 Regular Session, to read:

381.82 Ed and Ethel Moore Alzheimer's Disease Research Program.—

(3) There is created the Alzheimer's Disease Research Grant Advisory Board within the Department of Health.

(d)1. Applications submitted to the board for Alzheimer's disease research grants under this section and, with the

23-00989-14 2014840__

exception of final recommendations, records generated by the board relating to the review of such applications are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Portions of a meeting of the board at which applications for Alzheimer's disease research grants under this section are discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

3. Information that is held confidential and exempt under this paragraph may be disclosed with the express written consent of the individual to whom the information pertains or the individual's legally authorized representative, or by court order upon showing good cause.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that applications for Alzheimer's disease research grants submitted to the Alzheimer's Disease Research Grant Advisory Board and records generated by the board relating to the review of such applications are confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The research grant applications and the records generated by the board relating to the review of such applications contain information of a confidential nature, including ideas and processes, which could injure the affected researchers and stifle scientific innovation if publicly disclosed. Maintaining confidentiality is a hallmark of

scientific peer review when awarding grants and is practiced by the National Science Foundation and the National Institutes of Health. The Legislature further finds that any public benefit derived from the disclosure of such information is significantly outweighed by the public and private harm which could result from the disclosure of such applications and records.

(2) The Legislature finds that it is a public necessity that portions of meetings of the Alzheimer's Disease Research Grant Advisory Board at which the applications are discussed be exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. Maintaining confidentiality allows for candid exchanges among reviewers critiquing applications. The Legislature further finds that closing access to those portions of meetings of the board during which the Alzheimer's disease research grant applications are discussed serves a public good by ensuring that decisions are based upon merit without bias or undue influence. This exemption is narrowly drawn in that only those portions of meetings at which the applications for research grants are discussed are exempt from public meetings requirements.

Section 3. This act shall take effect on the same date that SB ____ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

GEORGIADES.CELIA

From: KOKKINOS.REBECCA
Sent: Tuesday, February 11, 2014 12:39 PM
To: BEAN.AARON
Cc: STOVALL.SANDRA; GEORGIADES.CELIA; Hudson, Matt
Subject: agenda request from Sen. Richter for SB 872 & 840

Thank you for your consideration,

Becky Kokkinos

Chief Legislative Aide to
Senator Garrett Richter
850-487-5023
404 Senate Office Building

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:	SPB 7028
INTRODUCER:	For consideration by the Health Policy Committee
SUBJECT:	Telemedicine
DATE:	January 24, 2014
REVISED:	3/5/2014

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**HP Submitted as Committee Bill**

I. Summary:

SPB 7028 creates the Florida Telemedicine Act (the act) and defines the key components for the practice of telemedicine. The act establishes telemedicine as the practice of medicine through advanced communications technology by a telemedicine provider at a distant site. A telemedicine provider is a physician licensed under chapter 458 or chapter 459 or an out of state physician who meets the specific requirements for an exemption from Florida licensure. The act also provide exclusions from licensure for consultations and for emergency services, as defined under the act.

Physicians practicing telemedicine are required at license renewal to identify themselves as a telemedicine provider on their practitioner profile and to complete two hours of continuing education related to telemedicine.

The standard of care for telemedicine service coincides with health care services provided in-person. The nonemergency prescribing of a legend drug based solely on an online questionnaire is specifically prohibited and a controlled substance may not be prescribed through telemedicine for chronic non-malignant pain.

The act requires a telemedicine provider to be responsible for the quality of his or her equipment or technology and to maintain records in accordance with federal and state laws. Each telemedicine provider must identify himself or herself to the patient and their location prior to each encounter.

Regulatory boards, or the Department of Health (DOH) if there is not an applicable board, may adopt rules to administer the act. Rules prohibiting telemedicine that are inconsistent with this act must be repealed. Venue for any civil or administrative action is based on the location of the patient or in Leon County.

Telemedicine services to diagnose and treat the human eye may be used if certain standards are met, including minimum automated equipment requirements. The act prohibits the prescription

of spectacles or contact lenses based on a telemedicine service or solely on the use of a computer controlled device.

The Medicaid program must reimburse providers for telemedicine services in the same manner as provided for in-person services. Reimbursement amounts must be negotiated between the parties, to the extent permitted under federal law. Regardless of the amount negotiated, reimbursement for both the originating and the distant site should be considered based on the services provided during the encounter. A process for discontinuation of reimbursement for a Medicaid service through telemedicine is provided if the Agency for Health Care Administration (AHCA) can document a specific telemedicine service is not cost effective or does not meet the clinical needs of Medicaid recipients. The Medicaid provisions sunset on June 30, 2017.

The AHCA is required to submit a report on the usage and costs, including any savings, of telemedicine services provided to Medicaid recipients by January 1, 2017, to the President of the Senate, the Speaker of the House of Representatives and the minority leaders of the House and Senate.

The bill's effective date is October 1, 2014.

II. Present Situation:

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

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

The term teleheath is also sometimes used interchangeably with telemedicine. Telehealth, however, generally refers to a wider range of health care services that may or may not include clinical services.[2] Telehealth often collectively defines the telecommunications equipment and

[1] American Telemedicine Association, *What is Telemedicine?*, http://www.americantelemed.org/learn/what-is-telemedicine (last visited Jan. 6, 2014).
[2] Majerowicz, Anita; Tracy, Susan, "Telemedicine: Bridging Gaps in Healthcare Delivery," *Journal of AHIMA* 81, no. 5, (May 2010): 52-53, 56, http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_047324.hcsp?dDocName=bok1_047324 (last visited Jan. 27, 2014).

technology that is utilized to collect and transmit the data for a telemedicine consultation or evaluation.

Board of Medicine Rulemaking

Florida's Board of Medicine convened a Telemedicine Workgroup in 2013 to review its rules on telemedicine which had not been amended since 2003. The 2003 rule focused on standards for the prescribing of medicine via the internet. Last month, the Board adopted new rules specific to standards for telemedicine practice for allopathic and osteopathic physicians. These new rules define telemedicine, establish a standard of care, prohibit the prescription of controlled substances, permit the establishment of a doctor-patient relationship via telemedicine, and exempt emergency medical services.[3]

Telemedicine in Other States

As of January 2014, at least 20 states and the District of Columbia have mandated that private insurance plans cover telemedicine services at reimbursement rates equal to an in-person consultation.[4] Forty-four states reimburse under Medicaid for limited services, some restricting reimbursement to only rural or low provider access areas.[5] The breadth of state telemedicine laws vary from the very limited of authorizing store and forward services to mandating private insurance coverage and payment equivalency between face-to-face visits and telemedicine encounters. While nine states specifically issue a special-telemedicine-only license or certificate, several others may allow physicians from contiguous states to practice under certain conditions.[6]

States have used telemedicine in correctional systems to eliminate the need to transport inmates in both Colorado and Wyoming.[7] In some cases, the health care professional is located in another location at the same facility and is able to interact with the inmate. This option addresses situations with violent inmates or handicap accessibility issues. Some jails use this same technology for online visits in place of face-to-face visitation, including the Alachua County jail in Florida.[8]

Rural counties have utilized telemedicine to fill the void for specialty care in their emergency rooms and to avoid costly and time consuming transfers of patients from smaller hospitals to the larger tertiary centers for care. In a California project, the rural hospitals' emergency rooms received video conference equipment to facilitate the telemedicine consultations as part of the

[3] *See* Notice of Final Rule 64B8-9.0141, F.A.C., published February 20, 2014 and Notice of Final Rule 64B15-14.0081, F.AC., published February 20, 2014. Both rules are effective March 12, 2014.
[4] American Telemedicine Association, *2014 State Telemedicine Legislative Tracking*, http://www.americantelemed.org/docs/default-source/policy/state-telemedicine-legislation-matrix.pdf (last visited Jan. 24, 2014).
[5] Id.
[6] Center for Connected Health Policy, *State Telehealth Laws and Reimbursement Policies, (November 2013)*, p.6, http://telehealthpolicy.us/sites/telehealthpolicy.us/files/uploader/50%20State%20Medicaid%20Update%20Nov.%202013%20-%20Rev.%2012-20.pdf (last visited Jan. 24, 2014).
[7] Government Computing News, *Prisons Turn to Telemedicine for Treating Inmates*, (May 21, 2013), http://gcn.com/blogs/pulse/2013/05/prisons-telemedicine-treating-inmates.aspx (last visited Jan. 28, 2014)
[8] Gainesville, Sun, *Now You Can Visit an Inmate From Home*, (Jan. 9, 2014), http://www.gainesville.com/article/20140109/ARTICLES/140109711?p=1&tc=pg#gsc.tab=0 (last visited Jan. 28, 2014).

study. The rural hospital physicians, nurses and parents were linked with pediatric critical care medicine specialists at the University of California, Davis.[9] Researchers at the university found that parents' satisfaction and perception of the quality of care received was significantly greater with telemedicine than with telephone guidance.[10]

Federal Provisions for Telemedicine

Federal laws and regulations address telemedicine from several angles, from prescribing controlled substances and setting hospital emergency room guidelines, to establishing reimbursement guidelines for the Medicare program.

Prescribing Via the Internet

Federal law specifically prohibits the issue of controlled substances prescribed via the internet without an in-person evaluation. The federal regulation under 21 CFR §829 specifically states:

> No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed or dispensed by means of the Internet without a valid prescription.

A valid prescription is further defined under the same regulation as one issued by a practitioner who has conducted an in-person evaluation. The in-person evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other professionals.[11] However, the Ryan Haight Online Pharmacy Consumer Protection Act,[12] signed into law in October 2008, created an exception for the in-person medical evaluation for telemedicine practitioners. The practitioner is still subject to the requirement that all controlled substance prescriptions be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice.

The Drug Enforcement Administration (DEA) of the federal Department of Justice issued its own definition of telemedicine in April of 2009 as required under the Haight Act.[13] The federal regulatory definition of telemedicine under the DEA includes, but is not limited to, the following elements:

- The patient and the practitioner are located in separate locations;
- Patient and practitioner communicate via a telecommunications system;
- The practitioner must meet other registration requirements for the dispensing of controlled substance via the Internet; and,
- Certain practitioners (Department of Veterans Affairs' employees, for example) or practitioners in certain situations (public health emergencies) may be exempted from registration requirements.[14]

---

[9] *In Rural ERs, Kids Get Better Care with Telemedicine*, http://www.futurity.org/in-rural-ers-kids-get-better-care-with-telemedicine (last visited Jan. 28, 2014).
[10] Id.
[11] 21 CFR §829(e)(2).
[12] Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).
[13] Id., at sec. 3(j).
[14] 21 CFR §802(54).

Medicare Coverage

Specific telehealth services delivered at designated sites are covered under Medicare. The federal Centers for Medicare and Medicaid Services' regulations require both a distant site (location of physician delivering the service via telecommunications) and a separate originating site (location of the patient) under their definition of telehealth. Asynchronous "store and forward" activities are only reimbursed under Medicare in federal demonstration projects.[15]

To qualify for Medicare reimbursement, the originating site must meet one of these qualifications:

- Located in a federally defined rural county;
- Designated rural health professional shortage area;[16] or,
- Identified as a participant in a federal telemedicine demonstration project as of December 21, 2000.[17]

Federal requirements provide additional qualifications for an originating site once one of the initial elements above has been satisfied. An originating site must be one of the following location types as further defined in federal law and regulation:

- The office of a physician or practitioner;
- A critical access hospital;
- A rural health clinic;
- A federally qualified health center;
- A hospital;
- A hospital-based or critical access hospital-based renal dialysis center (including satellites);
- A skilled nursing facility; and,
- A community mental health center.[18]

Reimbursement for the distant site is established as "an amount equal to the amount that such physician or practitioner would have been paid under this title had such service been furnished without the use of a telecommunications system."[19]

Federal law also provides for a facility fee for the originating site that started and remained at $20 through December 31, 2002 and then, by law, is subsequently increased each year by the percentage increase in the Medicare Economic Index or MEI. For calendar year 2014, the originating fee was 80 percent of the lesser of the actual charge or $24.63.[20]

---

[15] Only two states have a federal demonstration project that meets these qualifications, Hawaii and Alaska.
[16] The rural definition was expanded through a final federal regulation released on December 10, 2013 to include health professional shortage areas located in rural census tracts of urban areas as determined by the Office of Rural Health Policy. *See* 78 FR 74229, 74400-74402, 74812 (December 10, 2013).
[17] *See* 42 U.S.C. sec. 1395(m)(m)(4)(C)(i).
[18] *See* 42 U.S.C. sec. 1395(m)(m)(4)(C)(ii).
[19] *See* 42 U.S.C. sec. 1395(m)(m)(2)(A).
[20] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *MLN Matters - News Flash #MM8533(December 20, 2013)*, http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/downloads/MM8533.pdf (last visited: Jan 28, 2014).

Telehealth services covered under Medicare include professional consultations, office visits, and office psychiatry services within certain health care procedure codes.[21] Practitioners eligible to bill for telehealth services include physicians, nurse practitioners, physician assistants, nurse midwives, clinical nurse specialists, clinical psychologists, clinical social workers, and registered dietitians or nutrition specialists who are licensed to provide the service under state law.[22]

Telemedicine Services in Florida

The University of Miami (UM) initiated telehealth services in 1973 and claims the first teleheath service in Florida, the first use of nurse practitioners in telemedicine in the nation, and the first telemedicine program in correctional facilities.[23] Today, UM has several initiatives in the areas of tele-dermatology, tele-trauma, humanitarian and disaster response relief telehealth, school telehealth services, and acute teleneurology or telestroke.[24] While some of the UM's activities reach their local community, others reach outside of Florida including providing Haiti earthquake relief and teledermatology to cruise line employees. Telehealth communications are also used for monitoring patients in the hospital and conducting training exercises.

The UM also utilizes telemedicine to research the effectiveness of telemedicine in different trauma situations with the United States military. The research utilizes a robot which is operated from a control station using a joystick. The control station is on a laptop that allows the provider to operate the robot from any location with a wireless connection.[25] Lessons learned from this research are intended to provide assistance to deployed surgeons on the battlefield treating injured solders.

The UM along with other designated trauma centers participate in the Florida Emergency Trauma Telemedicine Network (FETTN). Coordinated by the DOH, the FETTN, facilitates the treatment of trauma patients between trauma centers and community or rural hospitals.[26] The FETTN allows for multiple interface options and currently 7 out of 25 trauma centers are part of the network.[27] In 2011-2012, the seven level 1 or level 2 trauma centers that participated as a hub site, known as the location where the consulting physician is delivering the services, were Holmes Regional Medical Center, Tallahassee Memorial Hospital, Sacred Heart Hospital, University of Miami, Shands-Gainesville, Shands-Jacksvonille, and Orlando Health.[28]

---

[21] *See* 42 U.S.C.sec. (m)(m)(4)(F) for statutory authority and visit http://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/ for additional federal guidance.
[22] Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Telehealth Services - Rural Health Fact Sheet Series*, December 2012, http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/telehealthsrvcsfctsht.pdf (last visited Jan. 27, 2014).
[23] University of Miami, Miller School of Medicine, *UM Telehealth - Our History*, http://telehealth.med.miami.edu/about-us/our-history (last visited Jan. 31, 2014).
[24] University of Miami, Miller School of Medicine, *UM Telehealth*, http://telehealth.med.miami.edu/featured/teledermatology (last visited Jan. 28, 2014).
[25] University of Miami, Miller School of Medicine, *UM Telehealth - Teletrauma*, *http://telehealth.med.miami.edu/featured/teletrauma* (last visited Jan. 31, 2014*).*
[26] Florida Department of Health, *2014 Agency Legislative Bill Analysis of SB 70*, p.2, on file with the Senate Health Policy Committee (August 26, 2013).
[27] *Id.*, at 3.
[28] Florida Department of Health, *Long Range Program Plan* (September 28, 2012), on file with the Senate Health Policy Committee.

According to the DOH, the trauma centers and their satellites as well as the rural hospitals that currently participate in the FETTN are not reimbursed for the consultation and treatment services provided within the telemedicine network.

Florida Medicaid Program

Florida's Medicaid program reimburses for a limited number of telemedicine services by designated practitioners.[29] Audio only, email messages, facsimile transmissions, or communications with an enrollee through another mechanism other than the spoke site, known as the site where the patient is located, are not covered under Florida Medicaid.

Telemedicine is currently covered by Medicaid for the following services and settings:[30]

- Behavioral Health
  - Tele-psychiatry services for psychiatric medication management by practitioners licensed under s. 458 or 459, F.S.
  - Tele-behavioral health services for individual and family behavioral health therapy services by qualified practitioners licensed under chs. 490 or 491, F.S.
- Dental Services
  - Video conferencing between a registered dental hygienist employed by and under contract with a Medicaid-enrolled group provider and under the supervision of a supervising dentist.
  - Services include oral prophylaxis, topical fluoride, and oral hygiene instructions.
- Physician Services
  - Services provided using audio and video equipment that allow for two-way, real time interactive communication between physician and patient.
  - State plan waiver specifically authorizes reimbursement for specialty physician services for Children's Medical Services Network.
  - Physicians may bill for consultation services only provided via telemedicine.

The distant or hub site, where the provider is located, is eligible for reimbursement; the spoke site, where the patient is located, is not eligible for reimbursement unless a separate service is performed on the same day. Medicaid also requires that the referring physician and the patient be present during the consultation.[31]

Medicaid requires the following specific clinical records documentation to qualify for reimbursement as a telemedicine service: [32]

- A brief explanation of why services were not provided face-to-face;
- Documentation of telemedicine services, including results of assessment; and,

[29] Agency for Health Care Administration, *Highlights of Practitioner Services Coverage and Limitations Handbook Presentation*, Bureau of Medicaid Services, Summer 2013, p.30.
[30] Agency for Health Care Administration, *2014 Legislative Bill Analysis of SB 70*, November 7, 2013, p. 3, on file with the Senate Health Policy Committee.
[31] Agency for Health Care Administration, *supra*, note 29, at 34.
[32] Id. at p. 36.

- A signed statement from the patient (or parent or guardian, if a child), indicating their choice to receive services through telemedicine.

Medicaid services are reimbursable only in the hospital outpatient, inpatient and physician office settings. During the 2013 Legislative Session, Medicaid provider enrollment requirements were revised to allow the enrollment of physicians actively licensed in Florida to interpret diagnostic testing results through telecommunications and information technology provided from a distance.[33]

Since 2006, the Children's Medical Services Network (CMS Network) has been authorized to provide specified telemedicine services under Florida's 1915(b) Medicaid Managed Care waiver. Authorized services include physician office visits (evaluation and management services) and consultation services already covered by the Medicaid state plan in select rural counties. Currently, the CMS Network provides telemedicine services in 57 of Florida's 67 counties.[34]

The CMS Network works with the University of Florida's (UF) pediatric endocrinology staff to provide telehealth services for enrollees with diabetes and other endocrinology diseases in the Daytona Beach service area.[35] Additional partnerships with the Institute for Child Health Policy at UF include referring children with special health care needs to community health centers for consults via telehealth for nutritional, neurological, and orthopedics in Southeast Florida.[36]

Child Protection Teams

The Child Protection Team (CPT) program under Children's Medical Services utilizes a telemedicine network to perform child assessments. The CPT is a medically directed multi-disciplinary program that works with local Sheriff's offices and the Department of Children and Families in cases of child abuse and neglect to supplement investigative activities.[37] The CPT patient is seen at a remote site and a registered nurse assists with the medical exam. A physician or Advanced Registered Nurse Practitioner (ARNP) is located at the hub site and has responsibility for directing the exam.

Hub sites are comprehensive medical facilities that offer a wide range of medical and interdisciplinary staff whereas the remote sites tend to be smaller facilities that may lack medical diversity. In 2013, CPT telehealth services were available at 14 sites and 437 children were provided medical or other assessments via telemedicine technology.[38]

---

[33] *See* Chapter 2013-150, L.O.F., sec. 1.
[34] Florida Department of Health, s*upra*, note 28, at 2.
[35] Florida Department of Health, *Maternal and Child Health Block Grant Narrative for 2013*, *http://www.floridahealth.gov/healthy-people-and-families/womens-health/pregnancy/mch-fl-2013-1narrative.pdf*, p.21, (last visited: Jan. 31, 2014).
[36] Id.
[37] Florida Department of Health, *Child Protection Teams*, http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited Jan. 7, 2014).
[38] Florida Department of Health, s*upra* note 35, at 21.

Other Department of Health Initiatives

The DOH utilizes tele-radiology through the Tuberculosis (TB) Physician's Network.[39] The ability to read electronic chest X-Rays remotely can lead to a faster diagnosis, treatment and a reduction in the spread of the disease, according to the DOH. This service is not currently reimbursed by Medicaid.

Compliance with Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information (PHI). Privacy rules were initially issued in 2000 by the Department of Health and Human Services and later modified in 2002. These rules address the use and disclosure of an individual's health information as well as create standards for privacy rights. Additional privacy and security measures were adopted in 2009 with the Health Information Technology for Economic Clinical Health (HITECH) Act.

Only certain entities are subject to HIPAA's provisions. These "covered entities" include:

- Health plans;
- Health care providers;
- Health care clearinghouses; and,
- Business Associates.

While not a covered entity as an individual, the patient still maintains his or her privacy and confidentiality rights regardless of the method in which the medical service is delivered. The HITECH Act specifically identified telemedicine as an area for review and consideration and funding was provided, in part, to strengthen infrastructure and tools to promote telemedicine.[40]

Under the provisions of HIPAA and the HITECH Act, a health care provider or other covered entity participating in telemedicine is required to meet the same technical and physical HIPAA and HITECH requirements as would be required for a physical office visit. These requirements include ensuring that that the equipment and technology is HIPAA compliant.

III. Effect of Proposed Changes

Section 1 designates ss. 456.4501-456.4506, F.S., as the "Florida Telemedicine Act."

Section 2 creates s. 456.4502 and provides definitions for the Florida Telemedicine Act, including:

- Act
- Advanced Communications Technology
- Distant Site
- Encounter

[39] Florida Department of Health, *supra* note 26, at 2.
[40] Public Law 111-5, sec. 3002(b)(2)(C)(iii) and sec. 3011(a)(4).

- Health Care Provider
- In Person
- Originating Site
- Patient Presenter
- Store and forward
- Telehealth
- Telemedicine
- Telemedicine provider

Section 3 creates s. 456.4503, F.S., and establishes requirements for an out of state physician who provides telemedicine across state lines to a patient physically located in Florida. In order to practice telemedicine, the out of state physician must:

- Have a Florida license to practice medicine under ch. 458, F.S., or ch. 459, F.S., or,
- Hold an active, unrestricted license to practice allopathic or osteopathic medicine in the distant site and that state's licensure requirements must meet or exceed this state's requirements;
- Maintain professional liability coverage that includes telemedicine that is consistent with s. 458.320, F.S.;
- Have one of the following:
  - Privileges or be on the medical staff of an out of state hospital that is affiliated with a Florida hospital licensed under ch. 395, F.S.; or,
  - Affiliation with an out of state health insurer or health plan that is also authorized to conduct business in Florida under ch. 627, F.S., or ch. 641, F.S.; and,
- Practice in a state that authorizes Florida-licensed physicians to provide telemedicine services to patients in that state without having to be licensed in that state.

An out-of-state physician who provides telemedicine services to a patient in Florida is subject to disciplinary action by the Florida Board of Medicine, the Board of Osteopathic Medicine, or a regulatory entity that has jurisdiction over the hospital, insurer or health plan affiliated with the physician. The physician and the hospital, insurer or health plan of the affiliated physician must agree to make available any pertinent records upon the request of the applicable board, the DOH or any other federal or state regulatory authority. Failure to comply with a records request may result in revocation of the out of state practitioner's license or a fine, as established by the appropriate board or the DOH, as applicable.

Licensure is not required for consultations between an out of state practitioner and an in-state practitioner where the physician licensed in this state retains ultimate responsibility for the diagnosis, treatment, and care of the patient. Physician consultations via telemedicine that occur on an emergency basis are also exempt from licensure.

A health care provider or patient presenter using telemedicine technology at the direction and supervision of a physician may not be interpreted as practicing medicine without a license. Providers, however, are required to be trained and knowledgeable about the equipment being utilized. Failure to acquire appropriate training and knowledge is grounds for disciplinary action.

Upon license renewal, a physician practicing telemedicine must identify himself or herself as a telemedicine provider on the physician's practitioner profile and submit proof of the successful completion of a course and subsequent examination, on the standards of practice in telemedicine. The act requires that the board-approved course consist of at least 2 web-based contact hours and the first course must be offered by July 1, 2014.

Venue for any civil or administrative action initiated by a telemedicine recipient or the appropriate regulatory board shall be based on the location of the patient or shall be in Leon County.

The regulatory boards, or the DOH if there is no board, may adopt rules to implement this act and are directed to repeal any rules that prohibit the practice of telemedicine. The boards may also adopt rules regarding patient presenters but may not require the use of a presenter, if special skills and training are not needed for the patient to participate in the encounter.

Section 4 creates s. 456.4504, F.S., to specify standards for the delivery of telemedicine services. The standard of care for the delivery of telemedicine services shall be the same as if the services were delivered in person.

The bill references the standard of care in s. 766.102, F.S. That section of law addresses medical negligence and provides:

> The prevailing professional standard of care for a given health care provider 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 health care providers.

The telemedicine provider is responsible for the quality of the telemedicine equipment and technology and its safe use. Telemedicine equipment must be able to provide the same information, at a minimum, that would have been obtained in an in-person encounter. The equipment and technology must enable the telemedicine provider to meet or exceed the prevailing standard of care for the practitioner's profession.

The telemedicine provider is not required to conduct a patient history or physical exam before the telemedicine encounter as long as the telemedicine evaluation meets the prevailing standard of care for the services provided.

The act prohibits prescribing a legend drug based solely on an electronic questionnaire without a visual examination. Additionally, a practitioner may not prescribe a controlled substance through the use of telemedicine for chronic non-malignant pain.

Medical record-keeping requirements must be kept in the same manner as an in-person encounter under federal and state law. All records generated must conform to confidentiality and record-keeping laws of this state, regardless of the patient's location. Telemedicine technology must be encrypted and include a record-keeping program to verify each interaction.

If a third party vendor is used by a telemedicine provider, a business associate agreement is required. The act requires that the third party vendor comply with the HITECH Act.

Section 5 creates s. 456.4505, F.S., to provide standards for the provision of telemedicine services to diagnose or treat the human eye and its appendages. Automated equipment may be utilized for telemedicine services to diagnose or treat the human eye if the following requirements are met:

- The automated equipment is approved by the United States Food and Drug Administration for the intended use;
- The automated equipment is designed and operated to accommodate any requirements of the federal ADA Amendments Act of 2008;
- The automated equipment and accompanying technology gathers and transmits information in compliance with HIPAA;
- The procedures for which the automated equipment is used has a recognized Current Procedural Terminology (CPT) code approved by the Centers for Medicare and Medicaid Services;
- The physical location of the automated equipment prominently displays the name and location of the individual that will read and interpret the information and data;
- The diagnostic information and data gathered by the automated equipment will be read and interpreted by an optometrist licensed under chapter 463 or a physician skilled in diseases of the human eye and licensed under chapter 458 or chapter 459; and,
- The owner or lessee of the automated equipment maintains liability insurance in amount adequate to cover claims by individuals diagnosed or treated based on information and data generated by the automated equipment.

A prescription for spectacles or contact lenses may not be made based on telemedicine services or based solely on the refractive error of the human error generated by a computer controlled device.

Section 6 creates s. 456.4506, F.S., to establish a requirement for the AHCA to reimburse for telemedicine services under Medicaid. Telemedicine services are to be reimbursed in the same manner and in an equivalent amount to Medicaid services provided in-person under parts III (Medicaid) and IV (Medicaid Managed Care) of ch. 409, F.S. An exception to this requirement is provided if the AHCA determines a service that is delivered through telemedicine is not cost effective or does not meet the clinical needs of recipients. If, after implementation, the AHCA documents this determination, then coverage for that particular service may be discontinued.

Before receipt of a telemedicine service, a Medicaid recipient or legal representative of the recipient must provide informed consent for telemedicine services. The recipient must be provided the opportunity to receive the same service through an in-person encounter.

Under this section, the reimbursement amount for Medicaid services delivered via telemedicine shall be negotiated between the parties; however, both the originating site and distant site should receive compensation based on the services rendered.

The AHCA is also required to submit a usage and cost report on telemedicine services in the Medicaid program. The report is due to the President of the Senate, Speaker of the House of Representatives, and the minority leaders by January 1, 2017.

This section relating to telemedicine services under the Medicaid program sunsets on June 30, 2017.

Section 7 provides an effective date of October 1, 2014.

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:

Telemedicine services are currently available in Florida. These services are being performed by more than physicians licensed under ch. 458, F.S., and ch. 459, F.S. With the definition of "telemedicine provider" being limited to these providers, existing health care practitioners would no longer be able to provide telemedicine services as defined under this act.

Health care technology companies that provide the equipment for these services may see an increase in demand from health care practitioners for new equipment and maintenance needs of any existing equipment.

C. Government Sector Impact:

For SB 70, which had a similar provision for telemedicine coverage of Medicaid services, the AHCA provided an indeterminate fiscal impact because the rulemaking in SB 70 had been delegated to the DOH and both costs and savings would be associated with the bill's provisions. The expected savings were based on possible efficiencies, improvements in

disease management, and improved patient outcomes that resulted from telemedicine services.[41]

An increase in the services covered by telemedicine could also lead to an indeterminate increase in utilization and costs. SPB 7028 broadens the number of services available through telemedicine.[42]

The DOH indicated in its analysis of SB 70 that a potential increase in Medicaid reimbursement funds for consultation and treatment under Medicaid could be achieved for the TB project. According to the DOH, the estimated revenue impact to the state would be $103,190.[43]

The bill's limitation on telemedicine services to physicians only could impact existing services being delivered by other state agencies and departments, such as the behavioral health services at the Department of Children and Families which can be performed by non-physician health care practitioners and certain health care services for Medicaid enrollees. There could be a negative fiscal impact to the state if the state could no longer use telemedicine to provide these services and had to require in-person encounters.

VI. Technical Deficiencies:

The word "certified" is used to describe a type of physician on line 195. It is unclear what certification is being referenced.

The act does not take effect until October 1, 2014, yet the telemedicine course is required to be offered by July 1, 2014 (line 181).

VII. Related Issues:

The definition of a "telemedicine provider" limits providers to physicians under chs. 458 and 459, F.S. However, under s. 456.4505, F.S., the act permits an optometrist licensed under ch. 463, F.S., or a physician skilled in diseases of the human eye and licensed under ch. 458 or ch. 459, F.S., to review information and data generated from automated equipment via telemedicine. This provision permitting a non-physician to provide telemedicine services conflicts with the other provisions of the act that limit participation to only physicians.

There are numerous other sections of state law that refer to "in person" or "face to face" requirements for certain medical services or health care related activities. While SPB 7028 defines "in person" for purposes of the Florida Telemedicine Act, there are other usages of this phrase in statute.

[41] Agency for Health Care Administration, *supra*, note 30, at 7.
[42] Id., p. 8.
[43] Florida Department of Health, *supra* note 26, at 5.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 456.4501, 456.4502, 456.4503, 456.4504, 456.4505, and 456.4506.

IX. Additional Information:

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

None.

B. Amendments:

None.

484228

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 456.4501, Florida Statutes, is created to read:

456.4501 Short title.—Sections 465.4501-465.4506 may be cited as the "Florida Telemedicine Act."

484228

Section 2. Section 456.4502, Florida Statutes, is created to read:

456.4502 Definitions.—As used in this act, the term:

(1) "Act" means the Florida Telemedicine Act.

(2) "Advanced communications technology" means:

(a) Compressed digital interactive video, audio, or data transmissions;

(b) Real-time synchronous video- or web-conferencing communications;

(c) Secure web-based communications;

(d) Still-image capture or asynchronous store and forward;

(e) Health care service transmissions supported by mobile devices (mHealth); or

(f) Other technology that facilitates access to health care services or medical specialty expertise.

(3) "Distant site" means the location at which the telemedicine provider delivering the health care service is located at the time the service is provided via telemedicine.

(4) "Encounter" means an examination, consultation, monitoring, or other health care service.

(5) "Health care provider" means a health care practitioner or out-of-state licensed individual who provides health care services within the scope of his or her professional license.

(6) "In person" means that a patient is in the physical presence of the health care provider without regard to whether portions of the encounter are conducted by other providers.

(7) "Originating site" means the location of the patient receiving telemedicine services which site meets the standards of this act as verified by the telemedicine provider.

484228

(8) "Patient presenter" means an individual who has clinical background training in the use of advanced communications technology equipment and who is available at the originating site to present the patient, manage the cameras or equipment, and perform any hands-on activity necessary to successfully complete the telemedicine encounter under the direction and supervision of a telemedicine provider.

(9) "Store and forward" means the type of telemedicine encounter that uses still digital images of patient data for rendering a medical opinion or diagnosis. The term includes the asynchronous transmission of clinical data from one site to another.

(10) "Telehealth" means the use of advanced communications technology to provide access to health assessment, diagnosis, intervention, consultation, supervision, and information across distances. The term includes the use of remote patient monitoring devices that are used to collect and transmit data for telemonitoring and interpretation.

(11) "Telemedicine" means the use of advanced communications technology by a health care provider or by a health care provider acting under an appropriate delegation or supervision as may be required by the appropriate board, or the department if there is no board, to provide a health care service. Services provided through telemedicine may include patient assessment, diagnosis, consultation, treatment, prescription of medicine, transfer of medical data, or other medical-related services. The term does not include audio-only calls, e-mail messages, or facsimile transmissions. Telemedicine includes telehealth and telemonitoring.

484228

(12) "Telemedicine provider" means a health care practitioner who provides telemedicine services, or an out-of-state health care provider who provides telemedicine services to a patient physically located in this state and who meets the requirements of s. 456.4503, as applicable.

Section 3. Section 456.4503, Florida Statutes, is created to read:

456.4503 Telemedicine requirements.—

(1) An out-of-state health care provider who provides telemedicine across state lines to a patient physically located in this state must have a Florida license to practice a health care profession, except as provided under subsection (2).

(2) An out-of-state physician who does not meet the requirements of subsection (1) may provide telemedicine services across state lines to patients located in this state if the physician:

(a) Holds an unrestricted active license to practice allopathic or osteopathic medicine in the state of the distant site and that state's licensure requirements meet or exceed those of this state under chapter 458 or chapter 459, as determined by the appropriate board;

(b) Maintains professional liability coverage that includes coverage for telemedicine services, in an amount and manner consistent with s. 458.320 and appropriate to the physician's scope of practice and location;

(c) Has at least one of the following:

1. Privileges at or is on the medical staff of an out-of-state hospital that is a certified Medicare provider;

2. Affiliation with an out-of-state health insurer or

484228

health plan that is also licensed in this state and that uses credentialing requirements that are equivalent to those used in this state; and

(d) Practices in a state that allows Florida-licensed physicians to provide telemedicine services to patients located in that state without having to be licensed to practice medicine in that state.

(3) An out-of-state physician provider authorized under subsection (2) to provide telemedicine services to patients in this state is subject to appropriate disciplinary action by a regulatory entity in this state which has regulatory jurisdiction over the hospital, insurer, or health plan affiliated with the physician as described in paragraph (2)(c). Such affiliated hospital, insurer, or health plan shall be held responsible by the appropriate state regulatory entities and other legal and regulatory authorities in this state, as applicable, for the actions of their affiliated physician providers providing telemedicine services to patients in this state.

(4) The telemedicine provider and any affiliated hospital, insurer, or health plan described under paragraph (2)(c), if applicable, shall make any pertinent records available upon request of the board, the department, or other regulatory authority as applicable. Failure to comply with such request may result in the revocation of a health care practitioner's license or imposition of a fine by the applicable board, or department if there is no board; or in the case of an affiliated hospital, insurer or health plan, a fine, a license restriction, or revocation of an affiliated entity's authorization to conduct

484228

business in this state.

(5) Venue for a civil or administrative action initiated by the telemedicine recipient, the department, or the appropriate board shall be based on the location of the patient or shall be in Leon County.

(6) Physician consultations that occur on an emergency basis and that are conducted via telemedicine are exempt from subsections (1) and (2). Emergency services and care provided to relieve an emergency medical condition have the same meaning as defined under s. 395.002.

(7) This section does not prohibit consultations between an out-of-state health care provider and a health care practitioner in this state or for the transmission and review of digital images, pathology specimens, test results, or other medical data by an out-of-state health care provider or other qualified providers related to the care of a patient in this state.

(8) This section does not preclude a health care provider who acts within the scope of his or her Florida professional license from using the technology of telemedicine within his or her practice or under the direction and supervision of another health care provider whose scope of practice includes the use of such technology. A health care provider or patient presenter acting under the direction and supervision of a physician through the use of telemedicine may not be interpreted as practicing medicine without a license. However, a health care provider must be trained in, educated on, and knowledgeable about the procedure and technology and may not perform duties for which the practitioner does not have sufficient training, education, and knowledge. Failure to have adequate training,

484228

education, and knowledge is grounds for disciplinary action by the appropriate board, or the department if there is no board, or the affiliated regulatory entity for affiliated providers.

(9) The boards, or the department if there is no board, may adopt rules to administer the requirements of this act and must repeal rules that are inconsistent with this act, including rules that prohibit the use of telemedicine in this state. The appropriate board, or the department if there is no board, may also develop standards and adopt rules relating to requirements for patient presenters. Such rules may not require the use of patient presenters in telemedicine services if special skills or training is not needed for a patient to participate in the encounter.

(10) A health care practitioner who engages in telemedicine services must complete 2 hours of continuing education credit related to the provision of services through telemedicine during each license renewal period.

Section 4. Section 456.4504, Florida Statutes, is created to read:

456.4504 Telemedicine standards.—

(1) The standard of care as provided in s. 766.102 is the same regardless of whether a health care provider provides health care services in person or by telemedicine. The applicable board for each health care provider, or the department if there is no board, may adopt rules specifically related to the standard of care for telemedicine.

(2) A telemedicine provider providing telemedicine services under this act is responsible for the quality of the equipment and technology employed and for its safe use. Telemedicine

484228

equipment and advanced communications technology must, at a minimum, be able to provide the same information to the telemedicine provider as the information that would be obtained in an in-person encounter with a health care provider and enable the telemedicine provider to meet or exceed the prevailing standard of care for the practice of the profession.

(3) The telemedicine provider is not required to conduct a patient history or physical examination of the patient before engaging in a telemedicine encounter if the telemedicine provider conducts a patient evaluation sufficient to meet the prevailing standard of care for the services provided.

(4) Before each telemedicine encounter, the identification and location of the telemedicine provider and any other individuals present via advanced communications technology who will view the patient or the patient's information must be identified to the patient.

(5) For the purposes of this act, the nonemergency prescribing of a legend drug based solely on an electronic questionnaire without a visual examination is considered a failure to practice medicine with the level of care, skill, and treatment which is recognized by a reasonably prudent physician or other authorized practitioner and is not authorized under this act.

(6) A controlled substance may not be prescribed through the use of telemedicine.

(7) Medical records must be kept by each telemedicine provider that participates in a patient telemedicine encounter to the same extent as required for an in-person encounter under state and federal law. Telemedicine providers are encouraged to

create electronic health records to document the encounter and to transmit information in the most efficient manner possible.

(8) Any medical records generated, including records maintained via video, audio, electronic, or other means, due to a telemedicine encounter must conform to the confidentiality and recordkeeping requirements of federal law, nationally recognized health care accreditation organizations, and the laws and rules of this state regardless of where the medical records of a patient in this state are maintained.

(9) Telemedicine technology used by a telemedicine provider must be encrypted and must use a recordkeeping program to verify each interaction.

(10) In those situations in which a telemedicine provider uses telemedicine technology provided by a third-party vendor, the telemedicine provider must:

(a) Require a business associate agreement with the third-party vendor; and

(b) Ensure that the third-party vendor complies with the administrative, physical, and technical safeguards and standards set forth by the Health Information Technology for Economic and Clinical Health (HITECH) Act and by federal regulations implemented pursuant to HITECH.

(11) If a patient provides any of the telemedicine technology, such as a patient-owned smartphone, tablet, laptop, desktop computer, or video equipment, the telemedicine provider must take steps to ensure that such technology:

(a) Complies with the administrative, physical, and technical safeguards set forth by HITECH and by federal regulations implemented pursuant to HITECH; and

(b) Is appropriate for the medical discipline for which the technology is provided.

Section 5. Section 456.4505, Florida Statutes, is created to read:

456.4505 Interstate compacts for telemedicine.—The Legislature finds that lack of access to high-quality, affordable health care services is an increasing problem, both in this state and nationwide. The Legislature finds that this problem could be alleviated by greater interstate cooperation among, and by the mobility of, health care providers through the use of telemedicine. Therefore, the executive directors of the boards, together with the department, may participate in the development of one or more interstate compacts for the provision of telemedicine services across state lines. The department shall annually submit a report on the status of any pending compacts for legislative consideration to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Any finalized compacts shall be submitted by December 31 for consideration by the Legislature during the next regular legislative session. A compact negotiated or proposed by a board or the department is not valid until enacted by the Legislature.

Section 6. Section 456.4506, Florida Statutes, is created to read:

456.4506 Telemedicine services under Medicaid.—

(1) The Agency for Health Care Administration shall reimburse for Medicaid services provided through telemedicine in the same manner and equivalent to Medicaid services provided in person under parts III and IV of chapter 409, except as provided

484228

in subsection (7).

(2) Telemedicine services reimbursed under Medicaid must meet the standards and requirements of this act.

(3) Except as provided in subsection (7), the agency may not require in-person contact between a health care provider and Medicaid recipient as a prerequisite for payment for services appropriately provided through telemedicine in accordance with generally accepted health care practices and standards prevailing in the applicable health care community at the time the services are provided.

(4) Before receipt of telemedicine services, a Medicaid recipient or the legal representative of a Medicaid recipient must provide informed consent for telemedicine services. A Medicaid recipient shall also be provided the opportunity to receive the same service through an in-person encounter.

(5) A Medicaid service that is provided through a fee-for-service or managed care program may not be denied as a creditable Medicaid service solely because that service is provided through telemedicine.

(6) Reimbursement of telemedicine services under Medicaid shall be the amount negotiated between the parties involved to the extent permitted under state and federal law. Regardless of the reimbursement methodology or amount, telemedicine providers located at the originating site and the distant site should both receive reimbursement based on the services rendered, if any, during the telemedicine encounter.

(7) If, after implementation, the agency determines that the delivery of a particular service through telemedicine is not cost-effective or does not adequately meet the clinical needs of

484228

recipients and the determination has been documented, the agency may discontinue Medicaid reimbursement for that telemedicine service.

(8) The agency shall submit a report on the usage and costs, including savings, if any, associated with the provision of health care services through telemedicine under the Medicaid program by January 1, 2017, to the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and House of Representatives.

(9) This section is repealed June 30, 2017.

Section 7. Paragraph (i) is added to subsection (1) of section 458.311, Florida Statutes, to read:

458.311 Licensure by examination; requirements; fees.—

(1) Any person desiring to be licensed as a physician, who does not hold a valid license in any state, shall apply to the department on forms furnished by the department. The department shall license each applicant who the board certifies:

(i) For an applicant who graduates from medical school after October 1, 2015, has completed at least 2 credit hours of medical education related to telemedicine.

Section 8. Paragraph (n) is added to subsection (1) of section 459.0055, Florida Statutes, to read:

459.0055 General licensure requirements.—

(1) Except as otherwise provided herein, any person desiring to be licensed or certified as an osteopathic physician pursuant to this chapter shall:

(n) For an applicant who graduates from medical school after October 1, 2015, have completed at least 2 credit hours of medical education related to telemedicine.

484228

Section 9. This act shall take effect October 1, 2014.

========== 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 telemedicine; creating s. 456.4501, F.S.; providing a short title; creating s. 456.4502, F.S.; defining terms applicable to the act; creating s. 456.4503, F.S.; requiring health care providers providing telemedicine services to patients in this state to be licensed in this state; providing alternative requirements for out-of-state physicians; providing for disciplining out-of-state physicians through affiliated entities operating in this state; requiring pertinent records to be made available upon request; establishing venue; providing exceptions for emergency services; providing applicability; authorizing the health care boards and the Department of Health to adopt rules; creating s. 456.4504, F.S.; providing standards and prohibitions for the provision of telemedicine services; creating s. 456.4505, F.S.; providing legislative findings; authorizing the regulatory boards and the department to participate in the development of interstate compacts for the provision of telemedicine services; requiring an annual report to the Governor and the Legislature on the status of such compacts; requiring legislative


484228

enactment of such compacts; creating s. 456.4506, F.S.; providing requirements for reimbursement of telemedicine services under the Medicaid program; requiring a report to the Legislature on the usage and costs of telemedicine in Medicaid by a certain date; providing for future repeal; amending ss. 458.311 and 459.0055, F.S.; requiring an applicant for licensure as a physician who graduates after a certain date to complete 2 credit hours of medical education related to telemedicine; providing an effective date.

949514

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/04/2014	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (484228) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 456.4501, Florida Statutes, is created to read:

456.4501 Short title.—Sections 465.4501-465.4506 may be cited as the "Florida Telemedicine Act."

Section 2. Section 456.4502, Florida Statutes, is created

to read:

456.4502 Definitions.—As used in this act, the term:

(1) "Act" means the Florida Telemedicine Act.

(2) "Advanced communications technology" means:

(a) Compressed digital interactive video, audio, or data transmissions;

(b) Real-time synchronous video- or web-conferencing communications;

(c) Secure web-based communications;

(d) Still-image capture or asynchronous store and forward;

(e) Health care service transmissions supported by mobile devices (mHealth); or

(f) Other technology that facilitates access to health care services or medical specialty expertise.

(3) "Distant site" means the location at which the telemedicine provider delivering the health care service is located at the time the service is provided via telemedicine.

(4) "Encounter" means an examination, consultation, monitoring, or other health care service.

(5) "Health care provider" means a health care practitioner or out-of-state licensed individual who provides health care services within the scope of his or her professional license.

(6) "In person" means that a patient is in the physical presence of the health care provider without regard to whether portions of the encounter are conducted by other providers.

(7) "Originating site" means the location of the patient receiving telemedicine services which site meets the standards of this act as verified by the telemedicine provider.

(8) "Patient presenter" means an individual who has

clinical background training in the use of advanced communications technology equipment and who is available at the originating site to present the patient, manage the cameras or equipment, and perform any hands-on activity necessary to successfully complete the telemedicine encounter under the direction and supervision of a telemedicine provider.

(9) "Store and forward" means the type of telemedicine encounter that uses still images of patient data for rendering a medical opinion or diagnosis. The term includes the asynchronous transmission of clinical data from one site to another.

(10) "Telehealth" means the use of advanced communications technology to provide access to health assessment, diagnosis, intervention, consultation, supervision, and information across distances. The term includes the use of remote patient monitoring devices that are used to collect and transmit data for telemonitoring and interpretation.

(11) "Telemedicine" means the practice of medicine through the use of advanced communications technology by a telemedicine provider at a distant site in compliance with federal and state privacy and confidentiality requirements and encryption standards. Services provided through telemedicine may include patient assessment, diagnosis, consultation, treatment, prescription of medicine, transfer of medical data, or other medical-related services. The term does not include audio-only calls, e-mail messages, or facsimile transmissions. Telemedicine includes telehealth and telemonitoring.

(12) "Telemedicine provider" means a physician licensed under chapter 458 or chapter 459 who provides telemedicine services, or an out-of-state physician who provides telemedicine

services to a patient physically located in this state and who meets the requirements of s. 456.4503, as applicable.

Section 3. Section 456.4503, Florida Statutes, is created to read:

456.4503 Telemedicine requirements.—

(1) An out-of-state physician who provides telemedicine across state lines to a patient physically located in this state must have a Florida license to practice medicine as provided under chapter 458 or chapter 459, except as provided under subsection (2).

(2) An out-of-state physician who does not meet the requirements of subsection (1) may provide telemedicine services across state lines to patients located in this state if the physician:

(a) Holds an unrestricted active license to practice allopathic or osteopathic medicine in the state of the distant site and that state’s licensure requirements meet or exceed those of this state under chapter 458 or chapter 459, as determined by the appropriate board;

(b) Maintains professional liability coverage that includes coverage for telemedicine services, in an amount and manner consistent with s. 458.320 and appropriate to the physician’s scope of practice and location;

(c) Has one of the following:

1. Privileges at or is on the medical staff of an out-of-state hospital affiliated with a Florida hospital licensed under chapter 395; or

2. Affiliation with an out-of-state health insurer or health plan that is also authorized to conduct business in this

state pursuant to chapter 627 or chapter 641; and

(d) Practices in a state that allows Florida-licensed physicians to provide telemedicine services to patients located in that state without having to be licensed to practice medicine in that state.

(3) An out-of-state physician authorized under subsection (2) to provide telemedicine services to patients in this state is subject to appropriate disciplinary action by a regulatory entity in this state which has regulatory jurisdiction over the hospital, insurer, or health plan affiliated with the physician as described in paragraph (2)(c). Such affiliated hospital, insurer, or health plan shall be held responsible by the appropriate state regulatory entities and other legal and regulatory authorities in this state, as applicable, for the actions of their affiliated physicians providing telemedicine services to patients in this state.

(4) The telemedicine provider and any affiliated hospital, insurer, or health plan described under paragraph (2)(c), if applicable, shall make any pertinent records available upon request of the board, the department, or other regulatory authority as applicable. Failure to comply with such request may result in the revocation of the physician’s license or imposition of a fine by the applicable board or department; or, in the case of an affiliated hospital, insurer, or health plan, a fine, a license restriction, or revocation of the affiliated entity’s authorization to conduct business in this state.

(5) Venue for a civil or administrative action initiated by the telemedicine recipient, the department, or the appropriate board shall be based on the location of the patient or shall be

in Leon County.

(6) Physician consultations that occur on an emergency basis and that are conducted via telemedicine are exempt from subsections (1) and (2). Emergency services and care provided to relieve an emergency medical condition have the same meaning as provided in s. 395.002.

(7) This section does not prohibit consultations between an out-of-state health care provider and a health care practitioner in this state or for the transmission and review of digital images, pathology specimens, test results, or other medical data by an out-of-state health care provider or other qualified providers related to the care of a patient in this state.

(8) The boards, or the department if there is no board, may adopt rules to administer the requirements of this act and must repeal rules that are inconsistent with this act, including rules that prohibit the use of telemedicine in this state. The appropriate board, or the department if there is no board, may also develop standards and adopt rules relating to requirements for patient presenters. Such rules may not require the use of patient presenters in telemedicine services if special skills or training is not needed for a patient to participate in the encounter.

(9) A health care practitioner who participates in telemedicine services must complete 2 hours of continuing education credit related to the provision of services through telemedicine during each license renewal period.

Section 4. Section 456.4504, Florida Statutes, is created to read:

456.4504 Telemedicine standards.—

(1) The standard of care as provided in s. 766.102 is the same regardless of whether the physician provides health care services in person or by telemedicine. The applicable board may adopt rules specifically related to the standard of care for telemedicine.

(2) A telemedicine provider providing telemedicine services under this act is responsible for the quality of the equipment and technology employed and for its safe use. Telemedicine equipment and advanced communications technology must, at a minimum, be able to provide the same information to the telemedicine provider as the information that would be obtained in an in-person encounter with a physician and must enable the telemedicine provider to meet or exceed the prevailing standard of care for the practice of the profession.

(3) The telemedicine provider is not required to conduct a patient history or physical examination of the patient before engaging in a telemedicine encounter if the telemedicine provider conducts a patient evaluation sufficient to meet the prevailing standard of care for the services provided.

(4) Before each telemedicine encounter, the identification and location of the telemedicine provider and all other individuals present via advanced communications technology who will view the patient or the patient’s information must be identified to the patient.

(5) For the purposes of this act, the nonemergency prescribing of a legend drug based solely on an electronic questionnaire without a visual examination is considered a failure to practice medicine with the level of care, skill, and treatment which is recognized by a reasonably prudent physician

or other authorized practitioner and is not authorized under this act.

(6) A controlled substance may not be prescribed through the use of telemedicine.

(7) Medical records must be kept by each telemedicine provider that participates in a patient telemedicine encounter to the same extent as required for an in-person encounter under state and federal law. Telemedicine providers are encouraged to create electronic health records to document the encounter and to transmit information in the most efficient manner possible.

(8) Any medical records generated, including records maintained via video, audio, electronic, or other means, due to a telemedicine encounter must conform to the confidentiality and recordkeeping requirements of federal law and nationally recognized health care accreditation organizations and the laws and rules of this state, regardless of where the medical records of a patient in this state are maintained.

(9) Telemedicine technology used by a telemedicine provider must be encrypted and must use a recordkeeping program to verify each interaction.

(10) In those situations in which a telemedicine provider uses telemedicine technology provided by a third-party vendor, the telemedicine provider must:

(a) Require a business associate agreement with the third-party vendor; and

(b) Ensure that the third-party vendor complies with the administrative, physical, and technical safeguards and standards set forth by the Health Information Technology for Economic and Clinical Health (HITECH) Act and by federal regulations

implemented pursuant to HITECH.

(11) If a patient provides any of the telemedicine technology, such as a patient-owned smartphone, tablet, laptop, desktop computer, or video equipment, the telemedicine provider must take steps to ensure that such technology:

(a) Complies with the administrative, physical, and technical safeguards set forth by HITECH and by federal regulations implemented pursuant to HITECH; and

(b) Is appropriate for the medical discipline for which the technology is provided.

Section 5. Section 456.4505, Florida Statutes, is created to read:

456.4505 Interstate compacts for telemedicine.—The Legislature finds that lack of access to high-quality, affordable health care services is an increasing problem, both in this state and nationwide. The Legislature finds that this problem could be alleviated by greater interstate cooperation among, and by the mobility of, health care providers through the use of telemedicine. Therefore, the executive directors of the boards, together with the department, may participate in the development of one or more interstate compacts for the provision of telemedicine services across state lines. The department shall annually submit a report on the status of any pending compacts for legislative consideration to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Any finalized compacts shall be submitted by December 31 for consideration by the Legislature during the next regular legislative session. A compact negotiated or proposed by a board or the department is not valid until enacted by the

949514

Legislature.

Section 6. Section 456.4506, Florida Statutes, is created to read:

456.4506 Telemedicine services under Medicaid.—

(1) The Agency for Health Care Administration shall reimburse for Medicaid services provided through telemedicine in the same manner and equivalent to Medicaid services provided in person under parts III and IV of chapter 409, except as provided in subsection (7).

(2) Telemedicine services reimbursed under Medicaid must meet the standards and requirements of this act.

(3) Except as provided in subsection (7), the agency may not require in-person contact between a physician and Medicaid recipient as a prerequisite for payment for services appropriately provided through telemedicine in accordance with generally accepted health care practices and standards prevailing in the applicable health care community at the time the services are provided.

(4) Before receipt of telemedicine services, a Medicaid recipient or the legal representative of a Medicaid recipient must provide informed consent for telemedicine services. A Medicaid recipient shall also be provided the opportunity to receive the same service through an in-person encounter.

(5) A Medicaid service that is provided through a fee-for-service or managed care program may not be denied as a creditable Medicaid service solely because that service is provided through telemedicine.

(6) Reimbursement of telemedicine services under Medicaid shall be the amount negotiated between the parties involved to

the extent permitted under state and federal law. Regardless of the reimbursement methodology or amount, telemedicine providers located at the originating site and the distant site should both receive reimbursement based on the services rendered, if any, during the telemedicine encounter.

(7) If, after implementation, the agency determines that the delivery of a particular service through telemedicine is not cost-effective or does not adequately meet the clinical needs of recipients and the determination has been documented, the agency may discontinue Medicaid reimbursement for that telemedicine service.

(8) The agency shall submit a report on the usage and costs, including savings, if any, associated with the provision of health care services through telemedicine under the Medicaid program by January 1, 2017, to the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(9) This section is repealed June 30, 2017.

Section 7. Paragraph (i) is added to subsection (1) of section 458.311, Florida Statutes, to read:

458.311 Licensure by examination; requirements; fees.—

(1) Any person desiring to be licensed as a physician, who does not hold a valid license in any state, shall apply to the department on forms furnished by the department. The department shall license each applicant who the board certifies:

(i) For an applicant who graduates from medical school after October 1, 2015, has completed at least 2 credit hours of medical education related to telemedicine.

Section 8. Paragraph (n) is added to subsection (1) of

949514

section 459.0055, Florida Statutes, to read:

459.0055 General licensure requirements.—

(1) Except as otherwise provided herein, any person desiring to be licensed or certified as an osteopathic physician pursuant to this chapter shall:

(n) For an applicant who graduates from medical school after October 1, 2015, have completed at least 2 credit hours of medical education related to telemedicine.

Section 9. This act shall take effect October 1, 2014.

========== 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 telemedicine; creating s. 456.4501, F.S.; providing a short title; creating s. 456.4502, F.S.; defining terms applicable to the act; creating s. 456.4503, F.S.; requiring physicians providing telemedicine services to patients in this state to be licensed in this state; providing alternative requirements for out-of-state physicians; providing for disciplining out-of-state physicians through affiliated entities operating in this state; requiring pertinent records to be made available upon request; establishing venue; providing exceptions for emergency services; providing applicability; authorizing the licensing boards and the Department of Health to adopt rules; creating s. 456.4504, F.S.; providing standards

949514

and prohibitions for the provision of telemedicine services; prohibiting nonemergency prescribing of a legend drug without a physical examination; prohibiting the prescription of a controlled substance using telemedicine; creating s. 456.4505, F.S.; providing legislative findings; authorizing the regulatory boards and the department to participate in the development of interstate compacts for the provision of telemedicine services; requiring an annual report to the Governor and the Legislature on the status of such compacts; requiring legislative enactment of such compacts; creating s. 456.4506, F.S.; providing requirements for reimbursement of telemedicine services under the Medicaid program; requiring a report to the Legislature on the usage and costs of telemedicine in Medicaid by a certain date; providing for future repeal; amending ss. 458.311 and 459.0055, F.S.; requiring an applicant for licensure as a physician who graduates after a certain date to complete 2 credit hours of medical education related to telemedicine; providing an effective date.

401616

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Substitute for Amendment (484228) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 456.4501, Florida Statutes, is created to read:

456.4501 Short title.—Sections 465.4501-465.4507 may be cited as the "Florida Telemedicine Act."

401616

Section 2. Section 456.4502, Florida Statutes, is created to read:

456.4502 Definitions.—As used in this act, the term:

(1) "Act" means the Florida Telemedicine Act.

(2) "Advanced communications technology" means:

(a) Compressed digital interactive video, audio, or data transmissions;

(b) Real-time synchronous video- or web-conferencing communications;

(c) Secure web-based communications;

(d) Still-image capture or asynchronous store and forward;

(e) Health care service transmissions supported by mobile devices (mHealth); or

(f) Other technology that facilitates access to health care services or medical specialty expertise.

(3) "Distant site" means the location at which the telemedicine provider delivering the health care service is located at the time the service is provided via telemedicine.

(4) "Encounter" means an examination, consultation, monitoring, or other health care service.

(5) "Health care provider" means a health care practitioner or out-of-state licensed individual who provides health care services within the scope of his or her professional license.

(6) "In person" means that a patient is in the physical presence of the health care provider without regard to whether portions of the encounter are conducted by other providers.

(7) "Originating site" means the location of the patient receiving telemedicine services, which site meets the standards of this act as verified by the telemedicine provider.

401616

(8) "Patient presenter" means an individual who has clinical background training in the use of advanced communications technology equipment and who is available at the originating site to present the patient, manage the cameras or equipment, and perform any hands-on activity necessary to successfully complete the telemedicine encounter under the direction and supervision of a telemedicine provider.

(9) "Store and forward" means the type of telemedicine encounter that uses still images of patient data for rendering a medical opinion or diagnosis. The term includes the asynchronous transmission of clinical data from one site to another.

(10) "Telehealth" means the use of advanced communications technology to provide access to health assessment, diagnosis, intervention, consultation, supervision, and information across distances. The term includes the use of remote patient-monitoring devices that are used to collect and transmit data for telemonitoring and interpretation.

(11) "Telemedicine" means the practice of medicine through the use of advanced communications technology by a telemedicine provider at a distant site in compliance with federal and state privacy and confidentiality requirements and encryption standards. Services provided through telemedicine may include patient assessment, diagnosis, consultation, treatment, prescription of medicine, transfer of medical data, or other medical-related services. The term does not include audio-only calls, e-mail messages, or facsimile transmissions. Telemedicine includes telehealth and telemonitoring.

(12) "Telemedicine provider" means a physician licensed under chapter 458 or chapter 459 who provides telemedicine

services.

Section 3. Section 456.4503, Florida Statutes, is created to read:

456.4503 Telemedicine requirements.—

(1) An out-of-state physician who provides telemedicine across state lines to a patient physically located in this state must:

(a) Have a Florida license to practice medicine as provided under chapter 458 or chapter 459, except as provided under subsection (2); or

(b) If not licensed in this state:

1. Hold an unrestricted active license to practice allopathic or osteopathic medicine in the state of the distant site and that state's licensure requirements must meet or exceed those of this state under chapter 458 or chapter 459, as determined by the appropriate board;

2. Maintain professional liability coverage that includes coverage for telemedicine services, in an amount and manner consistent with s. 458.320 and appropriate to the physician's scope of practice and location;

3. Have one of the following:

a. Privileges at or be on the medical staff of an out-of-state hospital affiliated with a Florida hospital licensed under chapter 395; or

b. Affiliation with an out-of-state health insurer or health plan that is also authorized to conduct business in this state pursuant to chapter 627 or chapter 641; and

4. Practice in a state that authorizes Florida-licensed physicians to provide telemedicine services to patients located

401616

in that state without having to be licensed to practice medicine in that state.

(2) An out-of-state physician authorized under paragraph (1)(b) to provide telemedicine services to patients in this state is subject to appropriate disciplinary action by a regulatory entity in this state which has regulatory jurisdiction over the hospital, insurer, or health plan affiliated with the physician as described in subparagraph (1)(b)3. Such affiliated hospital, insurer, or health plan shall be held responsible by the appropriate state regulatory entities and other legal and regulatory authorities in this state, as applicable, for the actions of its affiliated physicians providing telemedicine services to patients in this state.

(3) A telemedicine provider and a hospital, insurer, or health plan operating in this state which is affiliated with an out-of-state provider as described in subparagraph (1)(b)2. shall make any pertinent records available upon request of the board, the department, or other regulatory authority as applicable. Failure to comply with such request may result in the revocation of the provider's license or imposition of a fine by the applicable board; or, in the case of an affiliated hospital, insurer, or health plan, a fine, license restriction, or revocation of an affiliated entity's authorization to conduct business in this state.

(4) An out-of-state physician is not required to meet the requirements of subsection (1) if:

(a) The out-of-state physician is consulting with a physician licensed to practice medicine in this state; and

(b) The physician licensed in this state retains ultimate

401616

authority and responsibility for the diagnosis, treatment, and care of the patient located within this state.

(5) Physician consultations that occur on an emergency basis and that are conducted via telemedicine are exempt from subsection (1). Emergency services and care provided to relieve an emergency medical condition have the same meaning as provided in s. 395.002.

(6) A health care provider or patient presenter acting under the direction and supervision of a physician through the use of telemedicine may not be interpreted as practicing medicine without a license. However, the health care provider must be trained in, educated on, and knowledgeable about the procedure and technology and may not perform duties for which the provider does not have sufficient training, education, and knowledge. Failure to have adequate training, education, and knowledge is grounds for disciplinary action by the appropriate board, or the department if there is no board, or the affiliated regulatory entity for affiliated providers.

(7) Upon license renewal, a physician practicing telemedicine shall:

(a) Designate himself or herself as a telemedicine provider on the physician's practitioner profile; and

(b) Submit proof of successful completion of a course and subsequent examination, approved by the board, on the standards of practice in telemedicine. The course must consist of 2 web-based contact hours. The first course and examination must be offered by July 1, 2014, and shall be conducted at least annually thereafter. The course and examination shall be developed and offered by a statewide professional association of

401616

physicians in this state accredited to provide educational activities designated for an American Medical Association Physician's Recognition Award (AMA PRA) Category 1 credit. The board shall review and approve the content of the initial course and examination if the board determines that the course and examination adequately and reliably satisfy the criteria set forth in this section. The board shall annually thereafter review and approve the course and examination if the board determines that the content continues to adequately and reliably satisfy the criteria set forth in this section. Successful completion of the board-approved course and examination may be used by a certified physician to satisfy 2 hours of continuing education requirements for the biennial period during which the board-approved course and examination are taken. A physician who does not complete a board-approved course and examination under this section may not provide telemedicine services.

(8) Venue for a civil or administrative action initiated by the telemedicine recipient, the department, or the appropriate board shall be based on the location of the patient or shall be in Leon County.

(9) The boards may adopt rules to administer the requirements of this act and must repeal rules that are inconsistent with this act, including rules that prohibit the use of telemedicine in this state. The appropriate board may also develop standards and adopt rules relating to requirements for patient presenters. Such rules may not require the use of patient presenters in telemedicine services if special skills or training is not needed for a patient to participate in the encounter.

Section 4. Section 456.4504, Florida Statutes, is created to read:

456.4504 Telemedicine standards.—

(1) The standard of care as provided in s. 766.102 is the same regardless of whether the physician provides health care services in person or by telemedicine. The applicable board may adopt rules specifically related to the standard of care for telemedicine.

(2) A telemedicine provider providing telemedicine services under this act is responsible for the quality of the equipment and technology employed and for its safe use. Telemedicine equipment and advanced communications technology must, at a minimum, be able to provide the same information to the telemedicine provider as the information that would be obtained in an in-person encounter with a health care provider and must enable the telemedicine provider to meet or exceed the prevailing standard of care for the practice of the profession.

(3) The telemedicine provider is not required to conduct a patient history or physical examination of the patient before engaging in a telemedicine encounter if the telemedicine provider conducts a patient evaluation sufficient to meet the prevailing standard of care for the services provided.

(4) Before each telemedicine encounter, the identification and location of the telemedicine provider and all other individuals present via advanced communications technology who will view the patient or the patient’s information must be identified to the patient.

(5) For the purposes of this act, the nonemergency prescribing of a legend drug based solely on an electronic

401616

questionnaire without a visual examination is considered a failure to practice medicine with the level of care, skill, and treatment which is recognized by a reasonably prudent physician or other authorized practitioner and is not authorized under this act.

(6) A controlled substance may not be prescribed through the use of telemedicine for chronic, nonmalignant pain.

(7) Medical records must be kept by each telemedicine provider that participates in a patient telemedicine encounter to the same extent as required for an in-person encounter under state and federal law. Telemedicine providers are encouraged to create electronic health records to document the encounter and to transmit information in the most efficient manner possible.

(8) Any medical records generated, including records maintained via video, audio, electronic, or other means, due to a telemedicine encounter must conform to the confidentiality and recordkeeping requirements of federal law and nationally recognized health care accreditation organizations and the laws and rules of this state, regardless of where the medical records of a patient in this state are maintained.

(9) Telemedicine technology used by a telemedicine provider must be encrypted and must use a recordkeeping program to verify each interaction.

(10) In those situations in which a telemedicine provider uses telemedicine technology provided by a third-party vendor, the telemedicine provider must:

(a) Require a business associate agreement with the third-party vendor; and

(b) Ensure that the third-party vendor complies with the

administrative, physical, and technical safeguards and standards set forth by the Health Information Technology for Economic and Clinical Health (HITECH) Act and by federal regulations implemented pursuant to HITECH.

Section 5. Section 456.4505, Florida Statutes, is created to read:

456.4505 Telemedicine services to diagnose or treat the human eye.—

(1) The use of automated equipment, including computer-controlled devices, in the provision of telemedicine services to diagnose or treat the human eye and its appendages, is permissible if the following requirements are met at the time the automated equipment is used:

(a) The automated equipment is approved by the United States Food and Drug Administration for the intended use;

(b) The automated equipment is designed and operated in a manner that provides any accommodation required by the federal ADA Amendments Act of 2008;

(c) The automated equipment and accompanying technology used for the collection and transmission of information and data, including photographs and scans, gathers and transmits protected health information in compliance with the federal Health Insurance Portability and Accountability Act;

(d) The procedure for which the automated equipment is used has a recognized Current Procedural Terminology (CPT) code approved by the Centers for Medicare and Medicaid Services;

(e) The physical location of the automated equipment prominently displays the name and Florida license number of the individual who will read and interpret the diagnostic

401616

information and data, including photographs and scans;

(f) Diagnostic information and data, including photographs and scans, gathered by the automated equipment is read and interpreted by an optometrist licensed under chapter 463 or a physician skilled in diseases of the human eye and licensed under chapter 458 or chapter 459; and

(g) The owner or lessee of the automated equipment maintains liability insurance in an amount adequate to cover claims made by individuals diagnosed or treated based on information and data, including photographs and scans, generated by the automated equipment.

(2) A prescription for spectacles or contact lens may not be made based on telemedicine services or based solely on the refractive error of the human eye generated by a computer-controlled device such as an autorefractor.

Section 6. Section 456.4506, Florida Statutes, is created to read:

456.4506 Telemedicine services under Medicaid.—

(1) The Agency for Health Care Administration shall reimburse for Medicaid services provided through telemedicine in the same manner and equivalent to Medicaid services provided in person under parts III and IV of chapter 409, except as provided in subsection (7).

(2) Telemedicine services reimbursed under Medicaid must meet the standards and requirements of this act.

(3) Except as provided in subsection (7), the agency may not require in-person contact between a telemedicine provider and Medicaid recipient as a prerequisite for payment for services appropriately provided through telemedicine in

401616

accordance with generally accepted health care practices and standards prevailing in the applicable health care community at the time the services are provided.

(4) Before receipt of telemedicine services, a Medicaid recipient or the legal representative of a Medicaid recipient must provide informed consent for telemedicine services. A Medicaid recipient shall also be provided the opportunity to receive the same service through an in-person encounter.

(5) A Medicaid service that is provided through a fee-for-service or managed care program may not be denied as a creditable Medicaid service solely because that service is provided through telemedicine.

(6) Reimbursement of telemedicine services under Medicaid shall be the amount negotiated between the parties involved to the extent permitted under state and federal law. Regardless of the reimbursement methodology or amount, telemedicine providers located at the originating site and the distant site should both receive reimbursement based on the services rendered, if any, during the telemedicine encounter.

(7) If, after implementation, the agency determines that the delivery of a particular service through telemedicine is not cost-effective or does not adequately meet the clinical needs of recipients and the determination has been documented, the agency may discontinue Medicaid reimbursement for that telemedicine service.

(8) The agency shall submit a report on the usage and costs, including savings, if any, associated with the provision of health care services through telemedicine under the Medicaid program by January 1, 2017, to the President of the Senate, the


401616

Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(9) This section is repealed June 30, 2017.

Section 7. Section 456.4507, Florida Statutes, is created to read:

456.4507 Requirements for private insurer reimbursement.—

(1) Each health carrier or health benefit plan that offers or issues health benefit plans that are delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2014, may not deny coverage for a health care service on the basis that the health care service is provided through telemedicine if the same service would be covered if provided through an in-person encounter.

(2) A health carrier may not exclude an otherwise covered health care service from coverage solely because the service is provided through telemedicine rather than through an in-person encounter between a health care provider and a patient.

(3) A health carrier is not required to reimburse a telemedicine provider or a consulting provider for originating site fees or costs for the provision of telemedicine services; however, subject to correct coding, a health carrier shall reimburse a health care provider for the diagnosis, consultation, or treatment of an insured or enrollee if the health care service is delivered through telemedicine on the same basis that the health carrier reimburses the service when it is delivered in person.

(4) A health care service provided through telemedicine may not be subject to a greater deductible, copayment, or coinsurance amount than would be applicable if the same service

401616

was provided through an in-person diagnosis, consultation, or treatment.

(5) A health carrier may not impose upon any person receiving benefits under this section any copayment, coinsurance, or deductible amount or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services which is not equally imposed upon all terms and services covered under the policy, contract, or health benefit plan.

(6) This section does not preclude a health carrier from conducting a utilization review to determine the appropriateness of telemedicine as a means of delivering a health care service if such determination is made in the same manner as would be made for the same service delivered in person.

(7) A health carrier or health benefit plan may limit coverage for health care services that are provided through telemedicine to health care providers that are in a network approved by the plan or the health carrier.

(8) This section does not require a health care provider to be physically present with a patient unless the health care provider who is providing health care services by means of telemedicine determines that the presence of a health care provider is necessary.

(9) This section does not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified-disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, or short-term major medical policy of a duration of 6 months or less or any other supplemental policy as determined by

401616

the Office of Insurance Regulation.

Section 8. This act shall take effect October 1, 2014.

========== 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 telemedicine; creating s. 456.4501, F.S.; providing a short title; creating s. 456.4502, F.S.; defining terms applicable to the act; creating s. 456.4503, F.S.; requiring physicians providing telemedicine services to patients in this state to be licensed in this state or to meet alternative requirements; providing for disciplining out-of-state physicians through affiliated entities operating in this state; requiring pertinent records to be made available upon request; providing certain exceptions for emergency services and consultations; requiring other health care providers to be supervised by a physician; providing continuing education requirements for telemedicine providers; establishing venue; providing applicability; authorizing the licensing boards to adopt rules; creating s. 456.4504, F.S.; providing standards and prohibitions for the provision of telemedicine services; prohibiting nonemergency prescribing of a legend drug without a physical examination; prohibiting the prescription of a controlled substance using telemedicine; creating s.

401616

456.4505, F.S.; authorizing the use of telemedicine services in the diagnosis and treatment of the human eye; providing requirements for the use of automated equipment; requiring the owner or lessee of the automated equipment to maintain specified liability insurance under certain circumstances; prohibiting prescriptions for spectacles or contact lens based solely on the use of an autorefractor; creating s. 456.4506, F.S.; providing requirements for reimbursement of telemedicine services under the Medicaid program; requiring a report to the Legislature on the usage and costs of telemedicine in Medicaid by a certain date; creating s. 456.4507, F.S.; providing the requirements for the reimbursement of telemedicine services by private health insurers; providing applicability; providing an effective date.

256494

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment to Substitute Amendment (401616)

Delete line 101
and insert:
state is subject to appropriate disciplinary action by the Board of Medicine, the Board of Osteopathic Medicine, or a

942114

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment to Substitute Amendment (401616) (with title amendment)

Delete lines 105 - 109
and insert:
(1)(b)3.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 402 - 403

942114

and insert:

physicians; requiring pertinent records to be made

692240

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment to Substitute Amendment (401616) (with title amendment)

Delete lines 332 - 387.

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

And the title is amended as follows:

Delete lines 428 - 431

and insert:

Medicaid by a certain date; providing an effective date.

FOR CONSIDERATION By the Committee on Health Policy

588-01505-14 20147028__

A bill to be entitled

An act relating to telemedicine; creating s. 456.4501, F.S.; providing a short title, the "Florida Telemedicine Act"; creating s. 456.4502, F.S.; defining terms applicable to the act; creating s. 456.4503, F.S.; creating licensure and registration requirements; providing applicability; authorizing the health care boards and the Department of Health to adopt rules; creating s. 456.4504, F.S.; providing standards and prohibitions for the provision of telemedicine; creating s. 456.4505, F.S.; providing health insurer and health plan reimbursement requirements for telemedicine; creating s. 456.4506, F.S.; providing legislative findings; authorizing the regulatory boards and the department to negotiate interstate compacts for telemedicine; requiring an annual report to the Governor and the Legislature on the status of such compacts; requiring legislative ratification of such compacts; creating s. 456.4507, F.S.; providing requirements for reimbursement of telemedicine services under the Medicaid program; requiring a report to the Legislature on the usage and costs of telemedicine in Medicaid by a certain date; providing for future repeal; providing an effective date.

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

Section 1. Section 456.4501, Florida Statutes, is created

Florida Senate - 2014 **(PROPOSED COMMITTEE BILL) SPB 7028**

588-01505-14 20147028__

to read:

456.4501 Short title.—Sections 465.4501-465.4507 may be cited as the "Florida Telemedicine Act."

Section 2. Section 456.4502, Florida Statutes, is created to read:

456.4502 Definitions.— As used in this act, the term:

(1) "Act" means the Florida Telemedicine Act.

(2) "Advanced communications technology" means:

(a) Compressed digital interactive video audio, or data transmissions;

(b) Real-time synchronous video or web-conferencing communications;

(c) Secure web-based communications;

(d) Still-image capture or asynchronous store and forward;

(e) Health care service transmissions supported by mobile devices (mHealth); or

(f) Other technology that facilitates access to health care services or medical specialty expertise.

(3) "Distant site" means the location at which the telemedicine provider delivering the health care service is located at the time the service is provided via telemedicine.

(4) "Encounter" means an examination, consultation, monitoring, or other health care service.

(5) "Health care provider" means a health care practitioner or out-of-state licensed individual who provides health care services within the scope of his or her professional license.

(6) "In person" means that a patient is in the physical presence of the health care provider without regard to whether portions of the encounter are conducted by other providers.

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

(7) "Originating site" means the location of the patient at the time a health care service is being furnished via telemedicine. The originating site may also mean the location at which the advanced communications technology equipment that facilitates the provision of telemedicine is located, with or without the patient being present. An originating site is one of the following:

(a) The office of a health care provider.

(b) A critical access hospital as defined in s. 1861(mm)(1) of the Social Security Act.

(c) A rural health clinic as defined in s. 1861(aa)(2) of the Social Security Act.

(d) A federally qualified health center as defined in s. 1861(aa)(4) of the Social Security Act.

(e) A hospital as defined in s. 1861(e) of the Social Security Act.

(f) A hospital-based or critical access hospital-based renal dialysis center, including satellites.

(g) A community mental health center as defined in s. 1861(ff)(3)(B) of the Social Security Act.

(h) A correctional facility.

(i) If the security and privacy of the advanced communications technology can be verified by the distant site, the patient's home.

(8) "Patient presenter" means an individual who has clinical background training in the use of advanced communications technology equipment and who is available at the originating site to present the patient, manage the cameras or equipment, and perform any hands-on activity necessary to

successfully complete the telemedicine encounter.

(9) "Store and forward" means the type of telemedicine encounter that uses still digital images of patient data for rendering a medical opinion or diagnosis. The term includes the asynchronous transmission of clinical data from one site to another.

(10) "Telemedicine" means the use of advanced communications technology by a health care provider or by a health care provider acting under an appropriate delegation or supervision as may be required by the appropriate board, or the department if there is no board, to provide a health care services. Services provided through telemedicine may include patient assessment, diagnosis, consultation, treatment, prescription of medicine, transfer of medical data, or other medical-related services. The term does not include audio-only calls, e-mail messages, or facsimile transmissions. Telemedicine also includes telehealth and telemonitoring.

(11) "Telemedicine provider" means a health care provider who provides telemedicine services to a patient physically located in this state.

Section 3. Section 456.4503, Florida Statutes, is created to read:

456.4503 Licensure and registration requirements.—

(1) An out-of-state health care provider who provides telemedicine across state lines to a patient physically located in this state must have a Florida license to practice a health care profession or must meet the following telemedicine requirements:

(a) Hold an unrestricted active license to practice his or

her profession in the health care provider's state of residency; and

(b) Complete telemedicine registration with the department through a procedure established by the appropriate board for the health care provider's area of practice, or the department if there is no board; and

(c) Pay a biennial registration fee set by the applicable board, not to exceed $50.

(2) A registration issued under this section, regardless of the location of the telemedicine provider, shall be treated as a license for disciplinary action by the appropriate board in this state, or the department if there is no board. A telemedicine provider licensed in this state or registered to practice telemedicine in accordance with this act is subject to this act, the jurisdiction of this state's applicable board, other legal and regulatory authorities in this state, as applicable, and the jurisdiction of the courts of this state. The telemedicine provider shall also make available any pertinent records upon request of the board, the department, or the regulatory authority. Failure to comply with such request may result in revocation of the telemedicine provider's license or registration at the discretion of the applicable board, or the department if there is no board, or a fine as established by the applicable board or the department, as applicable.

(3) Registration as a telemedicine provider is required only for those out-of-state health care providers who engage in the practice of telemedicine across state lines more than 10 times per calendar year. Physician consultations that occur on an emergency basis are exempt from registration requirements.

(4) This section does not prohibit or require licensure or registration for consultations between an out-of-state health care provider and a health care practitioner in this state or for the transmission and review of digital images, pathology specimens, test results, or other medical data by an out-of-state health care provider or other qualified providers related to the care of a patient in this state.

(5) This section does not preclude a health care provider who acts within the scope of his or her practice from using the technology of telemedicine within his or her practice or under the direction and supervision of another health care provider whose scope of practice includes the use of such technology. A health care provider or patient presenter acting under the direction and supervision of a physician through the use of telemedicine may not be interpreted as practicing medicine without a license. However, a health care provider must be trained in, educated on, and knowledgeable about the procedure and technology and may not perform duties for which the practitioner does not have sufficient training, education, and knowledge. Failure to have adequate training, education, and knowledge is grounds for disciplinary action by the appropriate board or the department if there is no board.

(6) The boards, or the department if there is no board, may adopt rules to administer the requirements of this act and must repeal rules that are inconsistent with this act, including rules that prohibit the use of telemedicine in this state. The appropriate board, or the department if there is no board, may also develop standards and adopt rules relating to requirements for patient presenters. Such rules may not require the use of

patient presenters in telemedicine services if special skills or training is not needed for a patient to participate in the encounter.

Section 4. Section 456.4504, Florida Statutes, is created to read:

456.4504 Telemedicine standards.—

(1) The standard of care as provided in s. 766.102 is the same regardless of whether a health care provider provides health care services in person or by telemedicine. The applicable board for each health care provider, or the department if there is no board, may adopt rules specifically related to the standard of care for telemedicine.

(2) A telemedicine provider providing telemedicine services under this act is responsible for the quality of the equipment and technology employed and for its safe use. Telemedicine equipment and advanced communications technology must, at a minimum, be able to provide the same information to the telemedicine provider as the information that would be obtained in an in-person encounter with a health care provider which enables the telemedicine provider to meet or exceed the prevailing standard of care for the practice of the profession.

(3) The telemedicine provider is not required to conduct a patient history or physical examination of the patient before engaging in a telemedicine encounter if the telemedicine provider conducts a patient evaluation sufficient to meet the community standard of care for the services provided.

(4) For the purposes of this act, the nonemergency prescribing of a legend drug based solely on an electronic questionnaire without a visual examination is considered a

failure to practice medicine with the level of care, skill, and treatment which is recognized by a reasonably prudent physician or other authorized practitioners and is not authorized under this act.

(5) A controlled substance may not be prescribed through the use of telemedicine for chronic, nonmalignant pain.

(6) Medical records must be kept by each telemedicine provider that participates in a patient telemedicine encounter to the same extent as required for an in-person encounter under state and federal law. Telemedicine providers are encouraged to create electronic health records to record the encounter and to transmit information in the most efficient manner possible.

(7) Any medical records generated, including records maintained via video, audio, electronic, or other means, due to a telemedicine encounter must conform to the confidentiality and recordkeeping requirements of federal law, nationally recognized health care accreditation organizations, and the laws and rules of this state regardless of where the medical records of a patient in this state are maintained.

(8) Telemedicine technology used by a telemedicine provider must be encrypted and must use a recordkeeping program to verify each interaction.

(9) In those situations in which a telemedicine provider uses telemedicine technology provided by a third-party vendor, the telemedicine provider must:

(a) Require a business associate agreement with the third-party vendor; and

(b) Ensure that the third-party vendor complies with the administrative, physical, and technical safeguards and standards

set forth by the Health Information Technology for Economic and Clinical Health (HITECH) Act and by federal regulations implemented pursuant to HITECH.

(10) If a patient provides any of the telemedicine technology, such as a patient-owned smartphone, tablet, laptop, desktop computer, or video equipment, the telemedicine provider must take steps to ensure that such technology:

(a) Complies with the administrative, physical, and technical safeguards set forth by HITECH and by federal regulations implemented pursuant to HITECH; and

(b) Is appropriate for the medical discipline for which the technology is provided.

Section 5. Section 456.4505, Florida Statutes, is created to read:

456.4505 Requirements for reimbursement.—

(1) If health care services provided through telemedicine are an included benefit in a health insurance policy or health plan coverage, such services must be paid in an amount equal to the amount that a health care provider would have been paid had such services been furnished without the use of advanced communications technology.

(2) Reimbursement amounts for telemedicine providers at the distant site and the originating site and any originating fees are to be determined between the individual telemedicine provider and the health insurer or health plan.

(3) This section does not preclude a health insurer or health plan from imposing a deductible, a copayment, or a coinsurance requirement for a health care service provided through telemedicine if the deductible, copayment, or

coinsurance does not exceed the amount applicable to an in-person encounter for the same health care service.

(4) A health insurance policy or health plan may limit coverage for health care services that are provided through telemedicine to telemedicine providers that are in a network approved by the health insurer or health plan without regard to s. 627.6471 or s. 627.6472.

Section 6. Section 456.4506, Florida Statutes, is created to read:

456.4506 Interstate compacts for telemedicine.—The Legislature finds that lack of access to high-quality, affordable health care services is an increasing problem, both in this state and nationwide. The Legislature finds that this problem could be alleviated by greater interstate cooperation among, and by the mobility of, health care providers through the use of telemedicine. Therefore, the executive directors of the boards, together with the department, may negotiate one or more interstate compacts for the provision of telemedicine services across state lines. The department shall annually submit a report on the status of any negotiated compacts to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Any negotiated compacts shall be submitted by December 31 for ratification by the Legislature during the next regular legislative session.

Section 7. Section 456.4507, Florida Statutes, is created to read:

456.4507 Telemedicine services under Medicaid.—

(1) The Agency for Health Care Administration shall reimburse Medicaid services provided through telemedicine in the

same manner and equivalent to Medicaid services provided in person under parts III and IV of chapter 409, except as provided in subsection (6).

(2) Telemedicine services reimbursed under Medicaid must meet the standards and requirements of this act.

(3) Except as provided in subsection (6), the agency may not require in-person contact between a health care provider and Medicaid recipient as a prerequisite for payment for services appropriately provided through telemedicine in accordance with generally accepted health care practices and standards prevailing in the applicable health care community at the time the services are provided.

(4) A Medicaid service that is provided through a fee-for-service or managed care program may not be denied as a creditable Medicaid service solely because that service is provided through telemedicine.

(5) Reimbursement of telemedicine services under Medicaid shall be the amount negotiated between the parties involved to the extent permitted under state and federal law. Regardless of the reimbursement methodology or amount, telemedicine providers located at the originating site and the distant site should both receive reimbursement based on the services rendered, if any, during the telemedicine encounter.

(6) If, after implementation, the agency determines that the delivery of a particular service through telemedicine is not cost-effective or does not adequately meet the clinical needs of recipients and the determination has been documented, the agency may discontinue Medicaid reimbursement for that telemedicine service.

(7) The agency shall submit a report on the usage and costs, including savings, if any, associated with the provision of health care services through telemedicine under the Medicaid program by January 1, 2017, to the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and House of Representatives.

(8) This section is repealed June 30, 2017.

Section 8. This act shall take effect July 1, 2014.

BAYADA®
Home Health Care

Kyle Simon
Associate Director, Government Affairs
3001 Aloma Avenue
Winter Park, FL 32792

407-520-6944 cell
407-679-1300 fax
ksimon@bayada.com
www.bayada.com

Testimony to Senate Health Policy Committee – March 5, 2014

Florida and our nation are facing critical health care challenges: 10,000 Baby Boomers are turning 65 years old every day, and there is a growing shortage of health care practitioners available to provide Floridians with needed medical care. As such, BAYADA supports and applauds the Florida Senate Health Policy Committee for proposing telemedicine legislation (SPB 7028) that will have a positive impact on access to care and quality.

BAYADA Home Health Care is one of the nation's largest privately-held home health care providers, operating in 22 states including eight offices in Central Florida. Since 1975, BAYADA health care professionals have provided cost-effective, high quality care to our clients in the preferred setting — at home.

Telemedicine utilizes multiple forms of communication technology to provide safe, high quality health care services through a variety of electronic mediums. Floridians residing in rural areas or who have limited access to health care providers will benefit from SPB 7028, which would require private insurance plans to cover telemedicine services at rates equal to an in-person encounter. According to the American Telemedicine Association, at least 20 other states and the District of Columbia have already enacted similar legislation.[i]

A critical provision in SPB 7028 would permit state licensing boards to negotiate interstate compacts to alleviate staffing shortage issues. If enacted, the Florida Board of Nursing would have the option to join the Nurse Licensure Compact with 24 other states. Nurses licensed in any compact state would be able to practice nursing in any other compact member state. This is a state-based solution to a national staffing shortage problem.

As our state's population continues to grow and gray, BAYADA commends the Committee's leadership to address these critical challenges. Should you have questions regarding telemedicine, nurse licensure compact, home and community-based services, or about BAYADA, please contact me at (407) 520-6944 or via email at ksimon@bayada.com.

[i] American Telemedicine Association. http://www.americantelemed.org/docs/default-source/policy/state-telemedicine-legislation-matrix.pdf.

Compassion. Excellence. Reliability.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-5-14
Meeting Date

Topic SPB 7028 Galvano amendment — Bill Number 7028 *(if applicable)*

Name Audrey Brown — Amendment Barcode 942114 *(if applicable)*

Job Title President + CEO

Address _____ *Street* — Phone _____

_____ *City* *State* *Zip* — E-mail _____

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☐ No — Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/6/14
Meeting Date

Topic telemedicine Bill Number 7028 *(if applicable)*

Name Debra Hensley Amendment Barcode 942114 *(if applicable)*

Job Title Executive Director

Address 216 S. Monroe St. Phone 224-9403
Street

Tally FL 32301 E-mail
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Amendment 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.

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)

3-5-14
Meeting Date

Topic Bean amendment SPB 7025 Bill Number 7025 *(if applicable)*

Name Audrey Brown Amendment Barcode 692240 *(if applicable)*

Job Title President + CEO

Address Phone
Street

E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/14
Meeting Date

Topic Telemedicine

Bill Number SB 7028 *(if applicable)*

Name KRistina Wiggins

Amendment Barcode 401616 *(if applicable)*

Job Title

Address 225 S Adams St
Street
Tallahassee FL
City *State* *Zip*

Phone (850) 251-8674

E-mail

Speaking: ☐ For ☑ Against ☐ Information

Representing CNOW

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/14
Meeting Date

Topic Telemedicine

Bill Number 7028 *(if applicable)*

Name Layne Smith

Amendment Barcode 401616 *(if applicable)*

Job Title Director, State Government Relations

Address 4500 San Pablo Road
Street
Jacksonville FL 32224
City *State* *Zip*

Phone 904-953-7334

E-mail smith.layne@mayo.edu

Speaking: ☐ For ☐ Against ☐ Information

Representing Mayo Clinic

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Telemedicine — Bill Number 7028 *(if applicable)*

Name Dr Kim Landry — Amendment Barcode 401616 *(if applicable)*

Job Title Emergency Physician

Address 405 waterford lane *Street* — Phone 850-982-9384

Gulf Breeze *City* FL *State* 32561 *Zip* — E-mail Klandry@mchsi.com

Speaking: ☑ For ☐ Against ☐ Information

Representing

Appearing at request of Chair: ☐ Yes ☑ No — Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/14 *Meeting Date*

Topic Telehealth — Bill Number 7028 *(if applicable)*

Name David Christian — Amendment Barcode 401616 *(if applicable)*

692240

Job Title VP - Gov't Affairs

Address 136 S. Bronough St. *Street* — Phone 850/521-1200

Tallahassee *City* FL *State* 32301 *Zip* — E-mail dchristian@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.

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic TeleMedicine Bill Number 7028 4016416 *(if applicable)*

Name STAN Whittaker Amendment Barcode 9749674 *(if applicable)*

Job Title Chair FL Association of Nurse practitioners

Address 6294 NW Torreya PK Rd Phone 850-545-8381
Street

Bristol FL 32321 E-mail STANWhitHeAd1.Com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Association of Nurse Practitioners

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

√

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5
Meeting Date

Topic TeleHEALTH Bill Number 7028 *(if applicable)*

Name Alisa LaPolt Amendment Barcode *(if applicable)*

Job Title

Address PO Box 1349 Phone
Street

TLH E-mail
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Nurses Association

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-5-14
Meeting Date

Topic _____ Bill Number 7028 *(if applicable)*

Name Paul Sanford Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 106 S. Monroe St *Street* Phone 222-7200

Tallahassee, FL 32301 *City State Zip* E-mail _____

Speaking: ☐ For ☐ Against ☒ Information

Representing Florida Blue, Florida Ins. Council

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/14
Meeting Date

Topic Telemedicine Bill Number 7028 *(if applicable)*

Name Christopher Lipson Amendment Barcode _____ *(if applicable)*

Job Title Goverment Affairs Director

Address 1363 E Lafayette St Suite A *Street* Phone 850 222 8967

Tallahassee FL 32301 *City State Zip* E-mail CLipson@homecareflo.org

Speaking: ☑ For ☐ Against ☐ Information

Representing Home Care Association of Florida

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/14
Meeting Date

Topic Telemedicine

Bill Number 7028 *(if applicable)*

Name Tammy Perdue

Amendment Barcode _____ *(if applicable)*

Job Title General Counsel

Address 516 N. Adams St. *Street*

Phone 850-224-7173

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

E-mail tperdue@aif.com

Speaking: ☐ For ☐ Against ☑ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

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 918
INTRODUCER:	Senator Flores
SUBJECT:	Termination of Pregnancies
DATE:	February 26, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Pre-meeting**
2.			JU	
3.			RC	

I. Summary:

SB 918 amends the statutes relating to termination of pregnancies to prohibit an abortion if the physician reasonably determines that, in his or her good faith medical judgment, the fetus has achieved viability. Medical exceptions are provided if the termination of pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. The exceptions allowing a physician to terminate a pregnancy during the third trimester are revised to reflect this same standard.

Before performing an abortion, a physician must determine if the fetus is viable. Viability is redefined to mean the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures. The bill also defines standard medical measures.

The bill provides a parallel structure for abortions during the third trimester and once a fetus has achieved viability, including efforts to preserve the life and health of the fetus, requiring a lawful abortion to be performed in a hospital after these milestones, and criminal penalties for an unlawful abortion.

The bill provides a severability clause but provides that if the new section of law relating to termination of pregnancy during viability is held unconstitutional, then the other amendments in this act are repealed and these sections of law revert to the law as it existed on January 1, 2014.

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 measures.

The Florida Supreme 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]

Under 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] Section 390.011(1), F.S.

performed by a physician[9] 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 necessity. Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week.[11] Specifically, an abortion may not be performed within the third trimester unless two physicians certify in writing that, to a reasonable degree of medical probability, the termination of pregnancy is necessary to save the life or preserve the health of the pregnant woman. If a second physician is not available, one physician may certify in writing to the medical necessity for legitimate emergency medical procedures for termination of the pregnancy.

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.

A termination of pregnancy in the third trimester must be performed in a hospital.[12]

Viability

Current law defines "viability" 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.[13]

The gestational age of a viable fetus has become earlier in the pregnancy over the years. In 1935, the American Academy of Pediatrics defined a premature infant as one who weighed <2500 g at birth regardless of gestational age. Although no minimum weight for viability was established, 1250 g was frequently used and corresponded to an estimated gestational age of 28 weeks. As continuous positive airway pressure and neonatal total parenteral nutritional therapy became increasingly mainstream, the medical definition of viability continued to evolve as well. By the 1980s, survival of infants who were born weighing 500 to 700 g or were of 24 to 26 weeks' gestation became an expected possibility in regional NICUs. The 1980s and 1990s brought new waves of neonatal biomedical advances, led by tracheal instillation of surfactant for respiratory distress syndrome and the use of antenatal corticosteroids in women with imminent delivery of a

[9] Section 390.0111(2), F.S.
[10] Section 390.011(8), F.S.
[11] Section 390.011(7), F.S.
[12] Section 797.03(3), F.S.
[13] Section 390.0111(4), F.S.

preterm infant at 24 to 34 weeks' gestation. With these changes, survival of infants born at 23 and 24 weeks' estimated gestational age became increasingly frequent.[14]

The determination of viability is not an exact science and the stage at which a fetus is viable is an individual determination based on each pregnant woman and fetus. Gestational age, weight, sex, plurality or whether it is a single fetus, as well as other factors, may be considered in the determination of viability now and in the future as neonatal and medical care advances.[15,16]

Twenty-one states place limits on abortions after the fetus is viable. Generally, exceptions are made when the life and health of the women is at risk.[17]

Documenting Gestational Age

The Agency for Health Care Administration (Agency) is responsible for regulating abortion clinics under ch. 390, F.S., and part II of ch. 408, F.S. Section 390.012, F.S., requires the Agency to adopt rules[18] for, among other things, clinics that perform abortions after the first trimester of pregnancy. These rules must address physical facilities, supplies and equipment standards, personnel, medical screening and evaluation of patients, abortion procedures, recovery room standards, follow-up care, and adverse incident reporting. The statutes further prescribe specific components to be included within the rules relating to each of these subject areas.

Within rules relating to medical screening and evaluation of patients, the rules must, among other things, require that the physician is responsible for estimating the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age and shall write the estimate in the patient's medical history. The physician is also required to keep original prints of each ultrasound examination in the patient's medical history file.

III. Effect of Proposed Changes:

The bill prohibits abortions once a physician has determined a fetus is viable in the same manner as abortions are prohibited during the third trimester of pregnancy. This provides for comparable treatment as medical advances allow the life of a fetus to be sustainable outside the womb at an

[14] *See Limits of Human Viability in the United States: A Medicolegal Review*, Bonnie Hope Arzuaga, MD and Ben Hokew Lee, MD, MPH, MSCR, Pediatrics Perspectives, published online November 1, 2011, available at: http://pediatrics.aappublications.org/content/128/6/1047.full (Last visited Feb. 26, 2014)

[15] Wolters Kluwer Health, UpToDate, available at: http://www.uptodate.com/contents/limit-of-viability#H8144843, (Last visited Feb. 26, 2014).

[16] The U.S. Department of Health and Human Services, National Institutes of Health *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, Pregnancy and Perinatology Branch-supported researchers developed a tool using data from the Neonatal Research Network (NRN) that shows outcome trends for infants born at extremely preterm gestations. Found at:http://www.nichd.nih.gov/about/org/der/branches/ppb/programs/epbo/pages/epbo_case.aspx, (Last visited Feb. 26, 2014).

[17] These states include Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Ohio, Tennessee, Utah, Washington, Wisconsin, and Wyoming. *See* Guttmacher Institute State Policies in Brief *State Policies on Later Abortions*, as of February 1, 2014, found at: http://www.guttmacher.org/statecenter/spibs/spib_PLTA.pdf (Last visited Feb. 25, 2014).

[18] These rules are found in Rule Chapter 59A-9, Florida Administrative Code.

earlier point of gestation than the third trimester. The bill leaves in place the current prohibition on performing abortions during the third trimester.

Definitions

Section 1 of the bill
The term "viable" or "viability" is redefined and moved from another section of law[19] into the definitions section for applicability to the entire chapter 390, Florida Statutes. Under the bill, "viable" or "viability" means the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.

"Standard medical measure" is defined in the bill to mean the medical care that a physician would provide based on the particular facts of the pregnancy, the information available to the physician, and the technology reasonably available in a hospital, as defined in s. 395.002, F.S., with an obstetrical department, to preserve the life and health of the fetus, with or without temporary artificial life sustaining support, if the fetus were born at the same stage of fetal development.

Termination of Pregnancy in the Third Trimester and During Viability

Sections 2 and 3 of the bill
The bill establishes the same prohibitions and conditions for performing an abortion in the third trimester of pregnancy and once a fetus has achieved viability. The medical exceptions that allow a physician to perform an abortion in the third trimester of pregnancy are modified and are consistent with the medical exceptions established during viability.

The bill authorizes a termination of pregnancy in the third trimester or during viability when two physicians certify in writing that, to a reasonable degree of medical probability, the termination is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. If a second physician is not available, the physician may certify in writing to the medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition.

The bill specifies a standard of care when a termination of pregnancy occurs during viability that parallels the standard of care required when a termination of pregnancy occurs in the third trimester. The physician performing the abortion must exercise the same degree of professional skill, care, and diligence to preserve the life and health of the fetus which the physician would be required to exercise in order to preserve the life and health of a fetus intended to be born and not aborted. Further, if preserving the life and health of the fetus conflicts with preserving the life and health of the woman, the physician must consider preserving the woman's life and health the overriding and superior concern.

[19] Section 390.0111(4), F.S.

Section 4 of the bill amends s. 797.03, F.S., to prohibit a person performing an abortion on a person during viability other than in a hospital. A person who wilfully violates this provision is guilty of a misdemeanor of the second degree, punishable by a definite term of imprisonment not exceeding 60 days and subject to a fine of up to $500.

Determination of Viability

Section 3 of the bill
Before terminating a pregnancy, a physician must reasonably determine whether, in his or her good faith medical judgment, the fetus has achieved viability. At a minimum, the physician must perform a medical examination of the pregnant woman and, to the maximum extent possible through reasonably available tests and the ultrasound,[20] an examination of the fetus. The physician must document in the pregnant woman's medical file his or her determination and the method, equipment, fetal measurements, and any other information used to determine the viability of the fetus.

Penalties

Section 2 of the bill
The penalties for violating the bill's provisions pertaining to termination of pregnancies during viability in s. 390.01112, F.S., are similar to those for violating the provisions pertaining to termination of pregnancies during the third trimester in s. 390.0111, F.S.

Specifically, the bill provides that a person who willfully performs, or actively participates in, a termination of pregnancy in violation of the requirements of s. 390.01112, F.S., commits a felony of the third degree. If the woman dies as a result of this act, the person commits a felony of the second degree. A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years and may incur a fine of up to $5,000. A felony of the second degree is punishable by a term of imprisonment not exceeding 15 years and may incur a fine of up to $10,000.

Section 5 of the bill provides for severability and reversion. If any provision of this act or its application to any person or circumstance is held invalid, then other provisions which can be given effect are to be given effect. Notwithstanding that, if s. 390.01112, F.S., governing the termination of pregnancies during viability, is held unconstitutional and severed, then the amendments in this act to the other provisions of law are repealed and will revert to the law as it existed on January 1, 2014.

The effective date of this act is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[20] Current law requires an ultrasound to be performed before an abortion may be performed. *See* s. 390.0111(3)(a)1.b., F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Roe v. Wade, was decided by the U.S. Supreme Court in 1973.[21] 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.[22] 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.[23] 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.[24]

Later, in 1992, 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.[25]

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."[26]

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 measures.

[21] 410 U.S. 113 (1973).
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] 505 U.S. 833 (1992).
[26] *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).

The Florida Supreme 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.[27]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 390.011, 390.0111, and 797.03.
This bill creates section 390.01112 of the Florida Statutes.
This bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

[27] *Id.*

By Senator Flores

37-01090C-14 2014918__

A bill to be entitled

An act relating to the termination of pregnancies; amending s. 390.011, F.S.; defining the term "standard medical measure" and redefining the term "viability"; amending s. 390.0111, F.S.; revising the circumstances under which a pregnancy in the third trimester may be terminated; providing the standard of medical care for the termination of a pregnancy during the third trimester; providing criminal penalties for a violation of s. 390.01112, F.S.; authorizing administrative discipline for a violation of s. 390.01112, F.S., by certain licensed professionals; creating s. 390.01112, F.S.; prohibiting the termination of a viable fetus; providing exceptions; requiring a physician to perform certain examinations to determine the viability of a fetus; providing the standard of care for the termination of a viable fetus; amending s. 797.03, F.S.; prohibiting an abortion of a viable fetus outside of a hospital; providing for severability; providing for a contingent future repeal and reversion of law; providing an effective date.

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

Section 1. Present subsection (9) of section 390.011, Florida Statutes, is redesignated as subsection (10), and new subsections (9) and (11) are added to that section, to read:

390.011 Definitions.—As used in this chapter, the term:

37-01090C-14 2014918__

(9) "Standard medical measure" means the medical care that a physician would provide based on the particular facts of the pregnancy, the information available to the physician, and the technology reasonably available in a hospital, as defined in s. 395.002, with an obstetrical department, to preserve the life and health of the fetus, with or without temporary artificial life sustaining support, if the fetus were born at the same stage of fetal development.

(11) "Viable" or "viability" means the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.

Section 2. Subsections (1), (4), (10), and (13) of section 390.0111, Florida Statutes, are amended to read:

390.0111 Termination of pregnancies.—

(1) TERMINATION IN THIRD TRIMESTER; WHEN ALLOWED.—No termination of pregnancy shall be performed on any human being in the third trimester of pregnancy unless one of the following conditions is met:

(a) Two physicians certify in writing ~~to the fact~~ that, to a reasonable degree of medical probability, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition. ~~or preserve the health of the pregnant woman; or~~

(b) The physician certifies in writing to the medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible

physical impairment of a major bodily function of the pregnant woman other than a psychological condition ~~in the third trimester~~, and another physician is not available for consultation.

(4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD TRIMESTER ~~DURING VIABILITY~~.—If a termination of pregnancy is performed in the third trimester, the physician performing ~~during viability, no person who performs or induces~~ the termination of pregnancy must exercise the same ~~shall fail to use that~~ degree of professional skill, care, and diligence to preserve the life and health of the fetus which the physician ~~such person~~ would be required to exercise in order to preserve the life and health of a ~~any~~ fetus intended to be born and not aborted. However, if preserving the life and health of the fetus conflicts with preserving the life and health of the pregnant woman, the physician must consider preserving the woman's life and health the overriding and superior concern ~~"Viability" means 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. Notwithstanding the provisions of this subsection, the woman's life and health shall constitute an overriding and superior consideration to the concern for the life and health of the fetus when such concerns are in conflict.~~

(10) PENALTIES FOR VIOLATION.—Except as provided in subsections (3), (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 or s. 390.01112 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 or s. 390.01112 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.

(13) FAILURE TO COMPLY.—Failure to comply with the requirements of this section or s. 390.01112 constitutes grounds for disciplinary action under each respective practice act and under s. 456.072.

Section 3. Section 390.01112, Florida Statutes, is created to read:

390.01112 Termination of pregnancies during viability.—

(1) No termination of pregnancy shall be performed on any human being if the physician reasonably determines that, in the physician's good faith medical judgment, the fetus has achieved viability, unless:

(a) Two physicians certify in writing that, to a reasonable degree of medical probability, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition; or

(b) The physician certifies in writing to the medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another

physician is not available for consultation.

(2) Before performing a termination of pregnancy, a physician must determine if the fetus is viable by, at a minimum, performing a medical examination of the pregnant woman and, to the maximum extent possible through reasonably available tests and the ultrasound required under s. 390.0111(3), an examination of the fetus. The physician must document in the pregnant woman's medical file the physician's determination and the method, equipment, fetal measurements, and any other information used to determine the viability of the fetus.

(3) If a termination of pregnancy is performed during viability, the physician performing the termination of pregnancy must exercise the same degree of professional skill, care, and diligence to preserve the life and health of the fetus that the physician would be required to exercise in order to preserve the life and health of a fetus intended to be born and not aborted. However, if preserving the life and health of the fetus conflicts with preserving the life and health of the woman, the physician must consider preserving the woman's life and health the overriding and superior concern.

Section 4. Subsection (3) of section 797.03, Florida Statutes, is amended to read:

797.03 Prohibited acts; penalties.—

(3) It is unlawful for any person to perform or assist in performing an abortion on a person during viability or in the third trimester other than in a hospital.

Section 5. Severability and reversion.—

(1) 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 this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

(2) Notwithstanding subsection (1), if s. 390.01112, Florida Statutes, is held unconstitutional and severed by a court having jurisdiction, the amendments made by this act to s. 390.011, Florida Statutes, and subsections (4), (10), and (13) of s. 390.0111, Florida Statutes, will be repealed and will revert to the law as it existed on January 1, 2014.

Section 6. This act shall take effect July 1, 2014.

The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: February 14, 2014

I respectfully request that **Senate Bill #918**, relating to Termination of Pregnancy, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

File signed original with committee office

S-020 (03/2004)

ENTERED

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-5-14
Meeting Date

Topic Abortion — Bill Number SB 918 *(if applicable)*

Name Barbara DeVane — Amendment Barcode _____ *(if applicable)*

Job Title Lobbyist

Address 625 E. Brevard St — Phone 850-222-3969
Street

Tallahassee / FL / 32308 — E-mail barbaradevane1@yahoo.com
City / *State* / *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing FL NOW (National Organization for Women)

Appearing at request of Chair: ☐ Yes ☑ No — Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/05/14
Meeting Date

Topic _____ Bill Number 918 *(if applicable)*

Name Amber Washington Amendment Barcode _____ *(if applicable)*

Job Title Legislative Bsa Intern

Address 540 Beverly Ct *Street* Phone _____

Tallahassee *City* FL *State* 32303 *Zip* E-mail lwvfoutreach@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

Representing League of Women Voters Florida

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

05 MAR 2014
Meeting Date

Topic SB Bill Number JP 918 *(if applicable)*

Name THOMAS BAXTER Amendment Barcode _____ *(if applicable)*

Job Title RETIRED

Address 426 W CAROLINA ST *Street* Phone 850-893-7390

TALLAHASSEE *City* FL *State* 32301 *Zip* E-mail _____

Speaking: ☐ For ☑ Against ☐ Information

Representing WOMEN UNITE FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

March 5, 2014 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

Topic Pregnancy Termination Bill — Bill Number SB 918 *(if applicable)*

Name Alyssa Falla-Aversa — Amendment Barcode *(if applicable)*

Job Title Student

Address 500 Chapel Drive #346 — Phone (678) 548 7131
Street

Tallahassee, FL 32304 — E-mail agf10c@myfsu.edu
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Women Unite Florida

Appearing at request of Chair: ☐ Yes ☐ No — Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Viability Bill — Bill Number 918 *(if applicable)*

Name Pam Olsen — Amendment Barcode *(if applicable)*

Job Title Adoption Coordinator

Address 1110 Capital Circle NE — Phone 850-906-9170
Street

Tallahassee, FL. — E-mail pamolsen33@gmail.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

APPEARANCE RECORD

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

3/5/14
Meeting Date

Topic _____ Bill Number 918 *(if applicable)*

Name Pamela Burch Fort Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 104 S. Monroe Street Phone 850/425-1344
Street

Tallahassee, FL 32301 E-mail TcgLobby@aol.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/14
Meeting Date

Topic Termination of Pregnancy Bill Number SB 918 *(if applicable)*

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

Job Title Political Director

Address 18441 NW 2nd Ave, Suite 502 Phone 919-923-7288
Street

Miami Gardens FL 33169 E-mail ron@seiu1991.org
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing SEIU Florida

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/14
Meeting Date

Topic SB 918 Bill Number 918 *(if applicable)*

Name Michael Farmer Amendment Barcode *(if applicable)*

Job Title Field Director

Address 134 E. Colonial dr. Phone 407-462-9692
Street
Orlando FL 32801 E-mail Michael@eqfl.org
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/2014
Meeting Date

Topic Bill Number 918 *(if applicable)*

Name Ida Eskamani Amendment Barcode *(if applicable)*

Job Title Development Associate

Address 134 E Colonial Drive Phone 407-376-4801
Street
Orlando FL 32801 E-mail ida@eqfl.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 1036
INTRODUCER:	Health Policy Committee and Senator Grimsley
SUBJECT:	Nursing Education Programs
DATE:	March 5, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	**Fav/CS**
2.			ED	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1036 establishes a schedule for all RN prelicensure programs approved by the Board of Nursing (BON) to become accredited by a specialized nursing accrediting agency that is recognized by the U.S. Secretary of Education. It revises the definitions of "clinical training" and "practice of professional nursing" as used in chapter 464, Florida Statutes. The bill increases the limit on clinical training that can be by simulation to 50 percent from 25 percent and specifies the location of the required clinical training. Finally, the bill exempts a nurse who is certified by a health care specialty program that is accredited by the National Commission for Certifying Agencies (NCCA) or Accreditation Board for Specialty Nursing Certification (ABSNC) from the biennial continuing education requirement.

II. Present Situation:

Chapter 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the BON.[1]

[1] The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4 year terms. Seven of the 13 members must be nurses who reside in Florida and have been engaged in the practice of professional nursing for at least 4 years. Of those seven members, one must be an advanced registered nurse practitioner, one a nurse educator at an approved nursing program, and one a nurse executive. Three members of the BON must be licensed practical nurses (LPN) who reside in the state and have engaged in the practice of practical nursing for at least 4 years. The remaining three members must be Florida residents who have never been licensed as nurses and are in no way connected to the practice of nursing, any health care facility, agency, or insurer. Additionally, one member must be 60 years of age or older. (*see* s. 464.004(2), F.S.)

Applicants for an RN[2] or LPN [3] license must submit an application form to the DOH, pay a fee, submit information for a criminal background check, and pass a licensure exam.[4] The exam used by the DOH is the National Council Licensure Examination (NCLEX), developed by the National Council of State Boards of Nursing.

In addition, an applicant must complete the requirements for graduation from an approved program or its equivalent, as determined by the BON.[5]

Nursing Education Programs

Florida law requires any institution desiring to offer a nursing education program to submit an application to the DOH and pay a program review fee. The application must document compliance with the following program standards: faculty qualifications; clinical training and clinical simulation requirements, including a requirement that no more than 25 percent of the program's clinical training consist of clinical simulation; faculty-to-student supervision ratios: and curriculum and instruction requirements.[6]

Once the DOH determines an application is complete, it forwards the application to the BON, which has 90 days to approve the application or to provide the applicant with notice of its intent to deny and the reasons for the denial. An applicant may request a hearing under chapter 120, Florida Statutes, on a notice of intent to deny.[7]

BON-approved nursing programs are currently offered in Florida by: public school districts, community colleges, and state universities; private institutions licensed by the Commission for Independent Education (CIE); private institutions that are accredited by the Commission on Colleges of the Southern Association of Colleges and School, but are not licensed by the CIE; and Pensacola Christian College, which is statutorily authorized by s. 1005.06(1)(e), F.S.[8]

Some of the nursing programs offered by these institutions have *programmatic* accreditation. An "accredited program" is defined as:

> A program for the prelicensure education of professional or practical nurses that is conducted in the United States at an educational institution, whether in this state, another state, or the District of Columbia, and that is "*accredited by a specialized nursing*

[2] Practice of professional nursing.
[3] Practice of practical nursing.
[4] Section 464.008, F.S.
[5] Section 464.008(1)(c), F.S.
[6] Section 464.019(1), F.S.
[7] Section 464.019(2), F.S.
[8] This section of law exempts schools from the CIE's licensure requirements if the institution: had been so exempted prior to 2001; is incorporated in this state; the institution's credits or degrees are accepted for credit by at least three colleges that are fully accredited by an agency recognized by the U.S. Department of Education; and the institution does not enroll any students who receive state or federal financial aid. Section 1005.06(1)(e), F.S. Only two institutions in Florida, Pensacola Christian College and Landmark Baptist College, are subject to this exemption. Landmark Baptist College does not offer a nursing program.

> *accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs*." (emphasis supplied).[9]

The specialized nursing accrediting agencies currently recognized by the United States Department of Education include: the Commission on Collegiate Nursing Education and the Accreditation Commission for Education in Nursing, Inc.[10]

Chapter 464, F.S., recognizes and distinguishes between nursing education programs that are approved by the BON and programs that are both approved by the BON and accredited. An approved program[11] is required to submit an annual report to the BON which includes an affidavit certifying compliance with the program standards, and documentation for the previous academic year that sets forth data related to the number of students who apply, are accepted, enroll, and graduate; retention rates; and [institutional] accreditation status.[12] The BON, in turn, must post information on its website listing: all accredited programs and their most recent 2-year graduation rates; for approved programs that are not accredited, all documentation submitted in the application (for applications submitted after July 1, 2009), a summary description of the program's compliance with program standards, probationary status, graduate passage rates for the most recent 2 years, and retention rates; and for both approved and accredited programs, the average passage rates for the NCLEX. [13] Approved programs must have a graduate passage rate on the NCLEX that is not more than 10 percent below the national average for 2 consecutive years and failure to comply will result in the BON placing the program on probation or terminating the program entirely if not corrected within 2 years of being placed on probationary status.[14]

The 2009 Legislature substantially revised and streamlined the nursing education program approval process by significantly restricting the BON's rulemaking authority and codifying the program approval process in statute.[15] At the time, it was thought that streamlining the process would create the potential for a significant increase in the number of approved programs that could produce graduates to address the state's shortage of nurses.[16]

As part of the revisions, the 2009 Legislature directed the Florida Center for Nursing and the Office of Program Policy Analysis and Government Accountability to study the 5-year administration of the revised process. Reports have been submitted to the Governor, the

---

[9] Section 464.003(1), F.S.
[10] United States Department of Education, *Specialized Accrediting Agencies*, https://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html (last visited March 3, 2014).
[11] Section 464.003(4), F.S., defines "approved program" as, in relevant part, "a program for the prelicensure education of professional or practical nurses that is conducted in the state at an educational institution and that is approved under s. 464.019."
[12] Section 464.019(4), F.S
[13] Section 464.019(5), F.S.
[14] Section. 464.019(6), F.S.
[15] Ch. 2009-168, Laws of Fla.
[16] Senate Committee on Health and Human Services Appropriations, *CS/CS/SB 2284* (April 22, 2009), *available at* http://archive.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s2284.ha.pdf (last visited March 3, 2014).

President of the Senate, and the Speaker of the House of Representatives annually beginning January 2010.[17] In its 2014 report, the OPPAGA reported that since July 2009:[18]

- The BON has approved 231 new programs, which has increased the total number of programs by 139 percent;
- The number of available seats in nursing programs has increased by 180 percent;
- Overall enrollment has increased by 58 percent;
- The number of students graduating has increased by 30 percent; and,
- The licensure exam passage rates of the approved programs created since 2009 that had graduates who took the NCLEX has declined—approximately 73 percent (82 of 112 programs) had exam passage rates that were more than 10 percent below the national average for 2013. Twenty-four[19] of these were on probation and the remainder are at risk of probation if rates do not increase.

Currently, 73 nursing programs are accredited.[20]

Specialized Nursing Education Program Accreditation

Accreditation is a voluntary process by which a non-governmental entity reviews and recognizes educational institutions or programs that meet or exceed standards for educational quality.[21] Standards and criteria for accreditation, materials that document compliance, policies and procedures are based on principles widely accepted and tested in general and professional education. The accreditation process—the standards, criteria, policies, and procedures—is subject to continuous and systematic review to ensure they stay current with developments in education and nursing.[22] Once a program is determined eligible—generally, having current State Board of Nursing approval and evidencing capacity to meet accreditation standards—a program is asked to submit documentation addressing faculty qualifications and experience, curriculum, available resources, and program self-evaluation/improvement processes. In general, the accreditation process may include a self-evaluation report, peer review site visit, detailed analysis of materials and reviewer findings, and ultimate action by the accrediting body. Accreditation is subject to ongoing reporting and assessment to ensure continued compliance with accreditation standards.[23] While programs may vary in the detail, among the criteria that may be used for evaluating program effectiveness are: completion rates, licensure pass rates, graduate employment, and procedures for ensuring ongoing program improvement.[24]

---

[17] Section 464.019(11), F.S.
[18] Office of Program Policy and Government Accountability, Florida Legislature, *Florida's Nursing Education Programs Continued to Expand in 2013, While Licensure Exams Passage Rates of New Programs Declined,* Report No. 14-03, *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1403rpt.pdf (last visited March 3, 2014).
[19] According to information published by the DOH, the number has now increased to 43. (Florida Department of Health, *Compare Florida Prelicensure Education Programs* (as of March 3, 2014), http://ww2.doh.state.fl.us/MQANEPC/SearchResults.aspx.
[20] *Id.*
[21] Accreditation Commission for Education in Nursing, *Accreditation Manual*, 1, (July 31, 2013), *available at* http://www.acenursing.net/manuals/GeneralInformation.pdf (last visited March 4, 2014).
[22] *Id.* at 3.
[23] *Id.* at 13.
[24] Commission on Collegiate Nursing Education, *Standards for Accreditation* 17-19 (2013), available at http://www.aacn.nche.edu/ccne-accreditation/Standards-Amended-2013.pdf (last visited March 4, 2014).

Nurse Certification

A nurse may seek specialty certification beyond the education required for licensure. Typically, this is done for professional development—whether as a requirement of employment or a voluntary decision. Sometimes, however, specialty certification is a requirement of state licensure.[25] Currently, there are a wide range of specialty certification programs that are accredited by the National Commission on Certifying Agencies or the Accreditation Board for Specialty Nursing Certification, Inc., that provide certification as, among many others, an Advanced Practice Nurse, Clinical Care Nurse Specialist, Clinical Research Associate, and Certified Hospice and Palliative Nursing Assistant. Recertification is required at periodic intervals and typically will require proof of a designated number of clinic hours in the specialty practice, testing, professional competency (continuing education), or some combination of the three.

III. Effect of Proposed Changes:

Section 1 expands the definition of "clinical training" to include clinical simulation; expands the definition of "practice of practical nursing" to include teaching general principles of health and wellness to the public and students other than nursing students; and conforms a cross-reference.

Section 2 exempts any nurse who is certified by a health care specialty program that is accredited by the NCCA or ABSNC from the continuing education requirement of ch. 464, F.S.

Section 3 establishes a schedule for nursing education programs that prepare students for the practice of professional nursing (RN) to become accredited by an accrediting agency described in s. 464.003(1), F.S. This requires accreditation by a specialized nursing accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs.

Specifically, the bill requires that:

- A program that was approved by the BON and had enrolled students prior to July 1, 2014 must be an accredited program by July 1, 2019.
- A program that was approved by the BON before July 1, 2014, but did not enroll students before that date, must become an accredited program within 5 years of enrolling the program's first students.
- A program that is approved after June 30, 2014 must become an accredited program within 5 years of enrolling the program's first students.

The bill exempts the Pensacola Christian College nursing education program from the requirement to become accredited.[26]

[25] *See, e.g.,* s. 464.012(1)(a), F.S., requiring certification by an appropriate specialty board as a requirement of state certification as an Advanced Registered Nurse Practitioner.
[26] *See supra* note 8 for an explanation of the college's licensure status.

The bill increases the limit on clinical training that can be by simulation to 50 percent from 25 percent and specifies that required clinical training be at a health care facility that is located in the United States, the District of Columbia, or a possession or territory of the United States.

The BON is authorized to adopt rules to administer the documentation of the accreditation of nursing education programs.

The bill also repeals obsolete language related to the status of certain programs during the transition to the new approval process effective July 1, 2009.

The bill repeals the requirement for the OPPAGA, in addition to the Florida Center for Nursing, to submit an annual report on the administration of the nursing education approval process and extends the report indefinitely.

Section 4 conforms a cross-reference.

Section 5 provides an effective date of July 1, 2014.

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:

RN prelicensure education programs at private colleges and universities that are not currently accredited program will incur the cost to become accredited. The Commission on Collegiate Nursing Education imposes a new applicant fee of $3,500/program; an evaluation fee of $1,750/evaluation team member (typically, 3 - 5 members); and an annual fee of $2,468 to maintain accreditation. The Accreditation Commission for Education in Nursing, Inc. charges a candidacy fee of $2,500; an accreditation review fee of $1,000 for initial or continuing accreditation (per program); a site visit fee of $835 per

evaluator per day; and various service fees for additional services, as required. Currently, there are 20 Bachelor of Science in Nursing (BSN), which are 4-year degree programs, and 12 Associate Degree in Nursing (AND), which are 2-year programs, that will need to become accredited.[27]

C. Government Sector Impact:

RN prelicensure education programs at public colleges and universities that are not currently accredited program will incur the cost to become accredited. Currently, all of the nursing education programs (BSN) offered through the State University System are accredited. There are 29 public ADN programs, of which nine will need to become accredited.[28]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 464.003, 464.013, 456.014, and 464.019.

IX. Additional Information:

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

CS by Health Policy on March 5, 2014:

- Specifies the type of certification a nurse must have to qualify for exemption from the CE requirements to be certification by a health care specialty program accredited by the NCCA or ABSNC.
- Requires clinical training to be at a health care facility within the U.S., the District of Columbia, or a possession or territory of the United States.
- Reinstates and increases the limit on clinical training that can be by simulation to 50 percent from 25 percent.
- Extends the study of the implementation of the nursing program approval process from a 5-year review ending with a report released on or before January 30, 2015, to an ongoing annual review and report.

[27] *Id.*
[28] *Id.*

B. Amendments:

None.

495838

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (10) and (19) of section 464.003, Florida Statutes, are amended to read:

464.003 Definitions.—As used in this part, the term:

(10) "Clinical training" means direct nursing care experiences with patients or clients, or clinical simulation of such experiences, which offer the student the opportunity to

integrate, apply, and refine specific skills and abilities based on theoretical concepts and scientific principles.

(19) "Practice of practical nursing" means the performance of selected acts, including the administration of treatments and medications, in the care of the ill, injured, or infirm; ~~and~~ the promotion of wellness, maintenance of health, and prevention of illness of others under the direction of a registered nurse, a licensed physician, a licensed osteopathic physician, a licensed podiatric physician, or a licensed dentist; and the teaching of general principles of health and wellness to the public and to students other than nursing students. A practical nurse is responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing.

(23) "Required passage rate" means the graduate passage rate required for an approved program pursuant to s. 464.019(5)(a) ~~464.019(6)(a)1.~~

Section 2. Subsection (3) of section 464.013, Florida Statutes, is amended to read:

464.013 Renewal of license or certificate.—

(3) The board shall by rule prescribe up to 30 hours of continuing education ~~not to exceed 30 hours~~ biennially as a condition for renewal of a license or certificate. A nurse who is certified by a health care specialty program accredited by the National Commission for Certifying Agencies or Accreditation Board for Specialty Nursing Certification is exempt from continuing education requirements. The criteria for programs shall be approved by the board.

Section 3. Section 464.019, Florida Statutes, is amended to

read:

464.019 Approval of nursing education programs.—

(1) PROGRAM APPLICATION ~~APPLICATIONS~~.—An educational institution that wishes to conduct a program in this state for the prelicensure education of professional or practical nurses must submit to the department a program application and review fee of $1,000 for each prelicensure nursing education program to be offered at the institution's main campus, branch campus, or other instructional site. The ~~Each~~ program application must include the legal name of the educational institution, the legal name of the nursing education program, and, if such institution ~~program~~ is accredited ~~by an accrediting agency other than an accrediting agency described in s. 464.003(1)~~, the name of the accrediting agency. The application must also document that:

(a)1. For a professional nursing education program, the program director and at least 50 percent of the program's faculty members are registered nurses who have a master's or higher degree in nursing or a bachelor's degree in nursing and a master's or higher degree in a field related to nursing.

2. For a practical nursing education program, the program director and at least 50 percent of the program's faculty members are registered nurses who have a bachelor's or higher degree in nursing.

The educational degree requirements of this paragraph may be documented by an official transcript or by a written statement from the educational institution verifying that the institution conferred the degree.

(b) The program's nursing major curriculum consists of at

least:1. Fifty percent clinical training at a health care facility in the United States, the District of Columbia, or a possession or territory of the United States for a practical nursing education program, an associate degree professional nursing education program, or a professional diploma nursing education program.

2. Forty percent clinical training at a health care facility in the United States, the District of Columbia, or a possession or territory of the United States for a bachelor's degree professional nursing education program.

(c) No more than 50 ~~25~~ percent of the program's clinical training consists of clinical simulation.

(d) The program has signed agreements with each agency, facility, and organization included in the curriculum plan as clinical training sites and community-based clinical experience sites.

(e) The program has written policies for faculty which include provisions for direct or indirect supervision by program faculty or clinical preceptors for students in clinical training consistent with the following standards:

1. The number of program faculty members equals at least one faculty member directly supervising every 12 students unless the written agreement between the program and the agency, facility, or organization providing clinical training sites allows more students, not to exceed 18 students, to be directly supervised by one program faculty member.

2. For a hospital setting, indirect supervision may occur only if there is direct supervision by an assigned clinical preceptor, a supervising program faculty member is available by

telephone, and such arrangement is approved by the clinical facility.

3. For community-based clinical experiences that involve student participation in invasive or complex nursing activities, students must be directly supervised by a program faculty member or clinical preceptor and such arrangement must be approved by the community-based clinical facility.

4. For community-based clinical experiences not subject to subparagraph 3., indirect supervision may occur only when a supervising program faculty member is available to the student by telephone.

A program's policies established under this paragraph must require that a clinical preceptor who is~~, if~~ supervising students in a professional nursing education program~~, to~~ be a registered nurse or, if supervising students in a practical nursing education program, ~~to~~ be a registered nurse or licensed practical nurse.

(f) The professional or practical nursing curriculum plan documents clinical experience and theoretical instruction in medical, surgical, obstetric, pediatric, and geriatric nursing. A professional nursing curriculum plan shall also document clinical experience and theoretical instruction in psychiatric nursing. Each curriculum plan must document clinical training experience in appropriate settings that include, but are not limited to, acute care, long-term care, and community settings.

(g) The professional or practical nursing education program provides theoretical instruction and clinical application in personal, family, and community health concepts; nutrition; human growth and development throughout the life span; body

structure and function; interpersonal relationship skills; mental health concepts; pharmacology and administration of medications; and legal aspects of practice. A professional nursing education program must ~~shall~~ also provide theoretical instruction and clinical application in interpersonal relationships and leadership skills; professional role and function; and health teaching and counseling skills.

(2) PROGRAM APPROVAL.—

(a) Upon receipt of a program application and review fee, the department shall examine the application to determine if ~~whether~~ it is complete. If the ~~a program~~ application is not complete, the department shall notify the educational institution in writing of any errors or omissions within 30 days after the department's receipt of the application. A program application is deemed complete upon the department's receipt of:

1. The initial application, if the department does not notify the educational institution of any errors or omissions within the 30-day period; or

2. A revised application that corrects each error and omission of which the department notifies the educational institution within the 30-day period.

(b) Within 90 days after the department's receipt of a complete program application, the board shall:

1. Approve the application if it documents compliance with subsection (1) ~~paragraphs (1)(a)-(g)~~; or

2. Provide the educational institution with a notice of intent to deny the application if it does not document compliance with subsection (1) ~~paragraphs (1)(a)-(g)~~. The notice must specify ~~set forth~~ written reasons for the board's denial of

the application. The board may not deny a program application because of an educational institution's failure to correct an ~~any~~ error or omission that ~~of which~~ the department failed to provide notice of to ~~does not notify~~ the institution within the 30-day notice period under paragraph (a). The educational institution may request a hearing on the notice of intent to deny the program application pursuant to chapter 120.

(c) A program application is deemed approved if the board does not act within the 90-day review period provided under paragraph (b).

(d) Upon the board's approval of a program application, the program becomes an approved program.

~~(3) STATUS OF CERTAIN PROGRAMS.—A professional or practical nursing education program becomes an approved program if, as of June 30, 2009, the program:~~

~~(a) Has full or provisional approval from the board or, except as provided in paragraph (b), is on probationary status.~~

~~(b) Is on probationary status because the program did not meet the board's requirement for graduate passage rates. Such program shall remain on probationary status until it achieves a graduate passage rate for calendar year 2009 or 2010 that equals or exceeds the required passage rate for the respective calendar year and must disclose its probationary status in writing to the program's students and applicants. If the program does not achieve the required passage rate, the board shall terminate the program pursuant to chapter 120.~~

(3) ~~(4)~~ ANNUAL REPORT.—By November 1 of each year, each approved program shall submit to the board an annual report comprised of an affidavit certifying continued compliance with

subsection (1) ~~paragraphs (1)(a)-(g)~~, a summary description of the program's compliance with subsection (1) ~~paragraphs (1)(a)-(g)~~, and documentation for the previous academic year that, to the extent applicable, describes ~~sets forth~~:

(a) The number of student applications received, qualified applicants, applicants accepted, accepted applicants who enroll in the program, students enrolled in the program, and program graduates.

(b) The program's retention rates for students tracked from program entry to graduation.

(c) The program's accreditation status, including identification of the accrediting agency ~~if such agency is not an accrediting agency described in s. 464.003(1)~~.

(4)~~(5)~~ INTERNET WEBSITE.~~—By October 1, 2010,~~ The board shall publish the following information on its Internet website:

(a) A list of each accredited program conducted in the state and the program's graduate passage rates for the most recent 2 calendar years, which the department shall determine through the following sources:

1. For a program's accreditation status, the specialized accrediting agencies that are nationally recognized by the United States Secretary of Education to accredit nursing education programs.

2. For a program's graduate passage rates, the contract testing service of the National Council of State Boards of Nursing.

(b) The following data for each approved program, which includes ~~shall include~~, to the extent applicable:

1. All documentation provided by the program in its program

application if submitted on or after July 1, 2009.

2. The summary description of the program's compliance submitted under subsection (3) ~~(4)~~.

3. The program's accreditation status, including identification of the accrediting agency ~~if such agency is not an accrediting agency described in s. 464.003(1)~~.

4. The program's probationary status.

5. The program's graduate passage rates for the most recent 2 calendar years.

6. Each program's retention rates for students tracked from program entry to graduation.

(c) The average passage rates for United States educated first-time test takers on the National Council of State Boards of Nursing Licensing Examination for the most recent 2 calendar years, as calculated by the contract testing service of the National Council of State Boards of Nursing. The average passage rates shall be published separately for each type of comparable degree program listed in subparagraph (5)(a)1. ~~sub-subparagraphs (6)(a)1.a.-d.~~

The information required to be published under this subsection shall be made available in a manner that allows interactive searches and comparisons of individual programs selected by the website user. The board shall update the Internet website at least quarterly with the available information.

(5) ~~(6)~~ ACCOUNTABILITY.—

(a)1. An approved program must achieve a graduate passage rate that is not more ~~lower~~ than 10 percentage points lower ~~less~~ than the average passage rate during the same calendar year for

graduates of comparable degree programs who are United States educated, first-time test takers on the National Council of State Boards of Nursing Licensing Examination ~~during a calendar year~~, as calculated by the contract testing service of the National Council of State Boards of Nursing. For purposes of this subparagraph, an approved program is comparable to all degree programs of the same program type from among the following program types:

a. Professional nursing education programs that terminate in a bachelor's degree.

b. Professional nursing education programs that terminate in an associate degree.

c. Professional nursing education programs that terminate in a diploma.

d. Practical nursing education programs.

2. Beginning with graduate passage rates for calendar year 2010, if an approved program's graduate passage rates do not equal or exceed the required passage rates for 2 consecutive calendar years, the board shall place the program on probationary status pursuant to chapter 120 and the program director shall ~~must~~ appear before the board to present a plan for remediation. The program must ~~shall~~ remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any 1 calendar year. The board shall deny a program application for a new prelicensure nursing education program submitted by an educational institution if the institution has an existing program that is already on probationary status.

3. Upon the program's achievement of a graduate passage

rate that equals or exceeds the required passage rate, the board, at its next regularly scheduled meeting following release of the program's graduate passage rate by the National Council of State Boards of Nursing, shall remove the program's probationary status. However, if the program, during the 2 calendar years following its placement on probationary status, does not achieve the required passage rate for any 1 calendar year, the board shall terminate the program pursuant to chapter 120.

(b) If an approved program fails to submit the annual report required in subsection (3) ~~(4)~~, the board shall notify the program director and president or chief executive officer of the educational institution in writing within 15 days after the due date of the annual report. The program director shall ~~must~~ appear before the board at the board's next regularly scheduled meeting to explain the reason for the delay. The board shall terminate the program pursuant to chapter 120 if it does not submit the annual report within 6 months after the due date.

(c) An approved program on probationary status shall disclose its probationary status in writing to the program's students and applicants.

(6) ~~(7)~~ DISCLOSURE OF GRADUATE PASSAGE RATE DATA.—

(a) For each graduate of the program ~~an approved program's or accredited program's graduates~~ included in the calculation of the program's graduate passage rate, the department shall disclose to the program director, upon his or her written request, the name, examination date, and determination of whether each graduate passed or failed the National Council of ~~for~~ State Boards of Nursing Licensing Examination, if ~~to the~~


495838

~~extent that~~ such information is provided to the department by the contract testing service of the National Council of ~~for~~ State Boards of Nursing. The written request must specify the calendar years for which the information is requested.

(b) A program director to whom confidential information exempt from public disclosure pursuant to s. 456.014 is disclosed under this subsection must maintain the confidentiality of the information and is subject to the same penalties provided in s. 456.082 for department employees who unlawfully disclose confidential information.

(7)~~(8)~~ PROGRAM CLOSURE.—

(a) An educational institution conducting an approved program or accredited program in this state, at least 30 days before voluntarily closing the program, shall notify the board in writing of the institution's reason for closing the program, the intended closure date, the institution's plan to provide for or assist in the completion of training by the program's students, and the arrangements for storage of the program's permanent records.

(b) An educational institution conducting a nursing education program that is terminated under subsection (5) ~~(6)~~ or closed under subparagraph (9)(b)3. ~~(10)(b)3.~~:

1. May not accept or enroll new students.

2. Shall ~~Must~~ submit to the board within 30 days after the program is terminated or closed a written description of how the institution will assist in completing the ~~completion of~~ training of ~~by~~ the program's students and the institution's arrangements for storage of the program's permanent records.

(c) If an educational institution does not comply with

paragraph (a) or paragraph (b), the board shall provide a written notice explaining the institution's noncompliance to the following persons and entities:

1. The president or chief executive officer of the educational institution.

2. The Board of Governors, if the program is conducted by a state university.

3. The district school board, if the program is conducted by an educational institution operated by a school district.

4. The Commission for Independent Education, if the program is conducted by an educational institution licensed under chapter 1005.

5. The State Board of Education, if the program is conducted by an educational institution in the Florida College System or by an educational institution that is not subject to subparagraphs 2.-4.

(8) ~~(9)~~ RULEMAKING.—The board does not have ~~any~~ rulemaking authority to administer this section, except that the board shall adopt rules ~~a rule~~ that prescribe ~~prescribes~~ the format for submitting program applications under subsection (1) and annual reports under subsection (3), and to administer the documentation of the accreditation of nursing education programs under subsection (11) ~~(4)~~. The board may not impose any condition or requirement on an educational institution submitting a program application, an approved program, or an accredited program, except as expressly provided in this section. ~~The board shall repeal all rules, or portions thereof, in existence on July 1, 2009, that are inconsistent with this subsection.~~

(9) ~~(10)~~ APPLICABILITY TO ACCREDITED PROGRAMS.—

(a) Subsections (1)-(3) ~~(1)-(4)~~, paragraph (4)(b) ~~(5)(b)~~, and subsection (5) ~~(6)~~ do not apply to an accredited program. ~~An accredited program on probationary status before July 1, 2010, ceases to be subject to the probationary status.~~

(b) If an accredited program ceases to be accredited, the educational institution conducting the program:

1. Within 10 business days after the program ceases to be accredited, must provide written notice of the date that the program ceased to be accredited to the board, the program's students and applicants, and each entity providing clinical training sites or community-based clinical experience sites for the program. The educational institution must continue to provide the written notice to new students, applicants, and entities providing clinical training sites or community-based clinical experience sites for the program until the program becomes an approved program or is closed under subparagraph 3.

2. Within 30 days after the program ceases to be accredited, must submit an affidavit to the board, signed by the educational institution's president or chief executive officer which~~, that~~ certifies the institution's compliance with subparagraph 1. The board shall notify the persons and applicable entities listed in paragraph (7)(c) ~~subparagraph (8)(c)1. and the applicable entities listed in subparagraphs (8)(c)2.-5.~~ if an educational institution does not submit the affidavit required by this subparagraph.

3. May apply to become an approved program under this section. If the educational institution:

a. Within 30 days after the program ceases to be

accredited, submits a program application and review fee to the department under subsection (1) and the affidavit required under subparagraph 2., the program shall be deemed an approved program from the date that the program ceased to be accredited until the date that the board approves or denies the program application. The program application must be denied by the board pursuant to chapter 120 if it does not contain the affidavit. If the board denies the program application under subsection (2) or if ~~because~~ the program application does not contain the affidavit, the program shall be closed and the educational institution conducting the program must comply with paragraph (7)(b) ~~(8)(b)~~.

b. Does not apply to become an approved program pursuant to sub-subparagraph a., the program shall be deemed an approved program from the date ~~that~~ the program ceased to be accredited until the 31st day after that date. On the 31st day after the program ceased to be accredited, the program shall be closed and the educational institution conducting the program must comply with paragraph (7)(b) ~~(8)(b)~~.

(10) ~~(11)~~ IMPLEMENTATION STUDY.—The Florida Center for Nursing ~~and the education policy area of the Office of Program Policy Analysis and Government Accountability~~ shall study the implementation ~~5-year administration~~ of this section and submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives in January of each year following the effective date of this act ~~by January 30, 2011, and annually thereafter through January 30, 2015~~. The annual reports shall address the previous academic year; provide ~~set forth~~ data on the measures specified in paragraphs (a) and (b), as such data becomes available; and include an evaluation of such data

for purposes of determining whether this section is increasing the availability of nursing education programs and the production of quality nurses. The department and each approved program or accredited program shall comply with requests for data from the Florida Center for Nursing ~~and the education policy area of the Office of Program Policy Analysis and Government Accountability~~.

(a) The Florida Center for Nursing ~~education policy area of the Office of Program Policy Analysis and Government Accountability~~ shall evaluate program-specific data for each approved program and accredited program conducted in the state, including, but not limited to:

1. The number of programs and student slots available.

2. The number of student applications submitted, the number of qualified applicants, and the number of students accepted.

3. The number of program graduates.

4. Program retention rates of students tracked from program entry to graduation.

5. Graduate passage rates on the National Council of State Boards of Nursing Licensing Examination.

6. The number of graduates who become employed as practical or professional nurses in the state.

(b) The Florida Center for Nursing shall evaluate the board's implementation of the:

1. Program application approval process, including, but not limited to, the number of program applications submitted under subsection (1); the number of program applications approved and denied by the board under subsection (2); the number of denials of program applications reviewed under chapter 120; and a

description of the outcomes of those reviews.

2. Accountability processes, including, but not limited to, the number of programs on probationary status, the number of approved programs for which the program director is required to appear before the board under subsection (5) ~~(6)~~, the number of approved programs terminated by the board, the number of terminations reviewed under chapter 120, and a description of the outcomes of those reviews.

~~(c) For any state fiscal year in which the Florida Center for Nursing does not receive legislative appropriations, the education policy area of the Office of Program Policy Analysis and Government Accountability shall perform the duties assigned by this subsection to the Florida Center for Nursing.~~

(11) ACCREDITATION REQUIRED.—

(a) A nursing education program that prepares students for the practice of professional nursing, that was approved under this section before July 1, 2014, and that enrolled students before July 1, 2014, must become an accredited program by July 1, 2019.

(b) A nursing education program that prepares students for the practice of professional nursing, that was approved under this section before July 1, 2014, but did not enroll students before that date, must become an accredited program within 5 years after the date of enrolling the program's first students.

(c) A nursing education program that prepares students for the practice of professional nursing and that is approved by the board after June 30, 2014, must become an accredited program within 5 years after the date of enrolling the program's first students.


495838

(d) This subsection does not apply to a nursing education program provided by an institution that is exempted from licensure by the Commission for Independent Education under s. 1005.06(1)(e).

Section 4. Subsection (1) of section 456.014, Florida Statutes, is amended to read:

456.014 Public inspection of information required from applicants; exceptions; examination hearing.—

(1) All information required by the department of any applicant shall be a public record and shall be open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except the program director of an approved program or accredited program as provided in s. 464.019(6) ~~464.019(7)~~, members of the board, the department, and staff thereof, who have a bona fide need to know such information. Any information supplied to the department by any other agency which is exempt from the provisions of chapter 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department or the agency.

========== 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 nursing education programs; amending s. 464.003, F.S.; revising definitions of the terms "clinical training" and "practice of practical nursing"; conforming a cross-reference; amending s. 464.013, F.S.; exempting nurses who are certified by an accredited program from continuing education requirements; amending s. 464.019, F.S.; specifying the location of clinical training; revising the limitation on the percentage of clinical training that may consist of clinical simulation; deleting obsolete requirements; authorizing the Board of Nursing to adopt certain rules relating to documenting the accreditation of nursing education programs; deleting the requirement that the Office of Program Policy Analysis and Government Accountability participate in an implementation study and revising the terms of the study; requiring nursing education programs that prepare students for the practice of professional nursing to be accredited; providing an exception; amending s. 456.014, F.S.; conforming a cross-reference; providing an effective date.

By Senator Grimsley

21-01332A-14 20141036__

A bill to be entitled

An act relating to nursing education programs; amending s. 464.003, F.S.; revising definitions of the terms "clinical training" and "practice of practical nursing"; amending s. 464.013, F.S.; exempting nurses who are certified by an accredited program from continuing education requirements; amending s. 464.019, F.S.; removing the limitation on the percentage of clinical training that may consist of clinical simulation; deleting obsolete requirements; authorizing the Board of Nursing to adopt certain rules relating to documenting the accreditation of nursing education programs; deleting the requirement that the Office of Program Policy Analysis and Government Accountability participate in an implementation study; requiring nursing education programs that prepare students for the practice of professional nursing to be accredited; providing an exception; providing an effective date.

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

Section 1. Subsections (10) and (19) of section 464.003, Florida Statutes, are amended to read:

464.003 Definitions.—As used in this part, the term:

(10) "Clinical training" means direct nursing care experiences with patients or clients<u>, or clinical simulation of such experiences,</u> which offer the student the opportunity to integrate, apply, and refine specific skills and abilities based

21-01332A-14 20141036__

on theoretical concepts and scientific principles.

(19) "Practice of practical nursing" means the performance of selected acts, including the administration of treatments and medications, in the care of the ill, injured, or infirm<u>;</u> ~~and~~ the promotion of wellness, maintenance of health, and prevention of illness of others under the direction of a registered nurse, a licensed physician, a licensed osteopathic physician, a licensed podiatric physician, or a licensed dentist<u>; and the teaching of general principles of health and wellness to the public and to students other than nursing students</u>. A practical nurse is responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing.

Section 2. Subsection (3) of section 464.013, Florida Statutes, is amended to read:

464.013 Renewal of license or certificate.—

(3) The board shall by rule prescribe <u>up to 30 hours of</u> continuing education ~~not to exceed 30 hours~~ biennially as a condition for renewal of a license or certificate. <u>A nurse who is certified by an accredited program is exempt from continuing education requirements.</u> The criteria for programs shall be approved by the board.

Section 3. Section 464.019, Florida Statutes, is amended to read:

464.019 Approval of nursing education programs.—

(1) PROGRAM <u>APPLICATION</u> ~~APPLICATIONS~~.—An educational institution that wishes to conduct a program in this state for the prelicensure education of professional or practical nurses must submit to the department a program application and review

fee of $1,000 for each prelicensure nursing education program to be offered at the institution's main campus, branch campus, or other instructional site. The ~~Each~~ program application must include the legal name of the educational institution, the legal name of the nursing education program, and, if such program is accredited ~~by an accrediting agency other than an accrediting agency described in s. 464.003(1)~~, the name of the accrediting agency. The application must also document that:

(a)1. For a professional nursing education program, the program director and at least 50 percent of the program's faculty members are registered nurses who have a master's or higher degree in nursing or a bachelor's degree in nursing and a master's or higher degree in a field related to nursing.

2. For a practical nursing education program, the program director and at least 50 percent of the program's faculty members are registered nurses who have a bachelor's or higher degree in nursing.

The educational degree requirements of this paragraph may be documented by an official transcript or by a written statement from the educational institution verifying that the institution conferred the degree.

(b) The program's nursing major curriculum consists of at least:

1. Fifty percent clinical training for a practical nursing education program, an associate degree professional nursing education program, or a professional diploma nursing education program.

2. Forty percent clinical training for a bachelor's degree

professional nursing education program.

~~(c) No more than 25 percent of the program's clinical training consists of clinical simulation.~~

(c) ~~(d)~~ The program has signed agreements with each agency, facility, and organization included in the curriculum plan as clinical training sites and community-based clinical experience sites.

(d) ~~(c)~~ The program has written policies for faculty which include provisions for direct or indirect supervision by program faculty or clinical preceptors for students in clinical training consistent with the following standards:

1. The number of program faculty members equals at least one faculty member directly supervising every 12 students unless the written agreement between the program and the agency, facility, or organization providing clinical training sites allows more students, not to exceed 18 students, to be directly supervised by one program faculty member.

2. For a hospital setting, indirect supervision may occur only if there is direct supervision by an assigned clinical preceptor, a supervising program faculty member is available by telephone, and such arrangement is approved by the clinical facility.

3. For community-based clinical experiences that involve student participation in invasive or complex nursing activities, students must be directly supervised by a program faculty member or clinical preceptor and such arrangement must be approved by the community-based clinical facility.

4. For community-based clinical experiences not subject to subparagraph 3., indirect supervision may occur only when a

supervising program faculty member is available to the student by telephone.

A program's policies established under this paragraph must require that a clinical preceptor who is~~, if~~ supervising students in a professional nursing education program~~, to~~ be a registered nurse or, if supervising students in a practical nursing education program, ~~to~~ be a registered nurse or licensed practical nurse.

(e)~~(f)~~ The professional or practical nursing curriculum plan documents clinical experience and theoretical instruction in medical, surgical, obstetric, pediatric, and geriatric nursing~~;. A professional nursing curriculum plan shall also document~~ clinical experience and theoretical instruction in psychiatric nursing; and~~. Each curriculum plan must document~~ clinical training experience in appropriate settings that include, but are not limited to, acute care, long-term care, and community settings.

(f)~~(g)~~ The professional or practical nursing education program provides theoretical instruction and clinical application in personal, family, and community health concepts; nutrition; human growth and development throughout the life span; body structure and function; interpersonal relationship skills; mental health concepts; pharmacology and administration of medications; and legal aspects of practice. A professional nursing education program must ~~shall~~ also provide theoretical instruction and clinical application in interpersonal relationships and leadership skills; professional role and function; and health teaching and counseling skills.

(2) PROGRAM APPROVAL.—

(a) Upon receipt of a program application and review fee, the department shall examine the application to determine if ~~whether~~ it is complete. If the ~~a program~~ application is not complete, the department shall notify the educational institution in writing of any errors or omissions within 30 days after the department's receipt of the application. A program application is deemed complete upon the department's receipt of:

1. The initial application, if the department does not notify the educational institution of any errors or omissions within the 30-day period; or

2. A revised application that corrects each error and omission of which the department notifies the educational institution within the 30-day period.

(b) Within 90 days after the department's receipt of a complete program application, the board shall:

1. Approve the application if it documents compliance with subsection (1) ~~paragraphs (1)(a)-(g)~~; or

2. Provide the educational institution with a notice of intent to deny the application if it does not document compliance with subsection (1) ~~paragraphs (1)(a)-(g)~~. The notice must specify ~~set forth~~ written reasons for the board's denial of the application. The board may not deny a program application because of an educational institution's failure to correct an ~~any~~ error or omission that ~~of which~~ the department failed to provide notice of to ~~does not notify~~ the institution within the 30-day notice period under paragraph (a). The educational institution may request a hearing on the notice of intent to deny the program application pursuant to chapter 120.

(c) A program application is deemed approved if the board does not act within the 90-day review period provided under paragraph (b).

(d) Upon the board's approval of a program application, the program becomes an approved program.

~~(3) STATUS OF CERTAIN PROGRAMS.—A professional or practical nursing education program becomes an approved program if, as of June 30, 2009, the program:~~

~~(a) Has full or provisional approval from the board or, except as provided in paragraph (b), is on probationary status.~~

~~(b) Is on probationary status because the program did not meet the board's requirement for graduate passage rates. Such program shall remain on probationary status until it achieves a graduate passage rate for calendar year 2009 or 2010 that equals or exceeds the required passage rate for the respective calendar year and must disclose its probationary status in writing to the program's students and applicants. If the program does not achieve the required passage rate, the board shall terminate the program pursuant to chapter 120.~~

(3) ~~(4)~~ ANNUAL REPORT.—By November 1 of each year, each ~~approved~~ program that is not accredited shall submit to the board an annual report comprised of an affidavit certifying continued compliance with subsection (1) ~~paragraphs (1)(a)-(g)~~, a summary description of the program's compliance with subsection (1) ~~paragraphs (1)(a)-(g)~~, and documentation for the previous academic year that, to the extent applicable, describes ~~sets forth~~:

(a) The number of student applications received, qualified applicants, applicants accepted, accepted applicants who enroll

in the program, students enrolled in the program, and program graduates.

(b) The program's retention rates for students tracked from program entry to graduation.

(c) The program's accreditation status, including identification of the accrediting agency if the program is accredited ~~such agency is not an accrediting agency described in s. 464.003(1)~~.

(4) ~~(5)~~ INTERNET WEBSITE. ~~By October 1, 2010,~~ The board shall publish the following information on its Internet website:

(a) A list of each accredited program conducted in the state and the program's graduate passage rates for the most recent 2 calendar years, which the department shall determine through the following sources:

1. For a program's accreditation status, the specialized accrediting agencies that are nationally recognized by the United States Secretary of Education to accredit nursing education programs.

2. For a program's graduate passage rates, the contract testing service of the National Council of State Boards of Nursing.

(b) The following data for each approved program, which includes ~~shall include~~, to the extent applicable:

1. All documentation provided by the program in its program application if submitted on or after July 1, 2009.

2. The summary description of the program's compliance submitted under subsection (3) ~~(4)~~.

3. The program's accreditation status, including identification of the accrediting agency if the program is

accredited ~~such agency is not an accrediting agency described in s. 464.003(1)~~.

4. The program's probationary status.

5. The program's graduate passage rates for the most recent 2 calendar years.

6. Each program's retention rates for students tracked from program entry to graduation.

(c) The average passage rates for United States educated first-time test takers on the National Council of State Boards of Nursing Licensing Examination for the most recent 2 calendar years, as calculated by the contract testing service of the National Council of State Boards of Nursing. The average passage rates shall be published separately for each type of comparable degree program listed in subparagraph (5)(a)1. ~~sub-subparagraphs (6)(a)1.a.-d.~~

The information required to be published under this subsection shall be made available in a manner that allows interactive searches and comparisons of individual programs selected by the website user. The board shall update the Internet website at least quarterly with the available information.

(5)~~(6)~~ ACCOUNTABILITY.—

(a)1. An approved program must achieve a graduate passage rate that is not more ~~lower~~ than 10 percentage points lower ~~less~~ than the average passage rate during the same calendar year for graduates of comparable degree programs who are United States educated, first-time test takers on the National Council of State Boards of Nursing Licensing Examination ~~during a calendar year~~, as calculated by the contract testing service of the

National Council of State Boards of Nursing. For purposes of this subparagraph, an approved program is comparable to all degree programs of the same program type from among the following program types:

a. Professional nursing education programs that terminate in a bachelor's degree.

b. Professional nursing education programs that terminate in an associate degree.

c. Professional nursing education programs that terminate in a diploma.

d. Practical nursing education programs.

2. Beginning with graduate passage rates for calendar year 2010, if an approved program's graduate passage rates do not equal or exceed the required passage rates for 2 consecutive calendar years, the board shall place the program on probationary status pursuant to chapter 120 and the program director shall ~~must~~ appear before the board to present a plan for remediation. The program must ~~shall~~ remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any 1 calendar year. The board shall deny a program application for a new prelicensure nursing education program submitted by an educational institution if the institution has an existing program that is already on probationary status.

3. Upon the program's achievement of a graduate passage rate that equals or exceeds the required passage rate, the board, at its next regularly scheduled meeting following release of the program's graduate passage rate by the National Council of State Boards of Nursing, shall remove the program's

probationary status. However, if the program, during the 2 calendar years following its placement on probationary status, does not achieve the required passage rate for any 1 calendar year, the board shall terminate the program pursuant to chapter 120.

(b) If an approved program fails to submit the annual report required in subsection (3) ~~(4)~~, the board shall notify the program director and president or chief executive officer of the educational institution in writing within 15 days after the due date of the annual report. The program director shall ~~must~~ appear before the board at the board's next regularly scheduled meeting to explain the reason for the delay. The board shall terminate the program pursuant to chapter 120 if it does not submit the annual report within 6 months after the due date.

(c) An approved program on probationary status shall disclose its probationary status in writing to the program's students and applicants.

(6)~~(7)~~ DISCLOSURE OF GRADUATE PASSAGE RATE DATA.—

(a) For each graduate of the program ~~an approved program's or accredited program's graduates~~ included in the calculation of the program's graduate passage rate, the department shall disclose to the program director, upon his or her written request, the name, examination date, and determination of whether each graduate passed or failed the National Council of ~~for~~ State Boards of Nursing Licensing Examination, if ~~to the extent that~~ such information is provided to the department by the contract testing service of the National Council of ~~for~~ State Boards of Nursing. The written request must specify the calendar years for which the information is requested.

(b) A program director to whom confidential information exempt from public disclosure pursuant to s. 456.014 is disclosed under this subsection must maintain the confidentiality of the information and is subject to the same penalties provided in s. 456.082 for department employees who unlawfully disclose confidential information.

(7)~~(8)~~ PROGRAM CLOSURE.—

(a) An educational institution conducting an approved program or accredited program in this state, at least 30 days before voluntarily closing the program, shall notify the board in writing of the institution's reason for closing the program, the intended closure date, the institution's plan to provide for or assist in the completion of training by the program's students, and the arrangements for storage of the program's permanent records.

(b) An educational institution conducting a nursing education program that is terminated under subsection (5) ~~(6)~~ or closed under subparagraph (9)(b)3. ~~(10)(b)3.~~:

1. May not accept or enroll new students.

2. Shall ~~Must~~ submit to the board within 30 days after the program is terminated or closed a written description of how the institution will assist in completing the ~~completion of~~ training of ~~by~~ the program's students and the institution's arrangements for storage of the program's permanent records.

(c) If an educational institution does not comply with paragraph (a) or paragraph (b), the board shall provide a written notice explaining the institution's noncompliance to the following persons and entities:

1. The president or chief executive officer of the

educational institution.

2. The Board of Governors, if the program is conducted by a state university.

3. The district school board, if the program is conducted by an educational institution operated by a school district.

4. The Commission for Independent Education, if the program is conducted by an educational institution licensed under chapter 1005.

5. The State Board of Education, if the program is conducted by an educational institution in the Florida College System or by an educational institution that is not subject to subparagraphs 2.-4.

(8) ~~(9)~~ RULEMAKING.—The board does not have ~~any~~ rulemaking authority to administer this section, except that the board shall adopt rules ~~a rule~~ that prescribe ~~prescribes~~ the format for submitting program applications under subsection (1) and annual reports under subsection (3), and to administer the documentation of the accreditation of nursing education programs under subsection (11) ~~(4)~~. The board may not impose any condition or requirement on an educational institution submitting a program application, an approved program, or an accredited program, except as expressly provided in this section. ~~The board shall repeal all rules, or portions thereof, in existence on July 1, 2009, that are inconsistent with this subsection.~~

(9) ~~(10)~~ APPLICABILITY TO ACCREDITED PROGRAMS.—

(a) Subsections (1)-(3) ~~(1)-(4)~~, paragraph (4)(b) ~~(5)(b)~~, and subsection (5) ~~(6)~~ do not apply to an accredited program. ~~An accredited program on probationary status before July 1, 2010,~~

~~ceases to be subject to the probationary status.~~

(b) If an accredited program ceases to be accredited, the educational institution conducting the program:

1. Within 10 business days after the program ceases to be accredited, must provide written notice of the date that the program ceased to be accredited to the board, the program's students and applicants, and each entity providing clinical training sites or community-based clinical experience sites for the program. The educational institution must continue to provide the written notice to new students, applicants, and entities providing clinical training sites or community-based clinical experience sites for the program until the program becomes an approved program or is closed under subparagraph 3.

2. Within 30 days after the program ceases to be accredited, must submit an affidavit to the board, signed by the educational institution's president or chief executive officer which~~, that~~ certifies the institution's compliance with subparagraph 1. The board shall notify the persons listed in subparagraph (7)(c)1. ~~(8)(c)1.~~ and the applicable entities listed in subparagraphs (7)(c)2.-5. ~~(8)(c)2.-5.~~ if an educational institution does not submit the affidavit required by this subparagraph.

3. May apply to become an approved program under this section. If the educational institution:

a. Within 30 days after the program ceases to be accredited, submits a program application and review fee to the department under subsection (1) and the affidavit required under subparagraph 2., the program shall be deemed an approved program from the date that the program ceased to be accredited until the

date that the board approves or denies the program application. The program application must be denied by the board pursuant to chapter 120 if it does not contain the affidavit. If the board denies the program application under subsection (2) or if ~~because~~ the program application does not contain the affidavit, the program shall be closed and the educational institution conducting the program must comply with paragraph (7)(b) ~~(8)(b)~~.

b. Does not apply to become an approved program pursuant to sub-subparagraph a., the program shall be deemed an approved program from the date ~~that~~ the program ceased to be accredited until the 31st day after that date. On the 31st day after the program ceased to be accredited, the program shall be closed and the educational institution conducting the program must comply with paragraph (7)(b) ~~(8)(b)~~.

(10)~~(11)~~ IMPLEMENTATION STUDY.—The Florida Center for Nursing ~~and the education policy area of the Office of Program Policy Analysis and Government Accountability~~ shall study the 5-year administration of this section and submit reports to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 30, 2011, and annually thereafter through January 30, 2015. The annual reports shall address the previous academic year; provide ~~set forth~~ data on the measures specified in paragraphs (a) and (b), as such data becomes available; and include an evaluation of such data for purposes of determining whether this section is increasing the availability of nursing education programs and the production of quality nurses. The department and each approved program or accredited program shall comply with requests for data from the Florida Center for Nursing ~~and the education policy area of the~~

~~Office of Program Policy Analysis and Government Accountability~~.

(a) The Florida Center for Nursing ~~education policy area of the Office of Program Policy Analysis and Government Accountability~~ shall evaluate program-specific data for each approved program and accredited program conducted in the state, including, but not limited to:

1. The number of programs and student slots available.

2. The number of student applications submitted, the number of qualified applicants, and the number of students accepted.

3. The number of program graduates.

4. Program retention rates of students tracked from program entry to graduation.

5. Graduate passage rates on the National Council of State Boards of Nursing Licensing Examination.

6. The number of graduates who become employed as practical or professional nurses in the state.

(b) The Florida Center for Nursing shall evaluate the board's implementation of the:

1. Program application approval process, including, but not limited to, the number of program applications submitted under subsection (1); the number of program applications approved and denied by the board under subsection (2); the number of denials of program applications reviewed under chapter 120; and a description of the outcomes of those reviews.

2. Accountability processes, including, but not limited to, the number of programs on probationary status, the number of approved programs for which the program director is required to appear before the board under subsection (5) ~~(6)~~, the number of approved programs terminated by the board, the number of

terminations reviewed under chapter 120, and a description of the outcomes of those reviews.

~~(c) For any state fiscal year in which the Florida Center for Nursing does not receive legislative appropriations, the education policy area of the Office of Program Policy Analysis and Government Accountability shall perform the duties assigned by this subsection to the Florida Center for Nursing.~~

(11) ACCREDITATION REQUIRED.—

(a) A nursing education program that prepares students for the practice of professional nursing, that was approved under this section before July 1, 2014, and that enrolled students before July 1, 2014, must be accredited by an accrediting agency described in s. 464.003(1) by July 1, 2019.

(b) A nursing education program that prepares students for the practice of professional nursing, that was approved under this section before July 1, 2014, but did not enroll students before that date, must become accredited by an accrediting agency described in s. 464.003(1) within 5 years after the date of enrolling the program's first students.

(c) A nursing education program that prepares students for the practice of professional nursing and that is approved by the board after June 30, 2014, must become accredited by an accrediting agency described in s. 464.003(1) within 5 years after the date of enrolling the program's first students.

(d) This subsection does not apply to a nursing education program provided by an institution that is exempted from licensure by the Commission for Independent Education under s. 1005.06(1)(e).

Section 4. This act shall take effect July 1, 2014.

The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Committee on Health Policy

Subject: Committee Agenda Request

Date: February 28, 2014

I respectfully request that **Senate Bill #1036**, relating to Nursing Education Programs , be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

ENTERED

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-5-14
Meeting Date

Topic Nursing ED Bill Number 1036 *(if applicable)*

Name Jessi Berrin Amendment Barcode *(if applicable)*

Job Title Govt + Comm. Relations, BAPTIST HEALTH So. FLA.

Address 90 SW 3rd St, Apt 2413 Phone 305-984-2820
Street

MIA FL 33130 E-mail jeberrin@gmail.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing BAPTIST 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)

05 Mar. 2014
Meeting Date

Topic Nursing Education Programs — Bill Number 1036 *(if applicable)*

Name Matthew Holliday — Amendment Barcode _____ *(if applicable)*

Job Title Director of Government Relations

Address 8099 College Parkway *Street* — Phone 239-826-7864

Ft. Myers *City* FL *State* 33919 *Zip* — E-mail mholliday@edison.edu

Speaking: ☑ For ☐ Against ☐ Information

Representing Edison State College

Appearing at request of Chair: ☐ Yes ☑ No — Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/14
Meeting Date

Topic Nursing Education Programs — Bill Number S 1036 *(if applicable)*

Name David Gregory — Amendment Barcode _____ *(if applicable)*

Job Title Dir. of Institutional Relations / Pensacola Christian College

Address 250 Brent Lane *Street* — Phone 850-478-8496 x 2880

Pensacola *City* FL *State* 32504 *Zip* — E-mail dgregory@pcci.edu

Speaking: ☒ For ☐ Against ☐ Information

Representing Pensacola Christian College

Appearing at request of Chair: ☐ Yes ☒ No — Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/2014
Meeting Date

Topic _____ Bill Number SB1036 *(if applicable)*

Name Curtis Austin Amendment Barcode _____ *(if applicable)*

Job Title Executive Director FAPSC

Address 150 S. Monroe Street Suite 303 Phone 577-3139
Street

Tallahassee
City *State* *Zip*

E-mail Curtis@FAPSC.org

Speaking: ☒ For ☐ Against ☐ Information

Representing The Florida Association of Post Secondary Schools & Colleges

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-5-14
Meeting Date

Topic Nursing Bill Number 1036 *(if applicable)*

Name Sandra Mortham Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 6675 Weeping Willow Way Phone 850-251-2283
Street

Tallahassee FL 32311
City *State* *Zip*

E-mail smortham@aol.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Rasmussen College

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-5-2014
Meeting Date

Topic Nursing Education. Bill Number 1036 *(if applicable)*

Name Dr. Judith McFetridge-Durdle Amendment Barcode *(if applicable)*

Job Title Dean, College of Nursing, FSU.

Address 98 Varsity Way, FSU. Phone 850-644-6844
Street

Tallahassee, FL 32306 E-mail jdurdle@nursing.fsu.edu.
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Association of Colleges of Nursing.

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

3-5-14
Meeting Date

APPEARANCE RECORD

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

Topic Nursing Education Bill Number 1036 *(if applicable)*

Name Martha Decastro Amendment Barcode *(if applicable)*

Job Title Vice President for Nursing

Address 306 E College Ave Phone 222 9800
Street

Tallahassee FL 32317 E-mail martha@fha.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

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)

3/5
Meeting Date

Topic Nursing Education

Bill Number 1036 *(if applicable)*

Name Alisa LaPolt

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address PO Box 1344 *Street*

Phone 443-139

TLH *City* *State* *Zip*

E-mail _____

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

Representing Florida Nurses Association

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

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

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

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

S-001 (10/20/11)

The Florida Senate

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 976
INTRODUCER:	Health Policy Committee and Senator Bean
SUBJECT:	Nurse Registries
DATE:	March 5, 2014
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 976 amends section 400.506 of the Florida Statutes to clarify that a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide that is referred by a nurse registry is an independent contractor and not an employee of that nurse registry regardless of the regulatory obligation imposed on the nurse registry under ch. 400, F.S.

The bill also clarifies that a nurse registry is not responsible for monitoring, supervising, managing, or training the nurses, companions or homemakers, and home health aides it refers or for reviewing or acting on any records required to be filed with it by ch. 400, F.S., and maintained under the Agency for Health Care Administration (Agency) rule.

The bill requires that if a nurse registry becomes aware of a violation of law, misconduct, or a deficiency in credentials of a nurse, companion or homemaker, or home health aide then it is responsible for advising the patient to terminate the referred person's contract along with a reason for the recommendation, ceasing to refer the contractor to other patients or facilities, and notifying the applicable licensing board if practice violations are involved.

II. Present Situation:

A nurse registry is defined to mean "any person that procures, offers, promises, or attempts to secure health care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers, who are compensated by fees as independent contractors, including but not limited to, contracts for the provision of services to patients and contracts to provide private duty or staffing services to health care facilities licensed under chapter 395, [chapter 400], or chapter 429 or other business entities."[1] Nurse registries operate by referring qualified health care workers to patients, health care facilities, or other business entities who hire such health care workers as independent contractors.[2]

Nurse registries are regulated under the Home Health Services Act found in part III of ch. 400, F.S., specifically s. 400.506, F.S., and part II of ch. 408, F.S., the general licensing provisions for health care facilities regulated by the Agency. A license issued by the Agency is required to operate a nurse registry. As of February 27, 2014, 511 nurse registries are licensed with the Agency. [3,4]

Some of the responsibilities of a nurse registry as established in statute and rule include:

- Referring independent contractors capable of delivering services as defined in a specific medical plan of treatment for a patient or services requested by a client;[5]
- Keeping clinical records received from the independent contractors for 5 years following the termination of that contractor's service;[6]
- Disseminating to the independent contractors the procedures governing the administration of drugs and biologicals to patients required by ch. 464, F.S., and Agency rules, as well as all the information required by 59A-18.005(1), F.A.C.;[7]
- Initially confirming and annually reconfirming the licensure or certification of applicable independent contractors;[8]
- Annually requesting performance outcome evaluations from the health care facilities where the independent contractor provided services and maintaining those evaluations in that independent contractor's file;[9]
- Establishing a system for recording a following-up on complaints involving independent contractors referred by the nurse registry;[10]
- Informing a health care facility or other business entity that a referred independent contractor is on probation with their professional licensing board or certifying agency or has had other

[1] Section 400.462(21), F.S.
[2] Agency bill analysis for SB 976, on file with the Senate Health Policy Committee
[3] Multiple nurse registries that are located in the same county may be included in one license and each operational site must be listed on the license.
[4] On-line report of active nurse registries generated from the FloridaHealthFinder.gov website available at: http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx, (Last visited Feb. 27, 2014).
[5] Rule 59A-18.010(2)
[6] Rule 59A-18.012(7)
[7] Rule 59A-18.013(1)
[8] Rule 59A-18.005(3) and (4)
[9] Rule 59A-18.017
[10] Id.

restrictions placed on their license or certification when the nurse registry has received such information;[11]
- Preparing and maintaining a written comprehensive emergency management plan;[12] and,
- Complying with the background screening requirements in s. 400.512, F.S., requiring a level II background check for all employees and contractors.[13]

Since nurse registries operate as referral services with the referred health care workers working as independent contractors for a patient or facility who is responsible for hiring, firing, and paying the referred health care workers, nurse registries are not required to meet the minimum wage and overtime requirements for employers as set out in the federal Fair Labor Standards Act (FLSA). Nonetheless, it is possible for a nurse registry to be considered an employer for the purposes of the FLSA under certain circumstances.[14,15] Currently, even if a nurse registry is found to be an employer, it is still exempt from the requirements of the FLSA relating to minimum wage and overtime due to an exception made for the provision of companionship services.[16] Companionship services have been interpreted to include "essentially all workers providing services in the home to elderly people or people with illnesses, injuries, or disabilities regardless of the skill the duties performed require."[17]

Under a pending change to federal regulation that will take effect on January 1, 2015, the definition of companionship services will be significantly narrowed to specifically exclude "the performance of medically related services."[18] If a nurse registry is found to be an employer after January 1, 2015, it would have to comply with the requirements of the FLSA relating to minimum wage and overtime or be in violation of federal law.

III. Effect of Proposed Changes:

The bill clarifies the role of a nurse registry to reduce the likelihood that it would be deemed an employer under the FLSA, as follows:

- A registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide referred for contract by a nurse registry is an independent

[11] Id.
[12] 59A-18.018(1)
[13] s. 400.506(9), F.S.
[14] In order to determine whether or not employment or joint employment exists a person must look at all the facts in a particular case and assess the economic reality of the work relationship. Factors to consider may include whether an employer has the power to direct, control, or supervise the worker(s) or the work performed; whether an employer has the power to hire or fire, modify the employment conditions or determine the pay rates or the methods of wage payment for the worker(s); the degree of permanency and duration of the relationship; where the work is performed and whether the tasks performed require special skills; whether the work performed is an integral part of the overall business operation; whether an employer undertakes responsibilities in relation to the worker(s) which are commonly performed by employers; whose equipment is used; and who performs payroll and similar functions. See *Federal Register, Vol. 78, No. 190*, Oct. 1, 2013, at page 31.
[15] Currently, AHCA rule 59A-18.005(8)(d) requires a nurse registry to record and follow up on complaints that are filed involving individuals it refers. This oversight may meet the supervisory test as stated in n. 4.
[16] 29 CFR 552.6
[17] Id n. 4 at page 3.
[18] Id.

contractor and not an employee of that nurse registry regardless of the regulatory obligations imposed on the nurse registry by ch. 400, F.S., and Agency rule.

- A nurse registry is not obligated to monitor, supervise, manage, or train a registered nurse, licensed practical nurse, certified nursing assistant, or home health aide it refers.
- If a nurse registry becomes aware of a violation of law, misconduct, or a deficiency in the credentials of a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide it refers, the registry has the obligation to advise the patient to terminate the referred person's contract and provide a reason to the patient for the recommended termination, cease referring that contractor to other patients or facilities, and notify the appropriate licensing board if practice violations are involved.
- Records required to be filed with the nurse registry by ch. 400, F.S., must be kept in accordance with Agency rules solely as a repository of records and the nurse registry has no obligation to review or act upon such records other than as detailed above.

The effective date of the bill is July 1, 2014.

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. Statutes Affected:

This bill substantially amends section 400.506 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on March 5, 2014:

The CS amends SB 976 to include companions and homemakers in the clarifications made to a nurse registry's duties. The amendment also adds to the duties of a nurse registry when it becomes aware of illegal activity, misconduct, or a deficiency in credentials of one of its independent contractors by requiring the registry to provide a reason for the suggested termination, to cease referring that contractor, and to notify the licensing board if practice violations are involved.

B. Amendments:

None.

956550

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 28 - 43

and insert:

nursing assistant, companion or homemaker, or home health aide referred for contract under this chapter by a nurse registry shall be deemed an independent contractor and not an employee of the nurse registry regardless of the obligations imposed on a nurse registry under this chapter.

(19) It is not the obligation of a nurse registry to monitor, supervise, manage, or train registered nurses, licensed

956550

practical nurses, certified nursing assistants, companions or homemakers, or home health aides referred for contract under this chapter. In the event of a violation of this chapter, a violation of any other law of this state, or misconduct by a referred registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide, or a deficiency in credentials which comes to the attention of the nurse registry, the nurse registry shall advise the patient to terminate the referred person's contract, providing the reason for the suggested termination; cease referring the individual to other patients or facilities; and notify the licensing board if practice violations are involved.

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

And the title is amended as follows:

Delete lines 5 - 16

and insert:

assistants, companions or homemakers, and home health aides are independent contractors and not employees of the nurse registries that referred them; specifying that a nurse registry is not responsible for monitoring, supervising, managing, or training a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide referred by the nurse registry; requiring that certain records be kept in accordance with rules set by the Agency for Health Care Administration; providing that a nurse registry does not have an obligation to review and act upon such records except

956550

under certain circumstances; providing the duties of the nurse registry for a violation of certain laws by an individual referred by the nurse registry;

By Senator Bean

4-01213-14 2014976__

A bill to be entitled

An act relating to nurse registries; amending s. 400.506, F.S.; providing that registered nurses, licensed practical nurses, certified nursing assistants, and home health aides are independent contractors and not employees of the nurse registries that referred them; specifying that a nurse registry is not responsible for monitoring, supervising, managing, or training a registered nurse, licensed practical nurse, certified nursing assistant, or home health aide referred by the nurse registry; requiring that certain records be kept in accordance with rules set by the Agency for Health Care Administration; providing that a nurse registry does not have an obligation to review and act upon such records except under certain circumstances; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (6) of section 400.506, Florida Statutes, and subsections (19) and (20) are added to that section, to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(6)

(d) A registered nurse, licensed practical nurse, certified nursing assistant, or home health aide referred for contract under this chapter by a nurse registry shall be deemed an

4-01213-14 2014976__

independent contractor and not an employee of the nurse registry regardless of the obligations imposed on a nurse registry under this chapter.

(19) It is not the obligation of a nurse registry to monitor, supervise, manage, or train registered nurses, licensed practical nurses, certified nursing assistants, or home health aides referred for contract under this chapter. In the event of a violation of this chapter, a violation of any other law of this state, or misconduct by a referred registered nurse, licensed practical nurse, certified nursing assistant, or home health aide, or a deficiency in credentials which comes to the attention of the nurse registry, the nurse registry's sole obligation shall be to advise the patient to terminate the referred person's contract.

(20) Records required to be filed with the nurse registry under this chapter must be kept in accordance with rules adopted by the agency solely as a repository of records, and the nurse registry has no obligation to review and act upon such records except as specified in subsection (19).

Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/5/14
Meeting Date

Topic Nurse Registries

Bill Number SB 976 *(if applicable)*

Name Debra Henley

Amendment Barcode Committee Amendment *(if applicable)* 588-020 28-14

Job Title Executive Director

Address 218 S. Monroe St. *Street*

Phone 224-9403 C850

Tall. Fl. 32309 *City State Zip*

E-mail

Speaking: ☒ For ☒ Against Bill Amendment ☐ 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)

last

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/14
Meeting Date

Topic

Bill Number SB 976 *(if applicable)*

Name James Mark

Amendment Barcode *(if applicable)*

Job Title President

Address 1160 Fern Ave *Street*

Phone 407-579-1935

Orlando FL 32814 *City State Zip*

E-mail jim@AHCCARES.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Private 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.

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

S-001 (10/20/11)

CourtSmart Tag Report

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

Started: 3/5/2014 1:34:07 PM
Ends: 3/5/2014 3:01:52 PM Length: 01:27:46

1:34:10 PM Meeting Called to Order
1:35:21 PM Roll Call
1:35:56 PM SB 1036- Nursing Education Program
1:36:06 PM Sen. Grimsley explains the bill
1:37:50 PM Barcode 495838 Strike-all
1:38:53 PM Sen. Grimsley explains the strike all
1:40:05 PM Chair Bean asks for questions
1:40:08 PM Sen. Joyner asks question
1:41:00 PM Sen. Grimsley responds
1:41:13 PM Sen. Joyner asks follow-up question
1:41:20 PM Sen. Grimsley responds
1:41:22 PM Chair Bean asks for other questions
1:41:42 PM The strike all is adopted
1:42:07 PM Matthew Holliday, Edison State College, Waives in Support
1:42:27 PM Curtis Austin, FL association of Schools waives in support
1:42:47 PM Sandra Morthan, Rasmussen College, waives in support
1:43:11 PM Testimony by Dr. Judith McFetridge-Durdle, FL Association of College of Nursing
1:46:59 PM Chair Bean asks for questions
1:47:13 PM Sen. Garcia asks question
1:47:23 PM Dr. McFetridge-Durdle responds with regard to rotations
1:48:20 PM Martha Decastro, FL Hospital Ass. waives in support
1:48:37 PM Alisa LaPolt, FL Nurses Ass. waives in support
1:48:50 PM Chair Bean asks for debate
1:48:56 PM Sen. Joyner makes comment
1:49:41 PM Chair Bean asks for other debate
1:49:47 PM Sen. Grimsley waives close
1:49:58 PM SB 1036 is moved as committee substitute
1:50:15 PM Roll Call on SB 1036
1:50:24 PM Recorded Favorably
1:50:43 PM Sen. Sobel recognizes Chair Bean for SB 976
1:50:54 PM SB 976- Nurse Registries
1:51:03 PM Chair Bean explains the bill
1:52:14 PM Barcode 956550 is explained by Chair Bean
1:52:40 PM Sen. Sobel asks for questions
1:52:44 PM Sen. Joyner asks question about AM
1:53:08 PM Chair Bean responds with clarification
1:53:42 PM Sen. Joyner asks follow-up question
1:53:53 PM Chair Bean comments
1:54:12 PM Sen. Sobel asks for further questions
1:54:35 PM Testimony by Debra Henley, FL Justice Association
1:55:57 PM Sen. Garcia asks question
1:56:02 PM Ms. Henley responds
1:57:04 PM Sen. Garcia asks follow-up question
1:57:11 PM Ms. Henley responds
1:58:00 PM Sen. Sobel asks for further questions
1:58:05 PM Sen. Joyner asks a question
1:59:15 PM Sen. Bean responds
1:59:47 PM Sen. Joyner makes comment
1:59:59 PM Chair Bean makes comment
2:00:33 PM Sen. Sobel asks question about background checks
2:01:00 PM Chair Bean responds
2:01:29 PM Sen. Sobel asks follow-up question
2:01:34 PM Chair Bean responds
2:01:44 PM Sen. Sobel asks for further debate
2:01:51 PM AM is adopted
2:02:13 PM Sen. Joyner asks question
2:03:16 PM Testimony by James Mark, Private Care Association, President
2:04:57 PM Sen. Joyner asks to repeat example
2:05:31 PM Sen. asks follow-up question
2:05:42 PM Mr. Mark responds
2:06:03 PM Sen. Joyner asks question
2:06:09 PM Mr. Mark responds
2:06:15 PM Sen. Joyner continues
2:06:19 PM Mr. Mark responds and comments
2:07:02 PM Sen. Joyner makes comment
2:07:21 PM Sen. Sobel asks for other questions
2:07:25 PM Sen. Joyner asks question
2:07:46 PM Mr. Mark responds
2:08:23 PM Sen. Joyner asks follow-up question
2:08:27 PM Mr. Mark responds
2:08:37 PM Sen. Sobel asks question about need for change federally
2:08:47 PM Mr. Mark responds
2:09:47 PM Sen. Sobel asks follow-up question
2:09:54 PM Mr. Mark responds
2:10:26 PM Sen. Sobel asks question
2:10:30 PM Mr. Mark responds
2:10:35 PM Sen. Sobel asks for debate
2:10:55 PM Sen. Joyner asks question
2:11:44 PM Chair Bean responds
2:12:17 PM Sen. Joyner asks follow-up question
2:12:26 PM Chair Bean responds
2:12:37 PM Sen. Sobel asks for further debate
2:12:48 PM Sen. Joyner makes comment
2:14:53 PM Sen. Sobel makes comment
2:15:35 PM Sen. Garcia asks question
2:16:24 PM Sen. Sobel asks for other comments/debate
2:16:30 PM Chair Bean closes on bill
2:17:29 PM Sen. Garcia rules bill as committee substitute
2:17:42 PM Roll Call on SB 976
2:18:01 PM Show bill passing
2:18:07 PM Chair Bean thanks members and procedes to SPB 7028
2:18:54 PM SPB 7028- Telemedicine
2:20:49 PM Sen. Joyner introduces SPB 7028
2:22:43 PM Chair Bean makes comment
2:23:03 PM Sen. Sobel provides definitions of telemedicine
2:25:06 PM Chair Bean thanks Sen. Sobel and makes comment
2:25:22 PM Sen. Garcia explains requirements for licensing
2:27:22 PM Chair Bean thanks Sen. Garcia and makes comment
2:27:55 PM Sen. Flores explains regalatory and financial assignments
2:29:35 PM Chair Bean thanks Sen. Flores and makes comment
2:29:47 PM Sen. Brandes explains quality and security
2:30:47 PM Sen. Braynon explains interstate compacts
2:32:14 PM Chair Bean makes comment
2:32:20 PM Sen. Grimsley explains medicaid services
2:33:21 PM Chair Bean makes comment
2:33:47 PM Sen. Galvano explains barcode 401616
2:36:33 PM Chair Bean asks for questions
2:36:47 PM Sen. Galvano explains AM
2:37:30 PM Chair Bean asks for questions
2:38:03 PM Testimony by Debra Heuley, FJA
2:39:22 PM Chair Bean asks for debate/questions
2:39:50 PM Sen. Galvano closes on AM
2:40:34 PM Motion carries and AM is adopted
2:40:48 PM Sen. Galvano explains Bean AM

2:41:07 PM Chair Bean asks for questions
2:41:34 PM Audrey Brown, FL Ass. of Health Plans, waives in support
2:41:47 PM AM is adopted
2:42:00 PM Testimony by Kristina Wiggins, C Now
2:45:18 PM Testimony by David Christian, FL. Chamber of Commerce
2:45:49 PM Testimony by Stan Whittaker, FL Ass. of Nurse Practitioners
2:47:59 PM Chair Bean explains late filed AM by Sen. Sobel
2:48:15 PM Sen. Sobel explains Barcode 256414
2:48:57 PM Chair Bean asks for questions
2:48:59 PM Sen. Brandes asks question
2:49:25 PM Sen. Sobel responds
2:49:40 PM Sen. Galvano makes comment in support
2:50:29 PM Chair Bean asks for objection, hearing none the AM is adopted
2:51:09 PM Sen. Sobel makes comment
2:52:02 PM Sen. Joyner makes comment
2:53:48 PM Sen. Galvano closes on SA
2:54:41 PM Chair Bean asks for objections, hearing none, SA is adopted
2:55:19 PM Testimony by Alisa LaPolt, Florida Nurses Association
2:56:07 PM Testimony by Paul Sanford, FL Blue, FL Ins. Council
2:57:59 PM Testimony by Christopher Lipson, Home Care Association of FL
2:58:40 PM Testimony by Tammy Purdue, Associated Industries of FL
3:00:23 PM Chair Bean makes closing comments
3:00:33 PM Sen. Grimsley moves that bill is proposed committee bill 7028
3:00:48 PM Roll Call on SPB 7028
3:01:06 PM SPB 7028 reported favorably
3:01:19 PM Sen. Flores is recorded favorably on SB 1036
3:01:31 PM Sen. Brandes is recorded favorably on SB 1036
3:01:41 PM Sen. Flores moves we rise