

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

HEALTH REGULATION
Senator Garcia, Chair
Senator Sobel, Vice Chair

MEETING DATE: Wednesday, January 25, 2012
TIME: 3:30 —5:30 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Garcia, Chair; Senator Sobel, Vice Chair; Senators Diaz de la Portilla, Fasano, Gaetz, Jones, and Norman

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed committee bill:			
1	SPB 7186	Health Care Consumer Protection; Revising the Florida Patient's Bill of Rights to require certain health care practitioners to publish and post a schedule of charges for services provided to patients; requiring that urgent care centers, ambulatory surgical centers, and diagnostic-imaging centers publish and post a schedule of charges for services provided to patients; adding failure to comply with the provisions of s. 395.107, F.S., to the grounds for discipline of a practitioner licensed under certain chapters; prohibiting a provider of emergency medical care and services from billing a patient under certain circumstances, etc.	Failed to Submit as a Committee Bill
2	CS/SB 694 Children, Families, and Elder Affairs / Fasano (Similar CS/H 529)	Adult Day Care Centers; Citing this act as the "Specialized Alzheimer's Services Adult Day Care Act."; prohibiting an adult day care center from claiming to be licensed to provide specialized Alzheimer's services under certain circumstances; providing educational and experience requirements for the operator of an adult day care center seeking licensure to provide specialized Alzheimer's services; requiring that dementia-specific services be documented in a participant's file; requiring that the center coordinate and execute discharge procedures with a participant who has a documented diagnosis of Alzheimer's disease or a dementia-related disorder and the caregiver if the participant's enrollment in the center is involuntarily terminated, etc.	Fav/CS Yeas 7 Nays 0
		CF 01/12/2012 Fav/CS HR 01/25/2012 Fav/CS BC	

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Health Regulation

Wednesday, January 25, 2012, 3:30 —5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1856 Flores (Compare H 655, CS/H 657, Link S 616)	Public Records and Public Meetings/Peer Review Panels; Amending provisions relating to the James and Esther King Biomedical Research Program; providing an exemption from public records and public meetings requirements for peer review panels meeting to review certain grant proposals; amending provisions relating to the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program; providing an exemption from public records and public meetings requirements for peer review panels meeting to review certain grant proposals, etc. HR 01/25/2012 Not Considered GO	Not Considered
4	SB 594 Storms (Compare CS/H 1143, S 1884)	Medical Care; Providing powers of the Department of Health with regard to access to patient health records; providing for the department to obtain patient records without written authorization from the patient under certain circumstances; authorizing the department to issue an emergency order to suspend or restrict the license of a health care practitioner under certain circumstances, etc. HR 01/25/2012 Fav/CS GO BC	Fav/CS Yeas 6 Nays 1
5	SB 278 Sachs (Identical H 125)	Preventing Deaths from Drug-related Overdoses; Cites this act as the "911 Good Samaritan Act;" providing that a person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for specified offenses in certain circumstances; providing that a person who experiences a drug-related overdose and needs medical assistance may not be charged, prosecuted, or penalized for specified offenses in certain circumstances; providing that the protections from prosecution for specified offenses are not grounds for suppression of evidence in other prosecutions; amending mitigating circumstances under which a departure from the lowest permissible criminal sentence is reasonably justified to include circumstances in which a defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose, etc. CJ 11/03/2011 Temporarily Postponed CJ 01/12/2012 Favorable HR 01/25/2012 Favorable	Favorable Yeas 7 Nays 0

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Health Regulation

Wednesday, January 25, 2012, 3:30 —5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 1258 Benacquisto (Identical H 4163)	Continuing Education for Athletic Trainers and Massage Therapists; Repealing provisions relating to the requirement for athletic trainers and massage therapists to complete continuing education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome, etc. HR 01/25/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 0
7	SB 1358 Hays (Similar H 1205)	Drug-Free Workplace Act; Removing the definition of the term "safety-sensitive position" and defining the term "random testing"; authorizing an agency within state government to conduct random drug testing every 3 months; removing provisions prohibiting a state agency from discharging or disciplining an employee under certain circumstances based on the employee's first positive confirmed drug test; removing provisions limiting the circumstances under which an agency may discharge an employee in a special risk or safety-sensitive position; providing that an agency may discharge or discipline an employee following a first-time positive confirmed drug test result, etc. HR 01/25/2012 Fav/1 Amendment GO BC	Fav/1 Amendment (654020) Yeas 6 Nays 1
8	SB 850 Oelrich (Similar H 509)	Pharmacists; Revising the types of vaccines that pharmacists are authorized to administer; authorizing pharmacy interns to administer the vaccines under certain circumstances; authorizing pharmacists and pharmacy interns to administer an epinephrine autoinjection under certain circumstances; revising protocol requirements for vaccine administration and the duties of supervising physicians under such protocols; revising requirements for training programs, certifications, and patient records related to vaccine administration, etc. HR 01/25/2012 Fav/1 Amendment BC	Fav/1 Amendment (Yeas 6 Nays 1

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Health Regulation

Wednesday, January 25, 2012, 3:30 —5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 606 Montford	Youth Athletes; Requiring that an independent sanctioning authority for youth athletic teams and the Florida High School Athletic Association adopt guidelines, bylaws, and policies relating to the nature and risk of exertional heat stroke and heat-related injury in youth athletes; requiring that a parent or guardian of a youth who participates in an athletic competition or who is a candidate for an athletic team sign and return an informed-consent form before the youth athlete participates in an athletic competition or engages in any practice, tryout, workout, or other physical activity; requiring that any youth athlete who is suspected of suffering from an exertional heat stroke or heat-related injury during a practice or competition be removed from the practice or competition, etc. HR 01/25/2012 Favorable ED	Favorable Yeas 7 Nays 0
10	SB 1052 Ring (Identical H 829)	Newborn Screening for Congenital Heart Disease; Providing definitions; providing requirements for screening newborns for congenital heart disease; providing for certain insurance and managed care coverage; providing for referral for ongoing services; authorizing the Department of Health to adopt rules to implement the screening; providing powers and duties of the department, etc. HR 01/25/2012 Fav/CS BI BC	Fav/CS Yeas 7 Nays 0

Other Related Meeting Materials

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SPB 7186

INTRODUCER: For consideration by the Health Regulation Committee

SUBJECT: Health Care Consumer Protection

DATE: January 24, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill requires certain health care practitioners and health care facilities to provide patients with information that will enable patients to better protect their financial interests when they need health care services. The bill also provides protections for insured patients who are financially vulnerable when they need services that can only be obtained from a non-contract health care provider and they are unable to choose a contract provider.

The bill requires physicians to publish and distribute a schedule of charges for at least the 50 services most frequently provided by the physician. The schedule must be given to patients upon each visit. The bill specifies additional requirements for the content and posting of the schedule of charges and makes non-compliance a ground for discipline by the physician’s board.

The bill also requires ambulatory surgical centers and diagnostic-imaging centers, in addition to urgent care centers, to publish and post a schedule of charges for the medical services offered to patients. The bill specifies additional requirements for the content and posting of the schedule of charges and imposes a fine for non-compliance with these requirements.

For insured patients, balance billing is prohibited for non-contract providers for emergency services and care, if a patient is transported to the hospital by emergency medical transportation services. Balance billing is also prohibited for non-contract providers for non-emergency services and care in a hospital that has a contract with the insurer, if the patient could not choose a contract provider.

The bill establishes disclosure requirements for insurers, hospitals, and in-hospital providers that will alert a patient when health care providers do not have a contract with the patient’s insurer

and that they may be balance billed for services received from non-contract providers. The bill provides penalties for non-compliance with the disclosure requirements.

This bill substantially amends the following sections of the Florida Statutes: 381.026, 395.002, 395.107, 456.072, 627.6131, 383.50, 390.011, 394.4787, 395.003, 395.602, 395.701, 408.051, 409.905, 409.97, 409.975, 468.505, 627.736, 766.118, 766.316, and 812.014.

The bill creates s. 627.6385, Florida Statutes.

II. Present Situation:

Florida Patient's Bill of Rights and Responsibilities

The Florida Patient's Bill of Rights and Responsibilities¹ establishes rights of patients of health care facilities (defined as hospitals, ambulatory surgical centers, and mobile surgical facilities) and health care providers (defined as allopathic physicians, osteopathic physicians, and podiatric physicians). The rights of patients include rights relating to individual dignity, information about services and patient privacy, financial information, access to health care, and experimental research. The law also establishes certain patient responsibilities.

Some of the rights pertinent to this bill include:

- A patient has the right to know the name, function, and qualifications of each health care provider who is providing medical services to the patient.
- A health care provider or a health care facility shall, upon request, disclose to each patient who is eligible for Medicare, before treatment, whether the health care provider or the health care facility accepts the Medicare assignment rate.
- A patient has the right to receive, upon request, prior to treatment, a reasonable estimate of charges for medical care.
- A patient has the right to receive a copy of a reasonably clear and understandable, itemized bill and, upon request, to have the charges explained.

Both the rights and responsibilities are summarized in the law. Health care facilities and health care providers, as defined in the law, are required to make available to patients a statement of the rights and responsibilities of patients.

The Agency for Health Care Administration may impose administrative fines against health care facilities that fail to make available to patients a summary of their rights. The law authorizes the appropriate regulatory board to impose an administrative fine against a health care provider who fails to make available to patients a summary of their rights.²

Health Care Price Transparency

The 2011 Legislature passed CS/CS/HB 935 (ch. 2011-122, L.O.F.), an act relating to health care price transparency. The law amended the Florida Patient's Bill of Rights and Responsibilities to

¹ See s. 381.026, F.S.

² See s. 381.0261, F.S.

authorize, but not require, primary care providers³ to publish a schedule of charges for the medical services that the provider offers to patients. The law required the schedule to include certain price information for at least the 50 services most frequently provided by the primary care provider. The law also required the posting of the schedule in a conspicuous place in the reception area of the provider's office. The posting must be at least 15 square feet in size.

The law provided an incentive to primary care providers to voluntarily publish a schedule of charges. A primary care provider who publishes and maintains a schedule of charges is exempt from licensure fees for a single renewal of a professional license and from the continuing education requirements for a single 2-year period.

Chapter 2011-122, L.O.F., also established a requirement for urgent care centers to publish a schedule of charges for the medical services offered to patients. The law established requirements that are the same as those established for primary care providers under the Florida Patient's Bill of Rights and Responsibilities for the content of the schedule of charges and the posting of the schedule. The law imposed a fine of not more than \$1,000 per day (until the schedule is published and posted) on an urgent care center that fails to publish and post the schedule of charges.

Health Care Practitioners

Health care practitioners are regulated under the general provisions of ch. 456, F.S., and specific licensing statutes for each type of practitioner.

- Medical practice is governed by ch. 458, F.S., under the Board of Medicine within the Department of Health.
- The practice of osteopathic medicine is governed by ch. 459, F.S., under the Board of Osteopathic Medicine within the Department of Health.
- The practice of chiropractic medicine is governed by ch. 460, F.S., under the Board of Chiropractic Medicine within the Department of Health.
- The practice of podiatric medicine is governed by ch. 461, F.S., under the Board of Podiatric Medicine within the Department of Health.
- Nursing practice is governed by ch. 464, F.S., under the Board of Nursing within the Department of Health. Section 464.012, F.S., provides for the certification of registered nurses as advanced registered nurse practitioners. A nurse practitioner may perform certain acts within the framework of an established protocol with a physician.
- Physician assistants are governed by sections 458.347 and 459.022, F.S., under the Board of Medicine and the Board of Osteopathic Medicine within the Department of Health. Physician assistants perform certain medical services delegated by a supervising physician.

³ Section 381.026(2)(d), F.S., defines primary care providers to include allopathic physicians, osteopathic physicians, and nurses who provide medical services that are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, and general internal medicine.

Each of these health care practitioners must be licensed in order to practice in this state. Both ch. 456, F.S., and the specific licensing statutes for each of these practitioners specify grounds for which a practitioner may be disciplined.⁴

Health Care Facilities Licensed Under Chapter 395, F.S.

Chapter 395, F.S., is titled Hospital Licensing and Regulation. Part I of ch. 395, F.S., establishes the general licensure requirements for hospitals and other licensed facilities. Section 395.002, F.S., defines “licensed facility” to include hospitals, ambulatory surgical centers, and mobile surgical facilities. Each of these types of facilities is also defined in s. 395.002, F.S.

Health Insurer Payment of Claims

Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.” Section 624.02, F.S., defines “insurance” as “a contract whereby one undertakes to indemnify another or pay or allow a specified amount or a determinable benefit upon determinable contingencies.”

III. Effect of Proposed Changes:

Section 1 amends s. 381.026, F.S., the Florida Patient’s Bill of Rights and Responsibilities, to require health care practitioners licensed under ch. 458, F.S. (medical practice), ch. 459, F.S. (osteopathic medical practice), ch. 460, F.S. (chiropractic medicine), and ch. 461, F.S. (podiatric medicine) to publish a schedule of charges for at least the 50 medical services that the practitioner most frequently provides to patients. Current law authorizes, but does not require, only primary care providers to publish a schedule of charges.

Under the bill, the schedule must describe the medical services in language comprehensible to a layperson and must be distributed to patients upon each visit. Current law requires, and the bill retains the requirement, that the schedule of charges must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card.

Current law requires the schedule to be posted in a conspicuous place in the reception area of the provider’s office, that is, if the primary care provider elects to publish a schedule of charges, since the publishing of a schedule of charges is not required. Current law also requires any such posting to be at least 15 square feet in size. The bill requires the text describing the medical services to fill at least 12 square feet of the posting.

The bill maintains an existing exemption for primary care providers from certain licensure fees and continuing education requirements if they voluntarily published and maintained a schedule of charges for medical services from July 1, 2011, through June 30, 2012, in accordance with ch. 2011-122, L.O.F. The bill repeals the penalty imposed on primary care providers who voluntarily publish a schedule of charges, obtain the exemption from licensure fees and continuing education requirements, and then discontinue posting the schedule of charges.

⁴ See ss. 456.072, 458.331, 459.015, 460.413, and 461.013, F.S.

Section 2 amends s. 395.002, F.S., to define “diagnostic-imaging center” to mean a freestanding outpatient facility that provides specialized services for the diagnosis of a disease by examination and also provides radiological services. This section is also amended to correct cross-references to conform to the addition of the definition of diagnostic-imaging center.

Section 3 amends s. 395.107, F.S., to include ambulatory surgical centers and diagnostic-imaging centers in the requirements to publish and post a schedule of charges that currently applies to urgent care centers. The bill specifies that the schedule must describe the medical services in language comprehensible to a layperson.

For any of these centers that are affiliated with a hospital, the schedule must include text that notifies the patient whether the charges for medical services received at the center will be the same as, more than, or less than charges for medical services received at the hospital. The text must be in a font size equal to or greater than the font size used for prices and must be in contrasting color. The text must also be included in all advertisements for the center and must be in language comprehensible to a layperson.

The posted text describing the medical services must fill at least 12 square feet of the posting. The bill authorizes a center to use an electronic device to post the schedule of charges. The bill exempts an urgent care center that is operated and used exclusively for employees and the family members of employees of the business that owns or contracts for the urgent care center from the requirements of this section.

The existing \$1,000 per day fine is made to apply to the failure of a center to comply with any of the provisions of this section. The fine will be imposed until the center comes into compliance.

Section 4 amends s. 456.072, F.S., relating to grounds for discipline of health care practitioners regulated by the Department of Health, to add a ground for discipline for failing to comply with s. 395.107, F.S., which establishes requirements for publishing and posting a schedule of charges for urgent care centers, ambulatory surgical centers, and diagnostic-imaging centers. (The requirements for publishing and posting a schedule of charges for health care practitioners are contained in s. 381.026, F.S., in section 1 of the bill, not in s. 395.107, F.S.)

Section 5 amends s. 627.6131, F.S., relating to payment of claims by health insurers, to specify that if an insurer is liable for emergency services and care, regardless of whether a contract exists between the insurer and the provider of emergency services and care, the insurer is solely liable for payment of fees to the provider. The insured is not liable for payment of fees to the provider (other than applicable copayments and deductibles) if the insured is transported to the facility by emergency medical transportation services.

The bill also makes an insurer solely liable for payment of fees to the provider and the insured is not liable for payment of fees to the provider (other than applicable copayments and deductibles) for nonemergency medical services and care that is:

- Provided in a hospital or ambulatory surgical center which has a contract with the insurer; and
- Provided by a provider that does not have a contract with the insurer and the patient has no ability and opportunity to choose an alternative provider having a contract with the insurer.

Section 6 creates s. 627.6385, F.S., to require each insurer issuing a health insurance policy that covers medical and related services provided in a hospital or ambulatory surgical center to disclose to its insureds whether the facility contracts with providers who are not under contract with the insurer. The disclosure must be included in the insurer's member website and distributed by the insurer to each insured.

The bill requires each facility licensed under ch. 395, F.S., to disclose to each patient upon scheduling services or nonemergency admission which providers will treat the patient and which of these providers are not under contract with the patient's insurer. The disclosure must include notification to the insured that such providers may bill the insured directly for services rendered within the facility. The disclosure must be limited to the providers that are reasonably expected to provide specific medical services and treatment scheduled to be received by the insured, must be in writing, and must include certain information about the providers. The disclosure must also advise patients to contact providers before the delivery of medical services to determine whether or not providers will bill the patient directly for medical services rendered in the facility. Failure to make the disclosure will result in a fine of \$500 per occurrence.

The bill requires a provider not under contract with a patient's insurer to disclose, in writing, to a patient who is scheduled or admitted for nonemergency services in a facility licensed under ch. 395, F.S., before the provision of medical services, whether the patient will be billed directly for medical services rendered within the facility. The patient is not liable for any charges (other than applicable copayments or deductibles) billed to the patient by the provider who fails to make the disclosure.

Sections 7 through 21 amend various sections of the Florida Statutes to correct cross-references to definitions in s. 395.002, F.S., since the addition of the definition of diagnostic-imaging center in section 2 of the bill changed the numbering of most of the definitions in s. 395.002, F.S.

Section 22 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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

None.

B. Private Sector Impact:

Physicians, urgent care centers, ambulatory surgical centers, and diagnostic-imaging centers will incur costs to publish and post a schedule of charges.

Insured patients will be protected from balance billing under certain circumstances.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On line 175, the word “facility” should be “hospital” since an ambulatory surgical center is also licensed under ch. 395, F.S.

On line 236, the word “insured” should be plural.

The provisions on lines 240 through 266 establish requirements for facilities licensed under ch. 395, F.S., and should not be located in ch. 627, F.S.

VII. Related Issues:

It is unclear why practitioners licensed under ch. 460, F.S. (chiropractic medicine), are included in the new requirement to publish a schedule of charges, but are not included in the definition of health care provider under the Florida Patient’s Bill of Rights and Responsibilities. Practitioners licensed under ch. 460, F.S., are not currently subject to the requirements of the Florida Patient’s Bill of Rights and Responsibilities. The bill would make these practitioners subject only to the requirement to publish a schedule of charges.

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

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Health Regulation

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1 A bill to be entitled
 2 An act relating to health care consumer protection;
 3 amending s. 381.026, F.S.; revising the Florida
 4 Patient's Bill of Rights to require certain health
 5 care practitioners to publish and post a schedule of
 6 charges for services provided to patients; specifying
 7 text size; providing that a primary care provider who
 8 voluntarily published and maintained a schedule of
 9 charges within specified dates is exempt from certain
 10 requirements; amending s. 395.002, F.S.; defining the
 11 term "diagnostic-imaging center"; conforming cross-
 12 references; amending s. 395.107, F.S.; requiring that
 13 urgent care centers, ambulatory surgical centers, and
 14 diagnostic-imaging centers publish and post a schedule
 15 of charges for services provided to patients;
 16 specifying text size and requiring the schedule to be
 17 in language comprehensible to a layperson; specifying
 18 posted size and allowing for electronic posting;
 19 providing an exception; providing for fines; amending
 20 s. 456.072, F.S.; adding failure to comply with the
 21 provisions of s. 395.107, F.S., to the grounds for
 22 discipline of a practitioner licensed under certain
 23 chapters; amending s. 627.6131, F.S.; prohibiting a
 24 provider of emergency medical care and services from
 25 billing a patient under certain circumstances;
 26 prohibiting certain providers of nonemergency medical
 27 care and services from billing a patient under certain
 28 circumstances; creating s. 627.6385, F.S.; requiring
 29 insurers to inform insureds of certain providers who

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

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30 may bill the insured for medical services; requiring
 31 hospitals to disclose to certain patients which of its
 32 contracted providers will treat the patients and which
 33 of those may bill the patient directly; requiring
 34 hospitals to provide contact information for those
 35 providers to the patient; requiring certain providers
 36 in a hospital to inform certain patients in writing
 37 whether the patients will be billed directly by the
 38 providers; releasing a patient from liability if a
 39 provider fails to disclose billing information;
 40 amending ss. 383.50, 390.011, 394.4787, 395.003,
 41 395.602, 395.701, 408.051, 409.905, 409.97, 409.975,
 42 468.505, 627.736, 766.118, 766.316, and 812.014, F.S.;
 43 conforming cross-references; providing an effective
 44 date.

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

48 Section 1. Paragraph (c) of subsection (4) of section
 49 381.026, Florida Statutes, is amended to read:

50 381.026 Florida Patient's Bill of Rights and
 51 Responsibilities.—

52 (4) RIGHTS OF PATIENTS.—Each health care facility or
 53 provider shall observe the following standards:

54 (c) *Financial information and disclosure.*—

55 1. A patient has the right to be given, upon request, by
 56 the responsible provider, his or her designee, or a
 57 representative of the health care facility full information and
 58 necessary counseling on the availability of known financial

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59 resources for the patient's health care.

60 2. A health care provider or a health care facility shall,
61 upon request, disclose to each patient who is eligible for
62 Medicare, before treatment, whether the health care provider or
63 the health care facility in which the patient is receiving
64 medical services accepts assignment under Medicare reimbursement
65 as payment in full for medical services and treatment rendered
66 in the health care provider's office or health care facility.

67 3. A practitioner licensed under chapter 458, chapter 459,
68 chapter 460, or chapter 461 must ~~primary care provider may~~
69 publish a schedule of charges for the medical services that the
70 practitioner ~~provider~~ offers to patients and distribute the
71 schedule to patients upon each visit. The schedule must describe
72 the medical services in language comprehensible to a layperson.
73 The schedule must include the prices charged to an uninsured
74 person paying for such services by cash, check, credit card, or
75 debit card. The schedule must be posted in a conspicuous place
76 in the reception area of the practitioner's ~~provider's~~ office
77 and must include, but ~~need is~~ not be limited to, the 50 services
78 most frequently provided by the practitioner ~~primary care~~
79 ~~provider~~. The schedule may group services by three price levels,
80 listing services in each price level. The posting must be at
81 least 15 square feet in size. The text describing the medical
82 services must fill at least 12 square feet of the posting. A
83 primary care provider who voluntarily published and maintained
84 ~~publishes and maintains~~ a schedule of charges for medical
85 services from July 1, 2011, through June 30, 2012, in accordance
86 with chapter 2011-122, Laws of Florida, is exempt from the
87 license fee requirements for a single period of renewal of a

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88 professional license under chapter 456 for that licensure term
89 and is exempt from the continuing education requirements of
90 chapter 456 and the rules implementing those requirements for a
91 single 2-year period.

92 ~~4. If a primary care provider publishes a schedule of~~
93 ~~charges pursuant to subparagraph 3., he or she must continually~~
94 ~~post it at all times for the duration of active licensure in~~
95 ~~this state when primary care services are provided to patients.~~
96 ~~If a primary care provider fails to post the schedule of charges~~
97 ~~in accordance with this subparagraph, the provider shall be~~
98 ~~required to pay any license fee and comply with any continuing~~
99 ~~education requirements for which an exemption was received.~~

100 ~~4.5.~~ A health care provider or a health care facility
101 shall, upon request, ~~furnish a person,~~ before the provision of
102 medical services, furnish a reasonable estimate of charges for
103 such services. The health care provider or the health care
104 facility shall provide an uninsured person, before the provision
105 of a planned nonemergency medical service, a reasonable estimate
106 of charges for such service and information regarding the
107 provider's or facility's discount or charity policies for which
108 the uninsured person may be eligible. Such estimates ~~by a~~
109 ~~primary care provider~~ must be consistent with the schedule
110 posted under subparagraph 3. Estimates shall, to the extent
111 possible, be written in a language comprehensible to an ordinary
112 layperson. Such reasonable estimate does not preclude the health
113 care provider or health care facility from exceeding the
114 estimate or making additional charges based on changes in the
115 patient's condition or treatment needs.

116 ~~5.6.~~ Each licensed facility not operated by the state shall

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117 make available to the public on its Internet website or by other
 118 electronic means a description of and a link to the performance
 119 outcome and financial data that is published by the agency
 120 pursuant to s. 408.05(3)(k). The facility shall place a notice
 121 in the reception area that such information is available
 122 electronically and the website address. The licensed facility
 123 may indicate that the pricing information is based on a
 124 compilation of charges for the average patient and that each
 125 patient's bill may vary from the average depending upon the
 126 severity of illness and individual resources consumed. The
 127 licensed facility may also indicate that the price of service is
 128 negotiable for eligible patients based upon the patient's
 129 ability to pay.

130 ~~6.7.~~ A patient has the right to receive a copy of an
 131 itemized bill upon request. A patient has a right to be given an
 132 explanation of charges upon request.

133 Section 2. Subsections (6) through (33) of section 395.002,
 134 Florida Statutes, are renumbered as subsections (7) through
 135 (34), respectively, present subsections (10) and (28) of that
 136 section are amended, and a new subsection (6) is added to that
 137 section, to read:

138 395.002 Definitions.—As used in this chapter:

139 (6) "Diagnostic-imaging center" means a freestanding
 140 outpatient facility that provides specialized services for the
 141 diagnosis of a disease by examination and also provides
 142 radiological services.

143 (11)(10) "General hospital" means a ~~any~~ facility that ~~which~~
 144 meets the provisions of subsection (13) ~~(12)~~ and that ~~which~~
 145 regularly makes its facilities and services available to the

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146 general population.

147 ~~(29)(28)~~ "Specialty hospital" means a ~~any~~ facility that
 148 which meets the provisions of subsection (13) ~~(12)~~, and that
 149 which regularly makes available ~~either~~:

150 (a) The range of medical services offered by general
 151 hospitals, but restricted to a defined age or gender group of
 152 the population;

153 (b) A restricted range of services appropriate to the
 154 diagnosis, care, and treatment of patients with specific
 155 categories of medical or psychiatric illnesses or disorders; or

156 (c) Intensive residential treatment programs for children
 157 and adolescents ~~as defined in subsection (15)~~.

158 Section 3. Section 395.107, Florida Statutes, is amended to
 159 read:

160 395.107 ~~Urgent care centers~~, Publishing and posting
 161 schedule of charges; ~~penalties~~.—An urgent care center, an
 162 ambulatory surgical center, and a diagnostic-imaging center must
 163 publish and post a schedule of charges for the medical services
 164 offered to patients.

165 (1) The schedule must describe the medical services in
 166 language comprehensible to a layperson. The schedule must
 167 include the prices charged to an uninsured person paying for
 168 such services by cash, check, credit card, or debit card. The
 169 schedule must be posted in a conspicuous place in the reception
 170 area ~~of the urgent care center~~ and must include, but is not
 171 limited to, the 50 services most frequently provided ~~by the~~
 172 ~~urgent care center~~. The schedule may group services by three
 173 price levels, listing services in each price level. The posting
 174 must be at least 15 square feet in size. If a center is

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 175 affiliated with a facility licensed under chapter 395, the
 176 schedule must include text that notifies the patient whether the
 177 charges for medical services received at the center will be the
 178 same as, more than, or less than charges for medical services
 179 received at a hospital. The text notifying the patient must be
 180 in a font size equal to or greater than the font size used for
 181 prices and must be in a contrasting color. Such text must be
 182 included in all advertisements for the center and in language
 183 comprehensible to a layperson.

184 (2) The posted text describing the medical services must
 185 fill at least 12 square feet of the posting. A center may use an
 186 electronic device to post the schedule of charges.

187 (3) An urgent care center that is operated and used
 188 exclusively for employees and the family members of employees of
 189 the business that owns or contracts for the urgent care center
 190 is exempt from this section.

191 (4) A fine of up to \$1,000 per day shall be imposed on an
 192 urgent care center, an ambulatory surgical center, or a
 193 diagnostic-imaging center that fails to comply with this section
 194 until the center comes into compliance. ~~The failure of an urgent~~
 195 ~~care center to publish and post a schedule of charges as~~
 196 ~~required by this section shall result in a fine of not more than~~
 197 ~~\$1,000, per day, until the schedule is published and posted.~~

198 Section 4. Paragraph (oo) is added to subsection (1) of
 199 section 456.072, Florida Statutes, to read:

200 456.072 Grounds for discipline; penalties; enforcement.—

201 (1) The following acts shall constitute grounds for which
 202 the disciplinary actions specified in subsection (2) may be
 203 taken:

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 204 (oo) Failure to comply with s. 395.107.
 205 Section 5. Subsections (20) and (21) are added to section
 206 627.6131, Florida Statutes, to read:
 207 627.6131 Payment of claims.—
 208 (20) If an insurer is liable for emergency services and
 209 care, as defined in s. 395.002, regardless of whether a contract
 210 exists between the insurer and the provider of emergency
 211 services and care, the insurer is solely liable for payment of
 212 fees to the provider, and the insured is not liable for payment
 213 of fees to the provider, other than applicable copayments and
 214 deductibles, if the insured is transported to the facility by
 215 emergency medical transportation services, as defined in s.
 216 945.6041(1).

217 (21) An insurer is solely liable for payment of fees to the
 218 provider and the insured is not liable for payment of fees to
 219 the provider, other than applicable copayments and deductibles,
 220 for medical services and care that are:

221 (a) Nonemergency services and care as defined in s.
 222 395.002;

223 (b) Provided in a facility licensed under chapter 395 which
 224 has a contract with the insurer; and

225 (c) Provided by a provider that does not have a contract
 226 with the insurer where the patient has no ability and
 227 opportunity to choose an alternative provider having a contract
 228 with the insurer.

229 Section 6. Section 627.6385, Florida Statutes, is created
 230 to read:

231 627.6385 Hospital and provider transparency; duty to
 232 inform.—

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233 (1) Each insurer issuing a health insurance policy insuring
 234 against loss or expense due to medical and related services
 235 provided within a facility licensed under chapter 395 shall
 236 disclose to its insured whether the facility contracts with
 237 providers who are not under contract with the insurer. Such
 238 disclosure must be included in the insurer's member website and
 239 distributed by the insurer to each insured.

240 (2) Each facility licensed under chapter 395 shall disclose
 241 to each patient upon scheduling services or nonemergency
 242 admission which providers will treat the patient and which of
 243 those providers are not under contract with the patient's
 244 insurer. The disclosure must include notification to the insured
 245 that such providers may bill the insured directly for services
 246 rendered within the facility. The disclosure must be limited to
 247 the providers that are reasonably expected to provide specific
 248 medical services and treatment scheduled to be received by the
 249 insured, must be in writing, and must include the name,
 250 professional address, and telephone number of all such
 251 providers. The disclosure must advise all patients to contact
 252 providers before the delivery of medical services to determine
 253 whether or not providers will bill the patient directly for
 254 medical services rendered within the facility. Failure to make
 255 such a disclosure shall result in a fine of \$500 per occurrence
 256 pursuant to s. 408.813.

257 (3) For a patient scheduled or admitted for nonemergency
 258 services to a facility licensed under chapter 395 and receiving
 259 medical services from a provider not under contract with the
 260 patient's insurer, that provider shall disclose to the patient
 261 in writing, before the provision of medical services, whether

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262 the patient will be billed directly for medical services
 263 rendered within the facility. The patient is not liable for any
 264 charges, other than applicable copayments or deductibles, billed
 265 to the patient by the provider who failed to make the
 266 disclosure.

267 Section 7. Subsection (4) of section 383.50, Florida
 268 Statutes, is amended to read:

269 383.50 Treatment of surrendered newborn infant.—

270 (4) Each hospital of this state subject to s. 395.1041
 271 shall, and any other hospital may, admit and provide all
 272 necessary emergency services and care, as defined in s.
 273 395.002~~(9)~~, to any newborn infant left with the hospital in
 274 accordance with this section. The hospital or any of its
 275 licensed health care professionals shall consider these actions
 276 as implied consent for treatment, and a hospital accepting
 277 physical custody of a newborn infant has implied consent to
 278 perform all necessary emergency services and care. The hospital
 279 or any of its licensed health care professionals is immune from
 280 criminal or civil liability for acting in good faith in
 281 accordance with this section. Nothing in this subsection limits
 282 liability for negligence.

283 Section 8. Subsection (5) of section 390.011, Florida
 284 Statutes, is amended to read:

285 390.011 Definitions.—As used in this chapter, the term:

286 (5) "Hospital" means a facility as defined in s.
 287 395.002~~(12)~~ and licensed under chapter 395 and part II of
 288 chapter 408.

289 Section 9. Subsection (7) of section 394.4787, Florida
 290 Statutes, is amended to read:

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291 394.4787 Definitions; ss. 394.4786, 394.4787, 394.4788, and
 292 394.4789.—As used in this section and ss. 394.4786, 394.4788,
 293 and 394.4789:

294 (7) "Specialty psychiatric hospital" means a specialty
 295 hospital as defined in s. 395.002 and licensed by the agency
 296 pursuant to ~~s. 395.002(28)~~ and part II of chapter 408 as a
 297 specialty psychiatric hospital.

298 Section 10. Paragraph (b) of subsection (2) of section
 299 395.003, Florida Statutes, is amended to read:

300 395.003 Licensure; denial, suspension, and revocation.—

301 (2)

302 (b) The agency shall, at the request of a licensee that is
 303 a teaching hospital as defined in s. 408.07~~(45)~~, issue a single
 304 license to a licensee for facilities that have been previously
 305 licensed as separate premises, provided such separately licensed
 306 facilities, taken together, constitute the same premises as
 307 defined in s. 395.002~~(23)~~. Such license for the single premises
 308 ~~shall~~ include all of the beds, services, and programs that were
 309 previously included on the licenses for the separate premises.
 310 The granting of a single license under this paragraph does ~~shall~~
 311 not in any manner reduce the number of beds, services, or
 312 programs operated by the licensee.

313 Section 11. Paragraph (c) of subsection (2) of section
 314 395.602, Florida Statutes, is amended to read:

315 395.602 Rural hospitals.—

316 (2) DEFINITIONS.—As used in this part:

317 (c) "Inactive rural hospital bed" means a licensed acute
 318 care hospital bed, as defined in s. 395.002~~(13)~~, that is
 319 inactive in that it cannot be occupied by acute care inpatients.

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320 Section 12. Paragraph (c) of subsection (1) of section
 321 395.701, Florida Statutes, is amended to read:

322 395.701 Annual assessments on net operating revenues for
 323 inpatient and outpatient services to fund public medical
 324 assistance; administrative fines for failure to pay assessments
 325 when due; exemption.—

326 (1) For the purposes of this section, the term:

327 (c) "Hospital" has the same meaning as provided ~~means a~~
 328 ~~health care institution as defined in s. 395.002(12)~~, but does
 329 not include a ~~any~~ hospital operated by the agency or the
 330 Department of Corrections.

331 Section 13. Subsection (3) of section 408.051, Florida
 332 Statutes, is amended to read:

333 408.051 Florida Electronic Health Records Exchange Act.—

334 (3) EMERGENCY RELEASE OF IDENTIFIABLE HEALTH RECORD.—A
 335 health care provider may release or access an identifiable
 336 health record of a patient without the patient's consent for use
 337 in the treatment of the patient for an emergency medical
 338 condition, as defined in s. 395.002~~(8)~~, if when the health care
 339 provider is unable to obtain the patient's consent or the
 340 consent of the patient representative due to the patient's
 341 condition or the nature of the situation requiring immediate
 342 medical attention. A health care provider who in good faith
 343 releases or accesses an identifiable health record of a patient
 344 in any form or medium under this subsection is immune from civil
 345 liability for accessing or releasing an identifiable health
 346 record.

347 Section 14. Subsection (8) of section 409.905, Florida
 348 Statutes, is amended to read:

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349 409.905 Mandatory Medicaid services.—The agency may make
 350 payments for the following services, which are required of the
 351 state by Title XIX of the Social Security Act, furnished by
 352 Medicaid providers to recipients who are determined to be
 353 eligible on the dates on which the services were provided. Any
 354 service under this section shall be provided only when medically
 355 necessary and in accordance with state and federal law.
 356 Mandatory services rendered by providers in mobile units to
 357 Medicaid recipients may be restricted by the agency. Nothing in
 358 this section shall be construed to prevent or limit the agency
 359 from adjusting fees, reimbursement rates, lengths of stay,
 360 number of visits, number of services, or any other adjustments
 361 necessary to comply with the availability of moneys and any
 362 limitations or directions provided for in the General
 363 Appropriations Act or chapter 216.

364 (8) NURSING FACILITY SERVICES.—The agency shall pay for 24-
 365 hour-a-day nursing and rehabilitative services for a recipient
 366 in a nursing facility licensed under part II of chapter 400 or
 367 in a rural hospital, as defined in s. 395.602, or in a Medicare
 368 certified skilled nursing facility operated by a hospital, as
 369 defined by s. 395.002(10), that is licensed under part I of
 370 chapter 395, and in accordance with ~~provisions set forth in s.~~
 371 409.908(2) (a), which services are ordered by and provided under
 372 the direction of a licensed physician. However, if a nursing
 373 facility has been destroyed or otherwise made uninhabitable by
 374 natural disaster or other emergency and another nursing facility
 375 is not available, the agency must pay for similar services
 376 temporarily in a hospital licensed under part I of chapter 395
 377 provided federal funding is approved and available. The agency

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378 shall pay only for bed-hold days if the facility has an
 379 occupancy rate of 95 percent or greater. The agency is
 380 authorized to seek any federal waivers to implement this policy.

381 Section 15. Paragraph (a) of subsection (4) of section
 382 409.97, Florida Statutes, is amended to read:

383 409.97 State and local Medicaid partnerships.—

384 (4) HOSPITAL RATE DISTRIBUTION.—

385 (a) The agency is authorized to implement a tiered hospital
 386 rate system to enhance Medicaid payments to all hospitals when
 387 resources for the tiered rates are available from general
 388 revenue and such contributions pursuant to subsection (1) as are
 389 authorized under the General Appropriations Act.

390 1. Tier 1 hospitals are statutory rural hospitals as
 391 defined in s. 395.602, statutory teaching hospitals as defined
 392 in s. 408.07(45), and specialty ~~children's~~ hospitals for
 393 children as defined in s. 395.002(28).

394 2. Tier 2 hospitals are community hospitals not included in
 395 Tier 1 that provided more than 9 percent of the hospital's total
 396 inpatient days to Medicaid patients and charity patients, as
 397 defined in s. 409.911, and are located in the jurisdiction of a
 398 local funding source pursuant to subsection (1).

399 3. Tier 3 hospitals include all community hospitals.

400 Section 16. Paragraph (b) of subsection (1) of section
 401 409.975, Florida Statutes, is amended to read:

402 409.975 Managed care plan accountability.—In addition to
 403 the requirements of s. 409.967, plans and providers
 404 participating in the managed medical assistance program shall
 405 comply with the requirements of this section.

406 (1) PROVIDER NETWORKS.—Managed care plans must develop and

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407 maintain provider networks that meet the medical needs of their
 408 enrollees in accordance with standards established pursuant to
 409 s. 409.967(2)(b). Except as provided in this section, managed
 410 care plans may limit the providers in their networks based on
 411 credentials, quality indicators, and price.

412 (b) Certain providers are statewide resources and essential
 413 providers for all managed care plans in all regions. All managed
 414 care plans must include these essential providers in their
 415 networks. Statewide essential providers include:

416 1. Faculty plans of Florida medical schools.
 417 2. Regional perinatal intensive care centers as defined in
 418 s. 383.16(2).

419 3. Hospitals licensed as specialty ~~children's~~ hospitals for
 420 children as defined in s. 395.002(20).

421 4. Accredited and integrated systems serving medically
 422 complex children that are comprised of separately licensed, but
 423 commonly owned, health care providers delivering at least the
 424 following services: medical group home, in-home and outpatient
 425 nursing care and therapies, pharmacy services, durable medical
 426 equipment, and Prescribed Pediatric Extended Care.

427 Managed care plans that have not contracted with all statewide
 428 essential providers in all regions as of the first date of
 429 recipient enrollment must continue to negotiate in good faith.
 430 Payments to physicians on the faculty of nonparticipating
 431 Florida medical schools shall be made at the applicable Medicaid
 432 rate. Payments for services rendered by regional perinatal
 433 intensive care centers shall be made at the applicable Medicaid
 434 rate as of the first day of the contract between the agency and
 435

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436 the plan. Payments to nonparticipating specialty children's
 437 hospitals shall equal the highest rate established by contract
 438 between that provider and any other Medicaid managed care plan.

439 Section 17. Paragraph (1) of subsection (1) of section
 440 468.505, Florida Statutes, is amended to read:

441 468.505 Exemptions; exceptions.—

442 (1) Nothing in this part may be construed as prohibiting or
 443 restricting the practice, services, or activities of:

444 (1) A person employed by a nursing facility exempt from
 445 licensing as a hospital under chapter 395 ~~s. 395.002(12)~~, or a
 446 person exempt from licensing under s. 464.022.

447 Section 18. Paragraph (c) of subsection (4) and paragraph
 448 (a) of subsection (5) of section 627.736, Florida Statutes, are
 449 amended to read:

450 627.736 Required personal injury protection benefits;
 451 exclusions; priority; claims.—

452 (4) BENEFITS; WHEN DUE.—Benefits due from an insurer under
 453 ss. 627.730-627.7405 shall be primary, except that benefits
 454 received under any workers' compensation law shall be credited
 455 against the benefits provided by subsection (1) and shall be due
 456 and payable as loss accrues, upon receipt of reasonable proof of
 457 such loss and the amount of expenses and loss incurred which are
 458 covered by the policy issued under ss. 627.730-627.7405. When
 459 the Agency for Health Care Administration provides, pays, or
 460 becomes liable for medical assistance under the Medicaid program
 461 related to injury, sickness, disease, or death arising out of
 462 the ownership, maintenance, or use of a motor vehicle, benefits
 463 under ss. 627.730-627.7405 shall be subject to the provisions of
 464 the Medicaid program.

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465 (c) Upon receiving notice of an accident that is
 466 potentially covered by personal injury protection benefits, the
 467 insurer must reserve \$5,000 of personal injury protection
 468 benefits for payment to physicians licensed under chapter 458 or
 469 chapter 459 or dentists licensed under chapter 466 who provide
 470 emergency services and care, as defined in s. 395.002(9), or who
 471 provide hospital inpatient care. The amount required to be held
 472 in reserve may be used only to pay claims from such physicians
 473 or dentists until 30 days after the date the insurer receives
 474 notice of the accident. After the 30-day period, any amount of
 475 the reserve for which the insurer has not received notice of a
 476 claim from a physician or dentist who provided emergency
 477 services and care or who provided hospital inpatient care may
 478 ~~then~~ be used by the insurer to pay other claims. The time
 479 periods specified in paragraph (b) for required payment of
 480 personal injury protection benefits shall be tolled for the
 481 period of time that an insurer is required by this paragraph to
 482 hold payment of a claim that is not from a physician or dentist
 483 who provided emergency services and care or who provided
 484 hospital inpatient care to the extent that the personal injury
 485 protection benefits not held in reserve are insufficient to pay
 486 the claim. This paragraph does not require an insurer to
 487 establish a claim reserve for insurance accounting purposes.

488 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

489 (a)1. Any physician, hospital, clinic, or other person or
 490 institution lawfully rendering treatment to an injured person
 491 for a bodily injury covered by personal injury protection
 492 insurance may charge the insurer and injured party only a
 493 reasonable amount pursuant to this section for the services and

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494 supplies rendered, and the insurer providing such coverage may
 495 pay for such charges directly to such person or institution
 496 lawfully rendering such treatment, if the insured receiving such
 497 treatment or his or her guardian has countersigned the properly
 498 completed invoice, bill, or claim form approved by the office
 499 upon which such charges are to be paid for as having actually
 500 been rendered, to the best knowledge of the insured or his or
 501 her guardian. In no event, however, may such a charge be in
 502 excess of the amount the person or institution customarily
 503 charges for like services or supplies. With respect to a
 504 determination of whether a charge for a particular service,
 505 treatment, or otherwise is reasonable, consideration may be
 506 given to evidence of usual and customary charges and payments
 507 accepted by the provider involved in the dispute, and
 508 reimbursement levels in the community and various federal and
 509 state medical fee schedules applicable to automobile and other
 510 insurance coverages, and other information relevant to the
 511 reasonableness of the reimbursement for the service, treatment,
 512 or supply.

513 2. The insurer may limit reimbursement to 80 percent of the
 514 following schedule of maximum charges:

- 515 a. For emergency transport and treatment by providers
 516 licensed under chapter 401, 200 percent of Medicare.
 517 b. For emergency services and care provided by a hospital
 518 licensed under chapter 395, 75 percent of the hospital's usual
 519 and customary charges.
 520 c. For emergency services and care as defined by s.
 521 395.002(9) provided in a facility licensed under chapter 395
 522 rendered by a physician or dentist, and related hospital

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523 inpatient services rendered by a physician or dentist, the usual
524 and customary charges in the community.

525 d. For hospital inpatient services, other than emergency
526 services and care, 200 percent of the Medicare Part A
527 prospective payment applicable to the specific hospital
528 providing the inpatient services.

529 e. For hospital outpatient services, other than emergency
530 services and care, 200 percent of the Medicare Part A Ambulatory
531 Payment Classification for the specific hospital providing the
532 outpatient services.

533 f. For all other medical services, supplies, and care, 200
534 percent of the allowable amount under the participating
535 physicians schedule of Medicare Part B. However, if such
536 services, supplies, or care is not reimbursable under Medicare
537 Part B, the insurer may limit reimbursement to 80 percent of the
538 maximum reimbursable allowance under workers' compensation, as
539 determined under s. 440.13 and rules adopted thereunder which
540 are in effect at the time such services, supplies, or care is
541 provided. Services, supplies, or care that is not reimbursable
542 under Medicare or workers' compensation is not required to be
543 reimbursed by the insurer.

544 3. For purposes of subparagraph 2., the applicable fee
545 schedule or payment limitation under Medicare is the fee
546 schedule or payment limitation in effect at the time the
547 services, supplies, or care was rendered and for the area in
548 which such services were rendered, except that it may not be
549 less than the allowable amount under the participating
550 physicians schedule of Medicare Part B for 2007 for medical
551 services, supplies, and care subject to Medicare Part B.

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552 4. Subparagraph 2. does not allow the insurer to apply any
553 limitation on the number of treatments or other utilization
554 limits that apply under Medicare or workers' compensation. An
555 insurer that applies the allowable payment limitations of
556 subparagraph 2. must reimburse a provider who lawfully provided
557 care or treatment under the scope of his or her license,
558 regardless of whether such provider would be entitled to
559 reimbursement under Medicare due to restrictions or limitations
560 on the types or discipline of health care providers who may be
561 reimbursed for particular procedures or procedure codes.

562 5. If an insurer limits payment as authorized by
563 subparagraph 2., the person providing such services, supplies,
564 or care may not bill or attempt to collect from the insured any
565 amount in excess of such limits, except for amounts that are not
566 covered by the insured's personal injury protection coverage due
567 to the coinsurance amount or maximum policy limits.

568 Section 19. Subsection (4) of section 766.118, Florida
569 Statutes, is amended to read:

570 766.118 Determination of noneconomic damages.—

571 (4) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF
572 PRACTITIONERS PROVIDING EMERGENCY SERVICES AND CARE.—
573 Notwithstanding subsections (2) and (3), with respect to a cause
574 of action for personal injury or wrongful death arising from
575 medical negligence of practitioners providing emergency services
576 and care, as defined in s. 395.002~~(9)~~, or providing services as
577 provided in s. 401.265, or providing services pursuant to
578 obligations imposed by 42 U.S.C. s. 1395dd to persons with whom
579 the practitioner does not have a then-existing health care
580 patient-practitioner relationship for that medical condition:

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581 (a) Regardless of the number of such practitioner
582 defendants, noneconomic damages may ~~shall~~ not exceed \$150,000
583 per claimant.

584 (b) Notwithstanding paragraph (a), the total noneconomic
585 damages recoverable by all claimants from all such practitioners
586 may ~~shall~~ not exceed \$300,000.

587
588 The limitation provided by this subsection applies only to
589 noneconomic damages awarded as a result of any act or omission
590 of providing medical care or treatment, including diagnosis that
591 occurs before ~~prior to the time~~ the patient is stabilized and is
592 capable of receiving medical treatment as a nonemergency
593 patient, unless surgery is required as a result of the emergency
594 within a reasonable time after the patient is stabilized, in
595 which case the limitation provided by this subsection applies to
596 any act or omission of providing medical care or treatment which
597 occurs before ~~prior to~~ the stabilization of the patient
598 following the surgery.

599 Section 20. Section 766.316, Florida Statutes, is amended
600 to read:

601 766.316 Notice to obstetrical patients of participation in
602 the plan.—Each hospital with a participating physician on its
603 staff and each participating physician, other than residents,
604 assistant residents, and interns deemed to be participating
605 physicians under s. 766.314(4)(c), under the Florida Birth-
606 Related Neurological Injury Compensation Plan shall provide
607 notice to the obstetrical patients as to the limited no-fault
608 alternative for birth-related neurological injuries. Such notice
609 shall be provided on forms furnished by the association and

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610 shall include a clear and concise explanation of a patient's
611 rights and limitations under the plan. The hospital or the
612 participating physician may elect to have the patient sign a
613 form acknowledging receipt of the notice form. Signature of the
614 patient acknowledging receipt of the notice form raises a
615 rebuttable presumption that the notice requirements of this
616 section have been met. Notice need not be given to a patient
617 when the patient has an emergency medical condition as defined
618 in s. 395.002(9)(b) ~~395.002(8)(b)~~ or when notice is not
619 practicable.

620 Section 21. Paragraph (b) of subsection (2) of section
621 812.014, Florida Statutes, is amended to read:

622 812.014 Theft.—

623 (2)

624 (b)1. If the property stolen is valued at \$20,000 or more,
625 but less than \$100,000;

626 2. The property stolen is cargo valued at less than \$50,000
627 that has entered the stream of interstate or intrastate commerce
628 from the shipper's loading platform to the consignee's receiving
629 dock;

630 3. The property stolen is emergency medical equipment,
631 valued at \$300 or more, that is taken from a facility licensed
632 under chapter 395 or from an aircraft or vehicle permitted under
633 chapter 401; or

634 4. The property stolen is law enforcement equipment, valued
635 at \$300 or more, that is taken from an authorized emergency
636 vehicle, as defined in s. 316.003,

637

638 the offender commits grand theft in the second degree,

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639 punishable as a felony of the second degree, as provided in s.
640 775.082, s. 775.083, or s. 775.084. Emergency medical equipment
641 means mechanical or electronic apparatus used to provide
642 emergency services and care as defined in s. 395.002~~(9)~~ or to
643 treat medical emergencies. Law enforcement equipment means any
644 property, device, or apparatus used by any law enforcement
645 officer as defined in s. 943.10 in the officer's official
646 business. However, if the property is stolen within a county
647 that is subject to a state of emergency declared by the Governor
648 under chapter 252, the theft is committed after the declaration
649 of emergency is made, and the perpetration of the theft is
650 facilitated by conditions arising from the emergency, the theft
651 is a felony of the first degree, punishable as provided in s.
652 775.082, s. 775.083, or s. 775.084. As used in this paragraph,
653 the term "conditions arising from the emergency" means civil
654 unrest, power outages, curfews, voluntary or mandatory
655 evacuations, or a reduction in the presence of or response time
656 for first responders or homeland security personnel. For
657 purposes of sentencing under chapter 921, a felony offense that
658 is reclassified under this paragraph is ranked one level above
659 the ranking under s. 921.0022 or s. 921.0023 of the offense
660 committed.

661 Section 22. This act shall take effect July 1, 2012.



THE FLORIDA SENATE
COMMITTEE ON HEALTH REGULATION

Location
530 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5824

Senator Rene Garcia, *Chair*
Senator Eleanor Sobel, *Vice Chair*

Professional Staff: Sandra R. Stovall, *Staff Director*

Senate's Website: www.flsenate.gov

January 17, 2012


The Honorable Mike Haridopolos
President, Florida Senate
409 The Capitol
Tallahassee, Florida 32399

Dear Mr. President:

I respectfully request approval for the Health Regulation Committee to introduce a proposed committee bill relating to health care consumer protection. This subject matter is not the result of an interim study. However, conditions have come to our attention that warrant the Legislature's consideration of requiring fee disclosures in additional health care settings, and additional disclosures concerning the delivery of health care services.

The House of Representatives is also considering a similar bill.

Please do not hesitate to contact me should you have any questions. Thank you for your consideration.

Sincerely,

Rene Garcia, Senator
District 40

Copy to: Elizabeth Moya
Sandra Stovall

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Healthcare Consumer Protection

Bill Number PCB 7186
(if applicable)

Name Pablo Diaz

Amendment Barcode _____
(if applicable)

Job Title Legislative Director

Address _____
Street

Phone 850-251-4457

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing National Federation of Independent Business

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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01/25/12

Meeting Date

Topic Consumer Protection/Transparency

Bill Number SB7186
(if applicable)

Name Michael W. Garner

Amendment Barcode _____
(if applicable)

Job Title President & CEO

Address 200 W. College Ave., Suite 104
Street

Phone (850) 386-2904

Tallahassee FL 32301
City State Zip

E-mail michael@falpinet

Speaking: For Against Information

Representing FL Assoc of Health Plans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
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Meeting Date _____

Topic SPB 7186 - Provider
transparency

Bill Number SPB 7186
(if applicable)

Name Kevin Enterlein

Amendment Barcode _____
(if applicable)

Job Title President, Aetna Florida

Address 1600 SW 80th Terrace

Phone 954-382-3122

Street
Plantation FL 33324

E-mail _____

City *State* *Zip*

Speaking: For Against Information

Representing Aetna

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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Jan 25, 2012

Meeting Date

Topic Health Care Consumer Protection

Bill Number SPB 7186
(if applicable)

Name Richard Polengia

Amendment Barcode _____
(if applicable)

Job Title Health Care Policy Coordinator
Director of Government Affairs

Address 1300 N Duval St
Street
Tallahassee FL 32303
City State Zip

Phone 224-4206

E-mail richard@floridapig.org

Speaking: For Against Information

Representing Florida Public Interest Research Group / Florida Alliance for Retired Americans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
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1/25/2012

Meeting Date

Topic Health Care Consumer Protection

Bill Number SPB 718C
(if applicable)

Name MARILYN WILLS

Amendment Barcode _____
(if applicable)

Job Title 2nd V.P., League of Women Voters of FLORIDA

Address 2326 KILKENNY DR WEST
Street

Phone 850 893-4104

TALLAHASSEE FL 32309
City State Zip

E-mail marilyn.wills@msn.com

Speaking: For Against Information

Representing LEAGUE OF WOMEN VOTERS 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.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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1-25-12

Meeting Date

Topic Health care

Bill Number 7186
(if applicable)

Name Mac Kemp

Amendment Barcode _____
(if applicable)

Job Title Deputy Chief

Address 1800-2 Blair Stone Road

Phone 850 606 2100

Street

Tallahassee, FL 32308

City

State

Zip

E-mail Kempm@leoncountyfl.gov

Speaking: For Against Information

Representing Leon County EMS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

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

1-25-12

Meeting Date

Topic PCB

Bill Number 7186
(if applicable)

Name Neal Dunn, MD

Amendment Barcode ~~XXXXXXXXXX~~
(if applicable)

Job Title Physician

Address 80 Doctor's Dr.

Phone 850 785 8557

Panama City FL 32405

E-mail _____

Street City State Zip

Speaking: For Against Information

Representing Fla. Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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1-25-2012

Meeting Date

Topic HEALTH CARE CONSUMER PROTECTION

Bill Number SB 7186

(if applicable)

Name STEPHEN R. WIND

Amendment Barcode _____

(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHE PARKWAY

Phone 878-7364

Street

TALLAHASSEE

FL

32301

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
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1/25/12
Meeting Date

Topic _____

Bill Number SPB 7186
(if applicable)

Name Chris Nuland

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1000 Riverside Ave #115
Street
Jacksonville, FL 32204
City State Zip

Phone 904-355-1555

E-mail nulandlaw@aol.com

Speaking: For Against Information

Representing Florida Chapter, American College of Physicians / Fl. Chapter, American College of Surgeons

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

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1/25/12

Meeting Date

Topic PCB SPB 7186

Bill Number 7186 (if applicable)

Name Victor Friedman MD

Amendment Barcode (if applicable)

Job Title

Address 13061 Water Point Blvd Street

Phone 407 909 0693

Windermere FL 34786 City State Zip

E-mail VFriedman@cfl.pr.com

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

Representing President Florida College of Emergency Physicians

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

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

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

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THE FLORIDA SENATE
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1-25-2012

Meeting Date

Topic _____

Bill Number SPB 7186
(if applicable)

Name Katherine Holzer

Amendment Barcode _____
(if applicable)

Job Title VP Health Policy & Advocacy

Address 306 E College Ave
Street
Tallahassee, FL 32301
City State Zip

Phone 850-222-9800

E-mail _____

Speaking: For Against Information

Representing FL 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

Waive in support of bill.

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11-25-12
Meeting Date

Topic Consumer Protection

Bill Number 7186
(if applicable)

Name Joy Ryan

Amendment Barcode _____
(if applicable)

Job Title _____

Address 204 S. Monroe

Phone 681-6710

Tally 32312
City State Zip

E-mail _____

Speaking: For Against Information

Representing AITIP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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1/25/12
Meeting Date

Topic TRANSPARENCY

Bill Number PCB 7186
(if applicable)

Name PAUL LAMBERT

Amendment Barcode _____
(if applicable)

Job Title _____

Address 501 NORTH ADAMS STREET
Street
TALLAHASSEE FL 32301
City State Zip

Phone 850 224-9393
E-mail plambert@paul Lambert.com

Speaking: For Against Information

Representing FLORIDA CHIROPRACTIC ASSO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1 / 25 / 2011
Meeting Date

Topic _____

Bill Number 7186
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH
Street

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/CS/SB 694

INTRODUCER: Health Regulation Committee; Children, Families, and Elder Affairs Committee; and Senator Fasano and others

SUBJECT: Adult Day Care Centers

DATE: January 26, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	Fav/CS
2.	O'Callaghan	Stovall	HR	Fav/CS
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill creates the Specialized Alzheimer's Services Adult Day Care Act (Act), which allows an adult day care center to apply to the Agency for Health Care Administration (AHCA) for a designation on its license as a "specialized Alzheimer's services adult day care center." The bill provides heightened requirements that an adult day care center seeking such licensure designation must follow.

The operator, and the operator's designee, hired on or after July 1, 2012, by an adult day care center that has a license designated under the Act must meet certain education or experience requirements. In addition, an adult day care center having a license designated under the Act must have a registered or licensed practical nurse on site daily for at least 75 percent of the time that the center is open to Alzheimer's disease or a dementia-related disorder (ADRD) participants, and certain staff must have additional hours of dementia-specific training and receive and review an orientation plan.

In order for a person to be admitted to an adult day care center with a designated license, the person must require ongoing supervision and may not actively demonstrate aggressive behavior. In addition, the adult day care center participant or the participant's caregiver must provide

certain medical documentation signed by a licensed physician, licensed physician assistant, or a licensed advanced registered nurse practitioner.

The bill provides requirements for an ADRD participant's plan of care and additional requirements that an adult day care center having a licensure designation must follow. The bill requires a center to coordinate and execute appropriate discharge procedures if the center involuntarily terminates an ADRD participant's enrollment in the center for medical or behavioral reasons.

The bill specifies that an adult day care center that chooses not to have a licensure designation may still provide adult day care services to persons who have Alzheimer's disease or other dementia-related disorders. However, an adult day care center may not claim to have a license or licensure designation to provide specialized Alzheimer's services unless it has received such licensure designation.

The bill provides rulemaking authority to the Department of Elderly Affairs (DOEA or Department) to administer the newly created section of law.

This bill amends section 429.917, Florida Statutes.

The bill creates section 429.918, Florida Statutes.

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

There are approximately 5.4 million Americans currently living 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 That number is expected to rise to 959,000 new cases of Alzheimer's disease by 2050, a 130 percent increase from 2000.⁵

¹ Alzheimer's Foundation of America, *About Alzheimer's, Definition of Alzheimer's*, <http://www.alzfdn.org/AboutAlzheimers/definition.html> (last visited January 22, 2012).

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 January 22, 2012).

³ Alzheimer's Assn., *Fact Sheet: 2011 Alzheimer's Disease Facts and Figures* (March 2011), available at http://www.alz.org/documents_custom/2011_Facts_Figures_Fact_Sheet.pdf (last visited January 22, 2012).

⁴ Alzheimer's Assn., *2011 Alzheimer's Disease Facts and Figures*, 7 ALZHEIMER'S & DEMENTIA (Issue 2) at 17, available at http://www.alz.org/downloads/Facts_Figures_2011.pdf (last visited January 22, 2012).

⁵ *Id.*

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 2011, the aggregate cost for health care, long-term care, and hospice for persons with Alzheimer's and other dementias was estimated to be \$183 billion. That number is projected to be \$1.1 trillion by 2050.⁷ A major contributing factor to the cost of care for persons with Alzheimer's is that these individuals have more hospital stays, skilled nursing home stays, and home healthcare visits than older persons who do not have Alzheimer's disease. Research shows that 22 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) was estimated to be \$37 billion in 2011.⁹

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. Such caregivers often provide assistance with daily activities, such as shopping for groceries, preparing meals, bathing, dressing, grooming, assisting with mobility, helping the person take medications, making arrangements for medical care, and performing other household chores. In 2010, nearly 15 million unpaid caregivers provided an estimated 17 billion hours of unpaid care, valued at \$202.6 billion.¹⁰ In 2010, there were 960,037 caregivers in Florida with an estimated value of unpaid care reaching nearly \$13.5 million.¹¹

Adult Day Care Centers

The AHCA is authorized by statute to regulate and develop, establish, and enforce basic standards for adult day care centers (centers). An adult day care center is defined as "any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services."¹² The AHCA currently licenses 202 adult day care centers throughout the state.¹³

Section 429.90, F.S., assures the implementation of a program that provides therapeutic social and health activities and services to adults in an adult day care center. A participant¹⁴ in an adult day care center must have functional impairments and be in need of a protective environment

⁶ *Id.* at 18.

⁷ *Id.* at 35.

⁸ *Id.*

⁹ *Id.* at 44.

¹⁰ This number was established by using an average of 21.9 hours of care a week with a value of \$11.93 per hour. *Id.* at 27.

¹¹ *Id.* at 32.

¹² Section 429.901(1), F.S.

¹³ Agency for Health Care Administration, *2012 Bill Analysis & Economic Impact Statement, CS/SB 694* (on file with the Senate Committee on Health Regulation).

¹⁴ Section 429.901(8), F.S., defines a participant as "a recipient of basic services or of supportive and optional services provided by an adult day care center."

where therapeutic social and health activities and services are provided.¹⁵ Centers are prohibited from accepting participants who require medication during the time spent at the center and who are incapable of self-administration of medications, unless there is a person licensed to administer medications at the center.¹⁶

Every adult day care center must offer a planned program of varied activities and services promoting and maintaining the health of participants and encouraging leisure activities, interaction, and communication among participants on a daily basis. Centers are required to make these activities and services available during at least 60 percent of the time the center is open.¹⁷ A center is required to have one staff member for every six participants, but at no time may a center have less than two staff members present, one of whom is certified in first aid and CPR.¹⁸

Section 429.917, F.S., provides specific requirements for centers that offer care to persons with Alzheimer's disease or other related disorders. Current law authorizes an adult day care center to advertise and promote that it provides special care for persons with Alzheimer's disease or other related disorders. In order to do so, the center must disclose in its advertisements or in a separate document those services that distinguish the care as being especially applicable to, or suitable for, such persons.¹⁹ These centers must provide staff with written information on interacting with participants with Alzheimer's disease or dementia-related disorders. Additionally, staff who have direct contact with participants who have Alzheimer's disease or a dementia-related disorder must complete training of at least 1 hour within the first 3 months after employment, and staff who provide direct care to those same participants must complete an additional 3 hours of training within nine months after employment.²⁰ The training for staff who have direct contact with participants must include an overview of dementias and must provide instruction in basic skills for communicating with persons who have dementia. The training for staff who provide direct care to participants must include the management of problem behaviors, information about promoting the participant's independence in activities of daily living, and instruction in skills for working with families and caregivers.

The AHCA is authorized to license facilities requesting licensure as an adult day care center. There are no additional requirements placed on a center wishing to hold itself out as an adult day care center providing specialized services in any particular field.²¹

III. Effect of Proposed Changes:

This bill creates the Specialized Alzheimer's Services Adult Day Care Act (Act), which allows an adult day care center to seek licensure designation as an adult day care center that specializes in Alzheimer's disease and dementia-related disorder services.

¹⁵ Agency for Health Care Admin., *supra* note 13.

¹⁶ Rule 58A-6.006, F.A.C.

¹⁷ Rule 58A-6.008, F.A.C.

¹⁸ Rule 58A-6.006, F.A.C.

¹⁹ Section 429.917(2), F.S.

²⁰ Section 429.917(1), F.S.

²¹ Agency for Health Care Admin., *supra* note 13.

The bill defines the term “ADRD participant” as “a participant who has a documented diagnosis of Alzheimer’s disease or a dementia-related disorder (ADRD) from a licensed physician, licensed physician assistant, or a licensed advanced registered nurse practitioner. The bill also defines the terms “dementia,” “specialized Alzheimer’s services,” and “therapeutic activity.”

An adult day care center seeking licensure designation as a “specialized Alzheimer’s services adult day care center” must provide advance notice to the AHCA that the adult day care center is seeking such designation. The notice must be provided at least 30 days prior to initial licensure of the adult day care center, or if the center is already licensed, at least 6 months prior to expiration of the center’s license.

The bill requires the AHCA to issue the licensure designation to an adult day care center that has sought the designation and that meets the requirements of the bill. However, the issuance of the designation may only be made at the time of initial licensure or at licensure renewal.

The bill authorizes the AHCA to deny the request for the designation or revoke a designation of the adult day care center’s license if the adult day care center:

- Commits an intentional or negligent act materially affecting the health or safety of center participants.
- Commits a violation of part III of ch. 429, F.S., relating to adult day care centers, or of any standard or rule under that part or part II of ch. 408, F.S., relating to health care licensing.
- Fails to comply with background screening standards.
- Fails to follow the criteria and procedures provided under part I of ch. 394, F.S., relating to the transportation, voluntary admission, and involuntary examination of participants.
- Commits multiple or repeated violations of part III of ch. 429, F.S., or of any standard or rule adopted under that part or part II of ch. 408, F.S.

Furthermore, the bill authorizes the AHCA to revoke, at any time, the licensure designation if the adult day care center fails to maintain the requirements under the bill.

To be eligible for licensure designation, the adult day care center must:

- Have a mission statement that includes a commitment to providing dementia-specific services and disclose in the center’s advertisements or in a separate document, made available to the public upon request, the services that distinguish the care as being suitable for a person who has Alzheimer’s disease or a dementia-related disorder.
- Provide a program for dementia-specific, therapeutic activities.
- Maintain at all times a minimum staff-to-participant ratio of one staff member who provides direct services for every five ADRD participants.
- Provide a program for therapeutic activity at least 70 percent of the time.
- Provide ADRD participants with hands-on assistance with activities of daily living, inclusive of the provision of urinary and bowel incontinence care.
- Use assessment tools that identify the ADRD participant’s cognitive deficits and identify the specialized and individualized needs of the ADRD participant and the caregiver. This assessment must be updated when the ADRD participant experiences a significant change, but no less frequently than annually.

- Create an individualized plan of care for each ADRD participant, which addresses the identified, dementia-specific needs of the ADRD participant and the caregiver. The plan of care must be reviewed quarterly.
- Conduct a monthly health assessment of each ADRD participant, which includes the ADRD participant's weight, vital signs, and level of assistance needed with activities of daily living.
- Complete a monthly update in the ADRD participant's file regarding the ADRD participant's status or progress toward meeting goals indicated on the plan of care.
- Assist in the referral or coordination of other dementia-specific services and resources needed by the ADRD participant or caregiver.
- Offer, facilitate, or provide referrals to a support group for persons who are caregivers.
- Provide dementia-specific educational materials regularly to ADRD participants and their caregivers.
- Routinely conduct and document a count of all ADRD participants present in the center.
- Be a secured unit or have working alarm or security devices installed on every door that is accessible to the ADRD participants and provides egress from the center or areas of the center designated for the provision of adult day care – specialized Alzheimer's services.
- Not allow an ADRD participant to administer his or her own medication.
- Condition the ADRD participant's eligibility for admission on whether the ADRD participant has a coordinated mode of transportation to and from the center.

All operators, and the operator's designee, hired on or after July 1, 2012, by an adult day care center having a licensure designation, must:

- Have at least a bachelor's degree in health care services, social services, or a related field, one year of staff supervisory experience in a social services or health care services setting, and a minimum of 1 year of experience in providing dementia-specific services;
- Be a registered or practical nurse licensed in Florida, have one year of staff supervisory experience in a social services or health care services setting, and a minimum of 1 year of experience in providing dementia-specific services; or
- Have 5 years of staff supervisory experience in a social services or health care services setting and a minimum of 3 years of experience in providing dementia-specific services.

The bill requires that a registered nurse, or licensed practical nurse who must be supervised in accordance with existing law, be on site daily for at least 75 percent of the time the center is open to ADRD participants.

Upon beginning employment with a center, each employee must receive and review basic written information about interacting with ADRD participants. Additionally, every employee hired on or after July 1, 2012, who has direct contact with ADRD participants, must complete four hours of dementia-specific training within the first 3 months after employment, and employees hired on or after July 1, 2012, who provide direct care to participants, must complete an additional four hours of dementia-specific training within 6 months after employment. Upon completing this training, the employee will be issued a certificate that includes the name of the training provider, the topics covered in the training, and the date and signature of the training provider. The DOEA must approve the training required under the Act.

The training requirements for staff in this bill are more extensive than the current training requirements for staff at an adult day care center that provides care to persons with Alzheimer's disease. Accordingly, it appears that staff at any adult day care center that provides care to persons with Alzheimer's would continue to follow the requirements provided for in s. 429.917, F.S., and if a center opts to have a license designated under the Act, then staff at that center would be required to meet the additional requirements provided for in this bill.

The bill requires that each employee hired on or after July 1, 2012, who provides direct care to ADRD participants, receive and review an orientation plan, which must include:

- Procedures to locate an ADRD participant who has wandered from the center. These procedures must be reviewed regularly with all direct care staff.
- Information on the Silver Alert program.
- Information regarding available products or programs used to identify ADRD participants or prevent them from wandering away from the center, their home, or other locations.

In order for a person to be admitted to an adult day care center with a license designated under the Act, the person must:

- Require ongoing supervision to maintain the highest level of medical or custodial functioning and have a documented need for a responsible party to oversee his or her care.
- Not actively demonstrate aggressive behavior that places himself, herself, or others at risk for harm.

In addition, the person admitted to the adult day care center, or the person's caregiver, must provide certain medical documentation signed by a licensed physician, licensed physician assistant, or a licensed advanced registered nurse practitioner.

Also, before admitting a person as an ADRD participant, the adult day care center must determine whether the medical, psychological, or behavioral support and intervention required by the person can be provided by the center, and whether the resources required to assist with the person's acuity of care and support can be provided or coordinated by the center.

The bill requires certain documentation to be placed in an ADRD participant's file. First, the file must contain a data sheet, which must be completed within 45 days before or within 24 hours after admission to an adult day care center with a licensure designation. The data sheet must contain information regarding the status of the ADRD participant's enrollment in an identification or wandering-prevention program and a current photograph of the ADRD participant. Second, all dementia-specific services must be documented in the ADRD participant's file. The bill requires that an ADRD participant's plan of care be reviewed at least quarterly and notes regarding the services provided to the ADRD participant and the ADRD participant's activities be entered at least monthly in the ADRD participant's file. An ADRD participant, or the caregiver, is required to update the participant's medical documentation at least annually and the center must place that documentation in the ADRD participant's file.

The bill requires an adult day care center with a licensure designation to provide certain information to each person who enrolls as an ADRD participant in the center or to that person's caregiver. Additionally, if the ADRD participant's enrollment in the center is involuntarily

terminated due to medical or behavioral reasons, the center must coordinate and execute appropriate discharge procedures, which are to be established by DOEA in rule.

The bill specifies that an adult day care center that chooses not to have its license designated under the Act may still provide adult day care services to persons who have Alzheimer's disease or other dementia-related disorders. However, an adult day care center may not claim to have a license or designated licensed to provide specialized Alzheimer's services unless it has received such licensure designation from the AHCA.

Finally, the bill provides rule-making authority to DOEA to administer the provisions of the bill.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities or counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill requires an adult day care center that has a designated licensed under the Specialized Alzheimer's Services Adult Day Care Act (Act) to maintain a staff-to-participant ratio of one staff member for every five ADRD participants. Currently, adult day care centers must maintain a staff-to-participant ratio of one staff member for every six participants.²² Accordingly, adult day care centers having a licensure designation under the Act may incur additional expenses due to the need to hire additional staff to meet the required staffing ratios. Since the bill prohibits an ADRD participant from administering his or her own medication, a center must have staff who are authorized by law to administer medication.

²² Rule 58A-6.006, F.A.C.

Additionally, this bill requires that certain staff have additional dementia-specific training if working in an adult day care center with a license designated under the Act. The bill does not specify the cost associated with the training or who is responsible for paying for the training; however, it appears there may be additional expenses incurred to the staff member in order to take the training.

C. **Government Sector Impact:**

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS/CS by Health Regulation on January 25, 2012:

The committee substitute, for committee substitute (CS/CS), removes a licensure requirement and provides for the license of an adult day care center meeting requirements under the CS/CS to be *designated* as a specialized Alzheimer’s services adult day care center. In addition, the CS/CS:

- Revises the definition of “ADRD participant,” relating to who diagnoses the participant with Alzheimer’s disease or a dementia-related disorder.
- Defines the term “therapeutic activity.”
- Clarifies that an adult day care center applies to the AHCA for the designation at initial licensure or licensure renewal.
- Provides the AHCA with certain disciplinary authority.
- Provides that a document that discloses the specialty services provided by the adult day care center which relate to Alzheimer’s disease or a dementia-related disorder must be made available to the public upon request.
- Conditions the participant’s admission on whether transportation to and from the day care has been arranged for the participant.
- Clarifies that “supervisory experience” means “staff supervisory experience.”
- Requires the owner of the licensee to sign an affidavit that he or she has verified education and experience requirements have been completed by the operator or operator’s designee.
- Requires staff, upon employment at an adult day care center with a specialty designation, to not only receive, but also review written information about interacting with adult day care center participants.

- Requires staff of an adult day care center with a specialty licensure designation to not only receive an orientation plan, but also review the plan.
- Clarifies that the caregiver is responsible for providing medical documentation about the participant to the adult day care center.
- Deletes redundant language in the bill requiring a review a participant's plan of care.

CS by Children, Families, and Elder Affairs on January 12, 2012:

The committee substitute:

- Prohibits an adult day care center from claiming to be licensed to provide specialized Alzheimer's services unless it has been licensed under the Specialized Alzheimer's Services Adult Day Care Act created by the bill;
- Changes the short title of the bill from the Alzheimer's Adult Day Care Dignity Act to the Specialized Alzheimer's Services Adult Day Care Act;
- Defines the term "ADRD participant";
- States that the licensure created by the bill is voluntary;
- Requires an adult day care center licensed under the bill to provide ADRD participants with hands-on assistance with activities of daily living, inclusive of the provision of urinary and bowel incontinence care;
- Provides that only operators hired on or after July 1, 2012, have to meet the specified educational and experience requirements;
- Provides that a registered nurse or licensed practical nurse must be on site daily for at least 75 percent of the time, rather than during all hours of operation;
- Provides that only staff hired on or after July 1, 2012, have to complete the additional training requirements;
- Requires the DOEA to approve the training required under the bill and provides rulemaking authority to the DOEA to do so;
- Provides that employees must receive a certificate upon completion of the required training;
- Requires every employee to receive basic written information about interacting with ADRD participants;
- Clarifies that the bill does not prohibit an adult day care center that chooses not to become licensed from providing adult day care services to persons who have Alzheimer's disease or other dementia-related disorders;
- Removes certain redundant or overly-specific provisions of the bill;
- Changes several of the timing requirements in the bill so they are less burdensome; and
- Makes technical changes.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2012	.	
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The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) of section 429.917, Florida
Statutes, is amended to read:

429.917 Patients with Alzheimer's disease or other related
disorders; staff training requirements; certain disclosures.—

(2) A center licensed under this part which claims that it
provides special care for persons who have Alzheimer's disease
or other related disorders must disclose in its advertisements
or in a separate document those services that distinguish the



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13 care as being especially applicable to, or suitable for, such
14 persons. The center must give a copy of all such advertisements
15 or a copy of the document to each person who requests
16 information about the center and must maintain a copy of all
17 such advertisements and documents in its records. The agency
18 shall examine all such advertisements and documents in the
19 center's records as part of the license renewal procedure. An
20 adult day care center may not claim to be licensed or designated
21 to provide specialized Alzheimer's services unless the adult day
22 care center's license has been designated as such pursuant to s.
23 429.918.

24 Section 2. Section 429.918, Florida Statutes, is created to
25 read:

26 429.918 Licensure designation as a specialized Alzheimer's
27 services adult day care center.-

28 (1) This act may be cited as the "Specialized Alzheimer's
29 Services Adult Day Care Act."

30 (2) As used in this section, the term:

31 (a) "ADRD participant" means a participant who has a
32 documented diagnosis of Alzheimer's disease or a dementia-
33 related disorder (ADRD) from a licensed physician, licensed
34 physician assistant, or a licensed advanced registered nurse
35 practitioner.

36 (b) "Dementia" means the loss of at least two intellectual
37 functions, such as thinking, remembering, and reasoning, which
38 is severe enough to interfere with a person's daily function.
39 The term does not describe a disease, but describes a group of
40 symptoms that may accompany certain diseases or physical
41 conditions.



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42 (c) "Specialized Alzheimer's services" means therapeutic,
43 behavioral, health, safety, and security interventions; clinical
44 care; support services; and educational services that are
45 customized for the specialized needs of a participant's
46 caregiver and the participant who is affected by Alzheimer's
47 disease or an irreversible, degenerative condition resulting in
48 dementia.

49 (d) "Therapeutic activity" means an individual or group
50 activity that is intended to promote, maintain, or enhance the
51 ADRD participant's physical, cognitive, social, spiritual, or
52 emotional health.

53 (3) An adult day care center may apply to the agency to
54 have its license issued under s. 429.907, designated as a
55 "specialized Alzheimer's services adult day care center," if the
56 requirements under this section have been met.

57 (a) The adult day care center must notify the agency at
58 least 30 days prior to initial licensure under s. 429.907 or, if
59 already licensed, at least 6 months prior to the expiration of a
60 license issued under s. 429.907, that the adult day care center
61 is seeking a designation as a specialized Alzheimer's services
62 adult day care center.

63 (b) The agency, after receiving the notification pursuant
64 to paragraph (a), may make a determination at an initial
65 licensure inspection or at a licensure renewal inspection as to
66 whether the adult day care center meets the requirements of this
67 section to be designated as a specialized Alzheimer's services
68 adult day care center. If the agency determines that the adult
69 day care center meets the requirements of this section it must
70 designate the adult day care center as a specialized Alzheimer's



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71 services adult day care center at the time of initial licensure
72 or at licensure renewal.

73 (c) If the agency, during the initial or renewal
74 inspection, determines that the adult day care has committed an
75 act under s. 429.911(2), the agency may deny the request for the
76 designation or revoke such designation.

77 (d) The agency may at any time revoke the designation if
78 the adult day care center fails to maintain the requirements
79 under this section.

80 (4) To obtain or maintain the designation under this
81 section, an adult day care center must:

82 (a) Have a mission statement that includes a commitment to
83 providing dementia-specific services and disclose in the
84 center's advertisements or in a separate document, which must be
85 made available to the public upon request, the services that
86 distinguish the care as being suitable for a person who has
87 Alzheimer's disease or a dementia-related disorder.

88 (b) Provide ADRD participants with a program for dementia-
89 specific, therapeutic activities, including, but not limited to,
90 physical, cognitive, and social activities appropriate for the
91 ADRD participant's age, culture, and level of function.

92 (c) Maintain at all times a minimum staff-to-participant
93 ratio of one staff member who provides direct services for every
94 five ADRD participants.

95 (d) Provide ADRD participants with a program for
96 therapeutic activity at least 70 percent of the time that the
97 center is open.

98 (e) Provide ADRD participants with hands-on assistance with
99 activities of daily living, inclusive of the provision of



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100 urinary and bowel incontinence care.

101 (f) Use assessment tools that identify the ADRD
102 participant's cognitive deficits and identify the specialized
103 and individualized needs of the ADRD participant and the
104 caregiver. This assessment shall be conducted when the ADRD
105 participant is initially admitted into the center and shall be
106 updated when the ADRD participant experiences a significant
107 change, but no less frequently than annually.

108 (g) Create an individualized plan of care for each ADRD
109 participant which addresses the identified, dementia-specific
110 needs of the ADRD participant and the caregiver. The plan of
111 care shall be established when the ADRD participant is initially
112 admitted into the center and reviewed at least quarterly.

113 (h) Conduct a monthly health assessment of each ADRD
114 participant which includes, but is not limited to, the ADRD
115 participant's weight, vital signs, and level of assistance
116 needed with activities of daily living.

117 (i) Complete a monthly update in each ADRD participant's
118 file regarding the ADRD participant's status or progress toward
119 meeting the goals indicated on the individualized plan of care.

120 (j) Assist in the referral or coordination of other
121 dementia-specific services and resources needed by the ADRD
122 participant or the caregiver, such as medical services,
123 counseling, medical planning, legal planning, financial
124 planning, safety and security planning, disaster planning,
125 driving assessment, transportation coordination, or wandering
126 prevention.

127 (k) Offer, facilitate, or provide referrals to a support
128 group for persons who are caregivers to ADRD participants.



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129 (l) Provide dementia-specific educational materials
130 regularly to ADRD participants, as appropriate, and their
131 caregivers.

132 (m) Routinely conduct and document a count of all ADRD
133 participants present in the center throughout each day. This
134 count must be compared to each ADRD participant's attendance
135 record in order to ensure that an ADRD participant is not
136 missing from the center.

137 (n) Be a secured unit or have working alarm or security
138 devices installed on every door that is accessible to the ADRD
139 participant and provides egress from the center or areas of the
140 center designated for the provision of adult day care -
141 specialized Alzheimer's services.

142 (o) Not allow an ADRD participant to administer his or her
143 own medication.

144 (p) Condition the ADRD participant's eligibility for
145 admission on whether the ADRD participant has a coordinated mode
146 of transportation to and from the adult day care center, to
147 ensure the participant does not drive to or from the center.

148 (5) (a) The operator of an adult day care center having a
149 licensed designated under this section, and the operator's
150 designee, as applicable, hired on or after July 1, 2012, shall:

151 1. Have at least a bachelor's degree in health care
152 services, social services, or a related field, 1 year of staff
153 supervisory experience in a social services or health care
154 services setting, and a minimum of 1 year of experience in
155 providing services to persons who have dementia;

156 2. Be a registered or practical nurse licensed in this
157 state, have 1 year of staff supervisory experience in a social



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158 services or health care services setting, and have a minimum of
159 1 year of experience in providing services to persons who have
160 dementia; or

161 3. Have 5 years of staff supervisory experience in a social
162 services or health care services setting and a minimum of 3
163 years of experience in providing services to persons who have
164 dementia.

165 (b) The owner must sign an affidavit under penalty of
166 perjury stating that he or she has verified that the operator,
167 and the operator's designee, if any, has completed the education
168 and experience requirements of this subsection.

169 (6) (a) An adult day care center having a license designated
170 under this section must provide the following staff training and
171 supervision:

172 1. A registered nurse or licensed practical nurse must be
173 on site daily for at least 75 percent of the time that the
174 center is open to ADRD participants. Each licensed practical
175 nurse who works at the center must be supervised in accordance
176 with chapter 464.

177 2. Upon beginning employment with the center, each employee
178 must receive and review basic written information about
179 interacting with ADRD participants.

180 3. In addition to the information provided in subparagraph
181 2., every employee hired on or after July 1, 2012, who has
182 direct contact with ADRD participants shall complete 4 hours of
183 dementia-specific training within 3 months after employment.

184 4. In addition to the requirements of subparagraphs 2. and
185 3., each employee hired on or after July 1, 2012, who provides
186 direct care to ADRD participants shall complete an additional 4



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187 hours of dementia-specific training within 6 months after
188 employment.

189 (b) The Department of Elderly Affairs or its designee shall
190 approve the training required under this section. The department
191 shall adopt rules to establish standards for employees who are
192 subject to this training, for trainers, and for the training
193 required in this section.

194 (c) Upon completing any training described in this section,
195 the employee shall be issued a certificate that includes the
196 name of the training provider, the topics covered, and the date
197 and signature of the training provider. The certificate is
198 evidence of completion of training in the identified topics, and
199 the employee is not required to repeat training in those topics
200 if the employee changes employment to a different adult day care
201 center.

202 (d) Each employee hired on or after July 1, 2012, who
203 provides direct care to ADRD participants, must receive and
204 review an orientation plan that includes, at a minimum:

205 1. Procedures to locate an ADRD participant who has
206 wandered from the center. These procedures shall be reviewed
207 regularly with all direct care staff.

208 2. Information on the Silver Alert program in this state.

209 3. Information regarding available products or programs
210 used to identify ADRD participants or prevent them from
211 wandering away from the center, their home, or other locations.

212 (7) (a) An ADRD participant admitted to an adult day care
213 center having a license designated under this section, or the
214 caregiver when applicable, must:

215 1. Require ongoing supervision to maintain the highest



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216 level of medical or custodial functioning and have a
217 demonstrated need for a responsible party to oversee his or her
218 care.

219 2. Not actively demonstrate aggressive behavior that places
220 himself, herself, or others at risk of harm.

221 3. Provide the following medical documentation signed by a
222 licensed physician, licensed physician assistant, or a licensed
223 advanced registered nurse practitioner:

224 a. Any physical, health, or emotional conditions that
225 require medical care.

226 b. A listing of the ADRD participant's current prescribed
227 and over-the-counter medications and dosages, diet restrictions,
228 mobility restrictions, and other physical limitations.

229 4. Provide documentation signed by a health care provider
230 licensed in this state which indicates that the ADRD participant
231 is free of the communicable form of tuberculosis and free of
232 signs and symptoms of other communicable diseases.

233 (b) Before admitting an ADRD participant to an adult day
234 care center that has a license designated under this section,
235 the center shall determine whether:

236 1. The medical, psychological, safety, and behavioral
237 support and intervention required by the ADRD participant can be
238 provided by the center.

239 2. The resources required to assist with the ADRD
240 participant's acuity level of care and support needed can be
241 provided or coordinated by the center.

242 (8) (a) An ADRD participant's file must include a data
243 sheet, which must be completed within 45 days before or within
244 24 hours after admission to an adult day care center having a



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245 license designated under this section. The data sheet must
246 contain:

247 1. Information regarding the status of the ADRD
248 participant's enrollment in an identification or wandering-
249 prevention program, including the name of the program; and

250 2. A current photograph of the ADRD participant.

251 (b) Dementia-specific services shall be documented in the
252 ADRD participant's file.

253 (c) Notes regarding services provided to the ADRD
254 participant must be entered at least monthly in the ADRD
255 participant's file, and must indicate the ADRD participant's
256 status or progress toward achieving identified goals. Additional
257 notes must be entered more frequently if indicated by the ADRD
258 participant's condition.

259 (d) An ADRD participant, or the participant's caregiver,
260 shall annually provide the center with updated medical
261 documentation required under subparagraphs (7)(a)3. and 4., and
262 the center must place that documentation in the ADRD
263 participant's file.

264 (9) An adult day care center having a license designated
265 under this section must give to each person who enrolls as an
266 ADRD participant in the center, or the caregiver, a copy of the
267 ADRD participant's plan of care, as well as information
268 regarding resources to assist in ensuring the safety and
269 security of the ADRD participant, which must include, but need
270 not be limited to, information pertaining to driving for those
271 persons affected by dementia, available technology on wandering-
272 prevention devices and identification devices, the Silver Alert
273 program in this state, and dementia-specific safety



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274 interventions and strategies that can be used in the home
275 setting.

276 (10) If an ADRD participant's enrollment in the center is
277 involuntarily terminated due to medical or behavioral reasons,
278 the center shall coordinate and execute appropriate discharge
279 procedures, to be determined by rule, with the ADRD participant
280 and the caregiver.

281 (11) This section does not prohibit an adult day care
282 center that is licensed pursuant to s. 429.907, and without a
283 designation under this section, from providing adult day care
284 services to persons who have Alzheimer's disease or other
285 dementia-related disorders.

286 (12) The Department of Elderly Affairs may adopt rules to
287 administer this section.

288 Section 3. This act shall take effect July 1, 2012.

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290

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

292 And the title is amended as follows:

293 Delete everything before the enacting clause
294 and insert:

295 A bill to be entitled

296 An act relating to adult day care centers;
297 amending s. 429.917, F.S.; prohibiting an adult day
298 care center from claiming to be licensed or designated
299 as a specialized Alzheimer's services adult day care
300 center under certain circumstances; creating s.

301 429.918, F.S.; providing a short title; providing
302 definitions; providing for the licensure designation



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303 of adult day care centers that provide specialized
304 Alzheimer's services by the Agency for Health Care
305 Administration; providing for the denial or revocation
306 of such designation under certain circumstances;
307 requiring an adult day care center seeking such
308 designation to meet specified criteria; providing
309 educational and experience requirements for the
310 operator of an adult day care center seeking licensure
311 designation as a specialized Alzheimer's services
312 adult day care center; providing criteria for staff
313 training and supervision; requiring the Department of
314 Elderly Affairs to approve the staff training;
315 requiring the department to adopt rules; requiring
316 that the employee be issued a certificate upon
317 completion of the staff training; providing
318 requirements for staff orientation; providing
319 requirements for admission into such an adult day care
320 center; requiring that a participant's file include a
321 data sheet, which shall be completed within a certain
322 timeframe; requiring that certain information be
323 included in the data sheet; requiring that dementia-
324 specific services be documented in a participant's
325 file; requiring that a participant's plan of care be
326 reviewed quarterly; requiring that certain notes be
327 entered into a participant's file; requiring the
328 participant, or caregiver, to provide the adult day
329 care center with updated medical documentation;
330 requiring the center to give each person who enrolls
331 as a participant, or the caregiver, a copy of the



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332 participant's plan of care and safety information;
333 requiring that the center coordinate and execute
334 discharge procedures with a participant who has a
335 documented diagnosis of Alzheimer's disease or a
336 dementia-related disorder and the caregiver if the
337 participant's enrollment in the center is
338 involuntarily terminated; providing that the act does
339 not prohibit a licensed adult day care center that
340 does not receive such a designation from providing
341 adult day care services to persons who have
342 Alzheimer's disease or other dementia-related
343 disorders; authorizing the Department of Elderly
344 Affairs to adopt rules; providing an effective date.
345



482164

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/25/2012	.	
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The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment

Delete lines 70 - 79
and insert:

429.918 Licensure for specialized Alzheimer's services.-

(1) This act may be cited as the "Specialized Alzheimer's Services Adult Day Care Act."

(2) As used in this section, the term:

(a) "ADRD participant" means a participant who has a documented diagnosis of Alzheimer's disease or a dementia-related disorder (ADRD) from a licensed physician, licensed physician assistant, or a licensed advanced registered nurse



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13 practitioner.

14



925074

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/25/2012	.	
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The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment

Delete lines 93 - 101
and insert:

(d) "Therapeutic activity" means an individual or group activity that is intended to promote, maintain, or enhance the ADRD participant's physical, cognitive, social, spiritual, or emotional health.

(3) In addition to the standards required for licensure as an adult day care center under this part, an adult day care center may apply to the agency for an "adult day care center - specialized Alzheimer's services" license if the requirements



925074

13 under this section have been met.

14 (4) To obtain or maintain licensure under this section, an
15 adult day care center must:

16 (a) Have a mission statement that includes a commitment to
17 providing dementia-specific services and disclose in the
18 center's advertisements or in a separate document, which must be
19 made available to the public upon request, the services that
20



779200

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/25/2012	.	
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The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 160 - 188
and insert:

(p) Condition the ADRD participant's eligibility for admission on whether the ADRD participant has a coordinated mode of transportation to and from the adult day care center, to ensure the participant does not drive to or from the center.

(5) (a) The operator of an adult day care center licensed under this section, and the operator's designee, as applicable, hired on or after July 1, 2012, shall:

1. Have at least a bachelor's degree in health care



779200

13 services, social services, or a related field, 1 year of staff
14 supervisory experience in a social services or health care
15 services setting, and a minimum of 1 year of experience in
16 providing services to persons who have dementia;

17 2. Be a registered or practical nurse licensed in this
18 state, have 1 year of staff supervisory experience in a social
19 services or health care services setting, and have a minimum of
20 1 year of experience in providing services to persons who have
21 dementia; or

22 3. Have 5 years of staff supervisory experience in a social
23 services or health care services setting and a minimum of 3
24 years of experience in providing services to persons who have
25 dementia.

26 (b) The owner must sign an affidavit under penalty of
27 perjury stating that he or she has verified that the operator,
28 and the operator's designee, if any, has completed the education
29 and experience requirements of this subsection.

30 (6) (a) An adult day care center licensed under this section
31 must provide the following staff training and supervision:

32 1. A registered nurse or licensed practical nurse must be
33 on site daily for at least 75 percent of the time that the
34 center is open to ADRD participants. Each licensed practical
35 nurse who works at the center must be supervised in accordance
36 with chapter 464.

37 2. Upon beginning employment with the center, each employee
38 must receive and review basic written information about
39 interacting with ADRD participants.

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779200

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

43 And the title is amended as follows:

44 Delete line 14

45 and insert:

46 specialized Alzheimer's services; requiring the owner
47 of the adult day care center to sign an affidavit that
48 certain education and experience requirements have
49 been completed by the operator and operator's
50 designee; providing criteria



645958

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/25/2012	.	
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The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment

Delete lines 211 - 270
and insert:

(d) Each employee hired on or after July 1, 2012, who provides direct care to ADRD participants, must receive and review an orientation plan that includes, at a minimum:

1. Procedures to locate an ADRD participant who has wandered from the center. These procedures shall be reviewed regularly with all direct care staff.

2. Information on the Silver Alert program in this state.

3. Information regarding available products or programs



645958

13 used to identify ADRD participants or prevent them from
14 wandering away from the center, their home, or other locations.

15 (7) (a) An ADRD participant admitted to an adult day care
16 center licensed under this section, or the caregiver when
17 applicable, must:

18 1. Require ongoing supervision to maintain the highest
19 level of medical or custodial functioning and have a
20 demonstrated need for a responsible party to oversee his or her
21 care.

22 2. Not actively demonstrate aggressive behavior that places
23 himself, herself, or others at risk of harm.

24 3. Provide the following medical documentation signed by a
25 licensed physician or a health care provider who is under the
26 direct supervision of a licensed physician:

27 a. Any physical, health, or emotional conditions that
28 require medical care.

29 b. A listing of the ADRD participant's current prescribed
30 and over-the-counter medications and dosages, diet restrictions,
31 mobility restrictions, and other physical limitations.

32 4. Provide documentation signed by a health care provider
33 licensed in this state which indicates that the ADRD participant
34 is free of the communicable form of tuberculosis and free of
35 signs and symptoms of other communicable diseases.

36 (b) Before admitting an ADRD participant to an adult day
37 care center licensed under this section, the center shall
38 determine whether:

39 1. The medical, psychological, safety, and behavioral
40 support and intervention required by the ADRD participant can be
41 provided by the center.



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42 2. The resources required to assist with the ADRD
43 participant's acuity level of care and support needed can be
44 provided or coordinated by the center.

45 (8) (a) An ADRD participant's file must include a data
46 sheet, which must be completed within 45 days before or within
47 24 hours after admission to an adult day care center licensed
48 under this section. The data sheet must contain:

49 1. Information regarding the status of the ADRD
50 participant's enrollment in an identification or wandering-
51 prevention program, including the name of the program; and

52 2. A current photograph of the ADRD participant.

53 (b) Dementia-specific services shall be documented in the
54 ADRD participant's file.

55 (c) Notes regarding services provided to the ADRD
56 participant must be entered at least monthly in the ADRD
57 participant's file, and must indicate the ADRD participant's
58 status or progress toward achieving identified goals. Additional
59 notes must be entered more frequently if indicated by the ADRD
60 participant's condition.

61 (d) An ADRD participant, or the participant's caregiver,
62 shall annually provide the center with updated medical
63 documentation required under subparagraphs (7) (a) 3. and 4., and
64 the center must place that documentation in the ADRD
65 participant's file.
66

By the Committee on Children, Families, and Elder Affairs; and
Senators Fasano, Haridopolos, Norman, Sachs, Gaetz, Bullard, and
Garcia

586-01854-12

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1 A bill to be entitled
2 An act relating to adult day care centers; amending s.
3 429.917, F.S.; prohibiting an adult day care center
4 from claiming to be licensed to provide specialized
5 Alzheimer's services under certain circumstances;
6 creating s. 429.918, F.S.; providing a short title;
7 providing definitions; providing for the voluntary
8 licensure of adult day care centers that provide
9 specialized Alzheimer's services; requiring an adult
10 day care center seeking such licensure to meet
11 specified criteria; providing educational and
12 experience requirements for the operator of an adult
13 day care center seeking licensure to provide
14 specialized Alzheimer's services; providing criteria
15 for staff training and supervision; requiring that the
16 Department of Elderly Affairs approve the staff
17 training; requiring the department to adopt rules;
18 requiring that the employee be issued a certificate
19 upon completion of the staff training; providing
20 requirements for staff orientation; providing
21 requirements for admission into such an adult day care
22 center; requiring that a participant's file include a
23 data sheet, which shall be completed within a certain
24 timeframe; requiring that certain information be
25 included in the data sheet; requiring that dementia-
26 specific services be documented in a participant's
27 file; requiring that a participant's plan of care be
28 reviewed quarterly; requiring that certain notes be
29 entered into a participant's file; requiring the

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

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30 participant to provide the adult day care center with
31 updated medical documentation; requiring the center to
32 give each person who enrolls as a participant, or the
33 caregiver, a copy of the participant's plan of care
34 and safety information; requiring that the center
35 coordinate and execute discharge procedures with a
36 participant who has a documented diagnosis of
37 Alzheimer's disease or a dementia-related disorder and
38 the caregiver if the participant's enrollment in the
39 center is involuntarily terminated; providing that the
40 act does not prohibit an adult day care center that
41 does not become licensed to provide specialized
42 Alzheimer's services from providing adult day care
43 services to persons who have Alzheimer's disease or
44 other dementia-related disorders; authorizing the
45 Department of Elderly Affairs to adopt rules;
46 providing an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Subsection (2) of section 429.917, Florida
51 Statutes, is amended to read:

52 429.917 Patients with Alzheimer's disease or other related
53 disorders; staff training requirements; certain disclosures.—

54 (2) A center licensed under this part which claims that it
55 provides special care for persons who have Alzheimer's disease
56 or other related disorders must disclose in its advertisements
57 or in a separate document those services that distinguish the
58 care as being especially applicable to, or suitable for, such

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59 persons. The center must give a copy of all such advertisements
60 or a copy of the document to each person who requests
61 information about the center and must maintain a copy of all
62 such advertisements and documents in its records. The agency
63 shall examine all such advertisements and documents in the
64 center's records as part of the license renewal procedure. An
65 adult day care center may not claim to be licensed to provide
66 specialized Alzheimer's services unless it has been licensed
67 pursuant to s. 429.918.

68 Section 2. Section 429.918, Florida Statutes, is created to
69 read:

70 429.918 Certification for specialized Alzheimer's
71 services.-

72 (1) This act may be cited as the "Specialized Alzheimer's
73 Services Adult Day Care Act."

74 (2) As used in this section, the term:

75 (a) "ADRD participant" means a participant who has a
76 documented diagnosis of Alzheimer's disease or a dementia-
77 related disorder (ADRD) from a licensed physician or a health
78 care provider who is under the direct supervision of a licensed
79 physician.

80 (b) "Dementia" means the loss of at least two intellectual
81 functions, such as thinking, remembering, and reasoning, which
82 is severe enough to interfere with a person's daily function.
83 The term does not describe a disease, but describes a group of
84 symptoms that may accompany certain diseases or physical
85 conditions.

86 (c) "Specialized Alzheimer's services" means therapeutic,
87 behavioral, health, safety, and security interventions; clinical

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88 care; support services; and educational services that are
89 customized for the specialized needs of a participant's
90 caregiver and the participant who is affected by Alzheimer's
91 disease or an irreversible, degenerative condition resulting in
92 dementia.

93 (3) In addition to the standards required for licensure as
94 an adult day care center under this part, an adult day care
95 center may seek voluntary licensure under this section as an
96 adult day care center - specialized Alzheimer's services.

97 (4) An adult day care center seeking licensure under this
98 section must:

99 (a) Have a mission statement that includes a commitment to
100 proving dementia-specific services and disclose in the center's
101 advertisements or in a separate document the services that
102 distinguish the care as being suitable for a person who has
103 Alzheimer's disease or a dementia-related disorder.

104 (b) Provide ADRD participants with a program for dementia-
105 specific, therapeutic activities, including, but not limited to,
106 physical, cognitive, and social activities appropriate for the
107 ADRD participant's age, culture, and level of function.

108 (c) Maintain at all times a minimum staff-to-participant
109 ratio of one staff member who provides direct services for every
110 five ADRD participants.

111 (d) Provide ADRD participants with a program for
112 therapeutic activity at least 70 percent of the time that the
113 center is open.

114 (e) Provide ADRD participants with hands-on assistance with
115 activities of daily living, inclusive of the provision of
116 urinary and bowel incontinence care.

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117 (f) Use assessment tools that identify the ADRD
 118 participant's cognitive deficits and identify the specialized
 119 and individualized needs of the ADRD participant and the
 120 caregiver. This assessment shall be conducted when the ADRD
 121 participant is initially admitted into the center and shall be
 122 updated when the ADRD participant experiences a significant
 123 change, but no less frequently than annually.

124 (g) Create an individualized plan of care for each ADRD
 125 participant which addresses the identified, dementia-specific
 126 needs of the ADRD participant and the caregiver. The plan of
 127 care shall be established when the ADRD participant is initially
 128 admitted into the center and reviewed at least quarterly.

129 (h) Conduct a monthly health assessment of each ADRD
 130 participant which includes, but is not limited to, the ADRD
 131 participant's weight, vital signs, and level of assistance
 132 needed with activities of daily living.

133 (i) Complete a monthly update in each ADRD participant's
 134 file regarding the ADRD participant's status or progress toward
 135 meeting the goals indicated on the individualized plan of care.

136 (j) Assist in the referral or coordination of other
 137 dementia-specific services and resources needed by the ADRD
 138 participant or the caregiver, such as medical services,
 139 counseling, medical planning, legal planning, financial
 140 planning, safety and security planning, disaster planning,
 141 driving assessment, transportation coordination, or wandering
 142 prevention.

143 (k) Offer, facilitate, or provide referrals to a support
 144 group for persons who are caregivers to ADRD participants.

145 (l) Provide dementia-specific educational materials

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146 regularly to ADRD participants, as appropriate, and their
 147 caregivers.

148 (m) Routinely conduct and document a count of all ADRD
 149 participants present in the center throughout each day. This
 150 count must be compared to each ADRD participant's attendance
 151 record in order to ensure that an ADRD participant is not
 152 missing from the center.

153 (n) Be a secured unit or have working alarm or security
 154 devices installed on every door that is accessible to the ADRD
 155 participant and provides egress from the center or areas of the
 156 center designated for the provision of adult day care -
 157 specialized Alzheimer's services.

158 (o) Not allow an ADRD participant to administer his or her
 159 own medication.

160 (p) Not allow an ADRD participant to drive himself or
 161 herself to or from the center.

162 (5) The operator of an adult day care center licensed under
 163 this section, and the operator's designee, as applicable, hired
 164 on or after July 1, 2012, shall:

165 (a) Have at least a bachelor's degree in health care
 166 services, social services, or a related field, 1 year of
 167 supervisory experience in a social services or health care
 168 services setting, and a minimum of 1 year of experience in
 169 providing services to persons who have dementia;

170 (b) Be a registered or practical nurse licensed in this
 171 state, have 1 year of supervisory experience in a social
 172 services or health care services setting, and have a minimum of
 173 1 year of experience in providing services to persons who have
 174 dementia; or

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175 (c) Have 5 years of supervisory experience in a social
 176 services or health care services setting and a minimum of 3
 177 years of experience in providing services to persons who have
 178 dementia.

179 (6) (a) An adult day care center licensed under this section
 180 must provide the following staff training and supervision:

181 1. A registered nurse or licensed practical nurse must be
 182 on site daily for at least 75 percent of the time that the
 183 center is open to ADRD participants. Each licensed practical
 184 nurse who works at the center must be supervised in accordance
 185 with chapter 464.

186 2. Upon beginning employment with the center, each employee
 187 must receive basic written information about interacting with
 188 ADRD participants.

189 3. In addition to the information provided in subparagraph
 190 2., every employee hired on or after July 1, 2012, who has
 191 direct contact with ADRD participants shall complete 4 hours of
 192 dementia-specific training within 3 months after employment.

193 4. In addition to the requirements of subparagraphs 2. and
 194 3., each employee hired on or after July 1, 2012, who provides
 195 direct care to ADRD participants shall complete an additional 4
 196 hours of dementia-specific training within 6 months after
 197 employment.

198 (b) The Department of Elderly Affairs or its designee shall
 199 approve the training required under this section. The department
 200 shall adopt rules to establish standards for employees who are
 201 subject to this training, for trainers, and for the training
 202 required in this section.

203 (c) Upon completing any training described in this section,

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204 the employee shall be issued a certificate that includes the
 205 name of the training provider, the topics covered, and the date
 206 and signature of the training provider. The certificate is
 207 evidence of completion of training in the identified topics, and
 208 the employee is not required to repeat training in those topics
 209 if the employee changes employment to a different adult day care
 210 center.

211 (d) Each employee hired on or after July 1, 2012, who
 212 provides direct care to ADRD participants, must receive an
 213 orientation plan that includes, at a minimum:

214 1. Procedures to locate an ADRD participant who has
 215 wandered from the center. These procedures shall be reviewed
 216 regularly with all direct care staff.

217 2. Information on the Silver Alert program in this state.

218 3. Information regarding available products or programs
 219 used to identify ADRD participants or prevent them from
 220 wandering away from the center, their home, or other locations.

221 (7) (a) An ADRD participant admitted to an adult day care
 222 center licensed under this section must:

223 1. Require ongoing supervision to maintain the highest
 224 level of medical or custodial functioning and have a
 225 demonstrated need for a responsible party to oversee his or her
 226 care.

227 2. Not actively demonstrate aggressive behavior that places
 228 himself, herself, or others at risk of harm.

229 3. Provide the following medical documentation signed by a
 230 licensed physician or a health care provider who is under the
 231 direct supervision of a licensed physician:

232 a. Any physical, health, or emotional conditions that

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233 require medical care.

234 b. A listing of the ADRD participant's current prescribed
 235 and over-the-counter medications and dosages, diet restrictions,
 236 mobility restrictions, and other physical limitations.

237 4. Provide documentation signed by a health care provider
 238 licensed in this state which indicates that the ADRD participant
 239 is free of the communicable form of tuberculosis and free of
 240 signs and symptoms of other communicable diseases.

241 (b) Before admitting an ADRD participant to an adult day
 242 care center licensed under this section, the center shall
 243 determine whether:

244 1. The medical, psychological, safety, and behavioral
 245 support and intervention required by the ADRD participant can be
 246 provided by the center.

247 2. The resources required to assist with the ADRD
 248 participant's acuity level of care and support needed can be
 249 provided or coordinated by the center.

250 (8) (a) An ADRD participant's file must include a data
 251 sheet, which must be completed within 45 days before or within
 252 24 hours after admission to an adult day care center licensed
 253 under this section. The data sheet must contain:

254 1. Information regarding the status of the ADRD
 255 participant's enrollment in an identification or wandering-
 256 prevention program, including the name of the program; and

257 2. A current photograph of the ADRD participant.

258 (b) Dementia-specific services shall be documented in the
 259 ADRD participant's file.

260 (c) An ADRD participant's plan of care must be reviewed at
 261 least quarterly. Notes regarding services provided to the ADRD

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262 participant must be entered at least monthly in the ADRD
 263 participant's file, and must indicate the ADRD participant's
 264 status or progress toward achieving identified goals. Additional
 265 notes must be entered more frequently if indicated by the ADRD
 266 participant's condition.

267 (d) An ADRD participant shall annually provide the center
 268 with updated medical documentation required under subparagraphs
 269 (7) (a) 3. and 4., and the center must place that documentation in
 270 the ADRD participant's file.

271 (9) An adult day care center licensed under this section
 272 must give to each person who enrolls as an ADRD participant in
 273 the center, or the caregiver, a copy of the ADRD participant's
 274 plan of care, as well as information regarding resources to
 275 assist in ensuring the safety and security of the ADRD
 276 participant, which must include, but need not be limited to,
 277 information pertaining to driving for those persons affected by
 278 dementia, available technology on wandering-prevention devices
 279 and identification devices, the Silver Alert program in this
 280 state, and dementia-specific safety interventions and strategies
 281 that can be used in the home setting.

282 (10) If an ADRD participant's enrollment in the center is
 283 involuntarily terminated due to medical or behavioral reasons,
 284 the center shall coordinate and execute appropriate discharge
 285 procedures with the ADRD participant and the caregiver.

286 (11) This section does not prohibit an adult day care
 287 center that does not become licensed under this section from
 288 providing adult day care services to persons who have
 289 Alzheimer's disease or other dementia-related disorders.

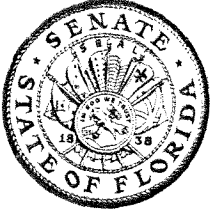
290 (12) The Department of Elderly Affairs may adopt rules to

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291 administer this section.

292 Section 3. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Budget - Subcommittee on Criminal and Civil Justice
Appropriations, *Chair*
Banking and Insurance
Budget
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Communications, Energy, and Public Utilities
Health Regulation
Military Affairs, Space, and Domestic Security

JOINT COMMITTEE:

Administrative Procedures

SENATOR MIKE FASANO

11th District

January 12, 2012

The Honorable Rene Garcia
Senate Committee on Health Regulation
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Garcia:

A handwritten signature in blue ink that reads "Rene".

My SB 694 pertaining to Adult Day Care Centers is now in your committee for consideration. I would greatly appreciate it if you would place this bill on the first available agenda for review by the committee.

Thank you in advance for your consideration of this request. As always, if there is ever anything I can do for you please do not hesitate to call on me.

Yours truly,

A handwritten signature in blue ink that reads "Mike Fasano".

Mike Fasano
State Senator, District 11

MF/gc

Cc: Sandra R. Stovall, Staff Director

A black mouse cursor icon pointing towards the "ENTERED" stamp.

ENTERED

REPLY TO:

- 8217 Massachusetts Avenue, New Port Richey, Florida 34653-3111 (727) 848-5885
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5062

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD



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

1/25/12
Meeting Date

Topic Adult Day Care Centers

Bill Number 694
(if applicable)

Name Laura Cantwell

Amendment Barcode _____
(if applicable)

Job Title _____

Address 200 West College Avenue, St. 304
Street
Tallahassee FL 32301
City State Zip

Phone 577-5163

E-mail lcantwell@aar.org

Speaking: For Against Information

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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



1-25-12

Meeting Date

Topic Alzheimer's Day Care Centers

Bill Number 694
(if applicable)

Name FELY CURVA, Ph.D.

Amendment Barcode _____
(if applicable)

Job Title Partner, Curva & Associates LLC

Address 1212 Piedmont Dr.

Phone (850) 508-2256

Street

Tallahassee

FL

32312

E-mail curva@mindspring.com

City

State

Zip

Speaking: For Against Information

Representing Alzheimer's Foundation of America

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD



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1/25/12
Meeting Date

Topic ALZHEIMERS DAYCARE LICENSURE

Bill Number 694
(if applicable)

Name CAROLE DUNCANSON

Amendment Barcode _____
(if applicable)

Job Title _____

Address 225 S ADAMS ST #250
Street
TALAHASSEE FL 32301
City State Zip

Phone 566 9056

E-mail CAROLECD@AOL.COM

Speaking: For Against Information

Representing ALZHEIMER'S COMMUNITY CARE

Appearing at request of Chair: Yes No

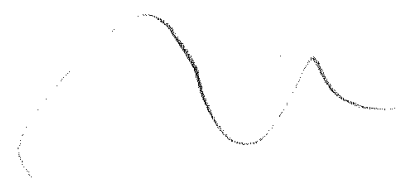
Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
APPEARANCE RECORD

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



1 / 25 / 2012

Meeting Date

Topic _____

Bill Number 694
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

Phone 727/897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1856

INTRODUCER: Senator Flores

SUBJECT: Public Records

DATE: January 23, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Pre-meeting
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

The bill amends the James and Esther King Biomedical Research Program (King Program) and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program) to prohibit any member of the Biomedical Research Advisory Council (the council) or peer review panel from participating in any council or panel discussion or decision concerning a research proposal by any entity with which the member is associated. The bill also deletes provisions that peer review panels be subject to public records laws.

The bill provides a statement of public necessity for the exemption from public record of information discussed by a peer review panel regarding the funding of a biomedical grant proposal. Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill is linked to SB 616 and will take effect on the same date that SB 616 or similar legislation becomes a law.

This bill amends ss. 215.5602 and 381.922, F.S., and creates one undesignated section of law.

II. Present Situation:

The James and Esther King Biomedical Research Program

The purpose of the King Program¹ is to provide an annual and perpetual source of funding to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease.² The long-term goals of the program are to:

- Improve the health of Floridians by researching better prevention, diagnoses, treatments, and cures for cancer, cardiovascular disease, stroke, and pulmonary disease;
- Expand the foundation of biomedical knowledge relating to the prevention, diagnosis, treatment, and cure of diseases related to tobacco use;
- Improve the quality of the state's academic health centers by bringing the advances of biomedical research into the training of physicians and other health care providers;
- Increase the state's per capita funding for research by undertaking new initiatives in public health and biomedical research that will attract additional funding from outside of Florida; and
- Stimulate economic activity in the state in areas related to biomedical research, such as the research and production of pharmaceuticals, biotechnology, and medical devices.

The King Program offers competitive grants to researchers throughout Florida. Grant applications from any university or established research institute³ in Florida will be considered for biomedical research funding. All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding.

The State Surgeon General, after consultation with the council, is authorized to award grants and fellowships on the basis of scientific merit⁴ within the following three categories:

- Investigator-initiated research grants;
- Institutional research grants; and
- Predoctoral and postdoctoral research fellowships.⁵

¹ The Florida Legislature created the Florida Biomedical Research Program in 1999 within the department (ch. 99-167, L.O.F.). The Florida Biomedical Research Program was renamed the James and Esther King Biomedical Research Program during Special Session B of the 2003 Legislature (ch. 2003-414, L.O.F.).

² Section 215.5602, F.S.

³ An "established research institute" is any Florida non-profit or foreign non-profit corporation covered under ch. 617, F.S., with a physical location in Florida, whose stated purpose and power is scientific, biomedical or biotechnological research or development and is legally registered with the Florida Department of State, Division of Corporations. This includes the federal government and non-profit medical and surgical hospitals, including veterans' administration hospitals. See James & Esther King Biomedical Research Program, *Call for Grant Applications: Biomedical, Biotechnological, and Social Scientific Research and Development, Fiscal Year 2009-2010*, page 7, available at: http://forms.floridabiomed.com/jek_call/King%20Call%2009-10.pdf (Last visited on January 23, 2012).

⁴ See the "Grant Application Review and Processing" section of Senate Interim Report 2010-219, page 7, for more information about assessing scientific merit. The report is available at: http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-219hr.pdf (Last visited on January 23, 2012).

⁵ Section 215.5602(5)(b), F.S.

The King Program was to expire on January 1, 2011, pursuant to s. 215.5602, F.S. However, the Legislature continued the program in 2010 by enacting HB 5311.⁶

The William G. “Bill” Bankhead, Jr., and David Coley Cancer Research Program

The 2006 Legislature created the Bankhead-Coley Program within the Department of Health (the department).⁷ The purpose of the program is to advance progress toward cures for cancer through grants awarded for cancer research.

Applications for funding cancer research from any university or established research institute in the state will be considered under the Bankhead-Coley Program. All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding. The State Surgeon General, after consultation with the council, is authorized to award grants and fellowships on the basis of scientific merit⁸ within the following three categories:

- Investigator-initiated research grants;
- Institutional research grants; and
- Collaborative research grants, including those that advance the finding of cures through basic or applied research.

As with the King Program, the Bankhead-Coley Program was to expire on January 1, 2011, pursuant to s. 215.5602, F.S. However, the Legislature also continued this program in 2010 when it enacted HB 5311.⁹

Biomedical Research Advisory Council¹⁰ and Peer Review Panel¹¹

The purpose of the council is to advise the State Surgeon General as to the direction and scope of the King Program. The council is also required to consult with the State Surgeon General concerning grant awards for cancer research through the Bankhead-Coley Program.¹² Currently there are 11 members on the council, authorized to serve no more than two consecutive, 3-year terms.

In order to ensure that proposals for research funding within the King Program and the Bankhead-Coley Program are appropriate and evaluated fairly on the basis of scientific merit, a peer review panel of independent, scientifically qualified individuals is appointed to review the scientific content of each proposal to establish a “scientific”¹³ priority score.¹⁴ To eliminate

⁶ Chapter 2010-161, L.O.F.

⁷ Section 381.922, F.S., (ch. 2006-182, L.O.F.).

⁸ *Supra* fn. 5.

⁹ Chapter 2010-161, L.O.F.

¹⁰ Section 215.5602(3), F.S.

¹¹ Section 215.5602(6) and (7), and s. 381.922(3)(b), F.S.

¹² Section 381.922(3)(a), F.S. However, s. 215.5602(11), F.S., contains an inconsistency with respect to the responsibility of the Council concerning awarding grants for cancer research.

¹³ The King Program requires a *scientific* priority score in s. 215.5602(6), F.S. The Bankhead-Coley Program requires a priority score in s. 381.922(3)(b), F.S.

¹⁴ A Bridge Grant application is ranked solely by the priority score or percentile assigned to its qualifying federal proposal in an eligible federal review process.

conflicts of interest, peer reviewers come from outside the state of Florida. Reviewers are experts in their fields from universities, government agencies, and private industry who are matched according to application topic and area of expertise. The priority scores must be considered by the council in determining which proposals will be recommended for funding to the State Surgeon General.

Meetings of the council and the peer review panel are subject to ch. 119, F.S., relating to public records; s. 286.011, F.S., relating to public meetings; and s. 24, Art. I of the State Constitution relating to access to public meetings and records.

Public Records

Article I, s. 24 of the State Constitution, provides that:

(a) Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,¹⁵ which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency¹⁶ records are available for public inspection¹⁶. The term “public record” is broadly defined 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.¹⁷

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate,

¹⁵ Chapter 119, F.S.

¹⁶ The word “agency” is defined in s. 119.011(2), F.S., 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.”

¹⁷ s. 119.011(12), F.S.

communicate, or formalize knowledge.¹⁸ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.¹⁹

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.²⁰ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.²¹

The Open Government Sunset Review Act (the Act)²² provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act. The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.²³

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁸ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

¹⁹ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

²⁰ Attorney General Opinion 85-62.

²¹ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

²² s. 119.15, F.S.

²³ s. 119.15(6)(b), F.S.

Companion Bill

SB 616 is a companion to this bill and revises several provisions relating to the King Program and the Bankhead-Coley Program.

III. Effect of Proposed Changes:

Section 1 amends s. 215.5602, F.S., relating to the King Program, to prohibit any member of the council or peer review panel from participating in any council or panel discussion or decision concerning a research proposal by any entity with which the member is associated. The bill also deletes a provision that peer review panels are subject to Art. I, s. 24 of the State Constitution, ch. 119, F.S., and s. 286.011, F.S.

Section 2 amends s. 381.922, F.S., relating to the Bankhead-Coley Program, to make the same changes as in section 1.

Section 3 provides a statement of public necessity for the exemption from public record of information discussed by a peer review panel regarding the funding of a biomedical grant proposal. Specifically the statement provides that the Legislature finds that confidentiality is a hallmark of scientific peer review when awarding grants and that such confidentiality is practiced by the National Science Foundation and the National Institutes of Health. In addition, the confidentiality of the peer review panel's discussions allows for candid exchanges between the reviewers critiquing proposals submitted for funding and serves a public good by ensuring that decisions are based upon merit without bias or undue influence.

Section 4 states that the bill will take effect on the same date that the linked bill or similar legislation takes effect, if such a bill is adopted during the same legislative session or extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

This bill provides a statement of public necessity for a public records exemption for information disclosed by a peer review panel regarding the funding of a biomedical grant proposal.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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

None.

B. Private Sector Impact:

Information discussed by a peer review panel regarding the funding of a biomedical grant proposal will be made confidential and exempt from public record.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

No bill number is stated in line 63. Without specifying the number of the linked bill which must pass in order for this bill to become law, this bill will never take effect.

Art. I, s. 24 of the State Constitution states that a general bill exempting records or meetings from public access must contain only provisions for such exemptions in the bill text. Sections 1 and 2 of the bill, which provide amendments to current statute, do not fulfill this provision and invalidate any public records exemption proposed therein.

Art. I, s. 24 of the State Constitution also requires that the bill state with specificity the public necessity justifying any public records exemption and that the bill be no broader than necessary to accomplish this justification. Further, s. 119.15, F.S., (the Act) provides specific criteria which must be met to be considered an “identifiable public purpose” which cannot be accomplished without a public records exemption. The reasons for exemption listed in this bill may not be specific or substantive enough to meet statutory or constitutional criteria.

The Act provides for the one-time review of each newly created or expanded exemption from public records law. Bills that create or expand public records exemptions must specify the date by which exemption must be reinstated by the Legislature and should specifically require legislative review of the exemption in accordance with s. 119.15, F.S. SB 1856 does not mention these provisions.

Finally, though the bill gives a statement of intent as to why certain peer research panel information should be considered confidential and exempt from public record, there is no provision in the bill that explicitly exempts such information or provides specific circumstances under which this information may be disclosed.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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



878622

LEGISLATIVE ACTION

Senate

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House

The Committee on Health Regulation (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Exemptions from public records and public meetings requirements; peer review panels.-

(1) That portion of a meeting of a peer review panel in which applications for biomedical research grants under s. 215.5602, Florida Statutes, or s. 381.922, Florida Statutes, are discussed is exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution.

(2) Any records generated by the peer review panel relating



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13 to review of applications for biomedical research grants, except
14 final recommendations, are confidential and exempt from s.
15 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State
16 Constitution.

17 (3) Research grant applications provided to the peer review
18 panel are confidential and exempt from s. 119.07(1), Florida
19 Statutes, and s. 24(a), Art. I of the State Constitution.

20 (4) Information which is held confidential and exempt under
21 this section may be disclosed with the express written consent
22 of the individual to whom the information pertains or the
23 individual's legally authorized representative, or by court
24 order upon showing good cause.

25 (5) Subsections (1), (2), and (3) are subject to the Open
26 Government Sunset Review Act in accordance with s. 119.15,
27 Florida Statutes, and shall stand repealed on October 2, 2017,
28 unless reviewed and saved from repeal through reenactment by the
29 Legislature.

30 Section 2. The Legislature finds that it is a public
31 necessity that meetings of peer review panels under the James
32 and Esther King Biomedical Research Program and the William G.
33 "Bill" Bankhead, Jr., and David Coley Cancer Research Program,
34 in which applications for the biomedical research grants are
35 discussed, certain records generated by the peer review panel
36 related to the review of applications for biomedical research
37 grants, and research grant applications provided to such peer
38 review panels be held confidential and exempt from disclosure.
39 The research grant applications contain information of a
40 confidential nature, including ideas and processes, the
41 disclosure of which could injure the affected researcher.



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42 Maintaining confidentiality is a hallmark of scientific peer
43 review when awarding grants, is practiced by the National
44 Science Foundation and the National Institutes of Health, and
45 allows for candid exchanges between reviewers critiquing
46 proposals. The Legislature further finds that closing access to
47 meetings of scientific peer review panels in which biomedical
48 research applications are discussed serves a public good by
49 ensuring that decisions are based upon merit without bias or
50 undue influence. Further, the Legislature finds that records
51 generated during meetings of the peer review panels related to
52 the review of applications for biomedical research grants must
53 be protected for the same reasons that justify the closing of
54 such meetings.

55 Section 3. This act shall take effect on the same date that
56 SB 616 or similar legislation takes effect, if such legislation
57 is adopted in the same legislative session or an extension
58 thereof and becomes law.

59
60
61 ===== T I T L E A M E N D M E N T =====

62 And the title is amended as follows:

63 Delete everything before the enacting clause
64 and insert:

65 A bill to be entitled

66 An act relating to public meetings and public records;
67 providing an exemption from public meeting requirements for
68 certain meetings of a peer review panel under the James and
69 Esther King Biomedical Research Program and the William G.
70 "Bill" Bankhead, Jr., and David Coley Cancer Research Program;



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71 providing an exemption from public records requirements for
72 certain records related to biomedical research grant
73 applications; providing an exemption from public records
74 requirements for research grant applications provided to, and
75 reviewed by, the peer review panel; providing exceptions to the
76 exemption; providing for legislative review and repeal of the
77 exemptions; providing a statement of public necessity; providing
78 a contingent effective date.

By Senator Flores

38-01678A-12

20121856__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 215.5602, F.S., relating to the James and Esther King
 4 Biomedical Research Program; providing an exemption
 5 from public records and public meetings requirements
 6 for peer review panels meeting to review certain grant
 7 proposals; amending s. 381.922, F.S., relating to the
 8 William G. "Bill" Bankhead, Jr., and David Coley
 9 Cancer Research Program; providing an exemption from
 10 public records and public meetings requirements for
 11 peer review panels meeting to review certain grant
 12 proposals; providing a statement of public necessity;
 13 providing a contingent effective date.

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

15 Section 1. Subsection (7) of section 215.5602, Florida
 16 Statutes, is amended to read:

17 215.5602 James and Esther King Biomedical Research
 18 Program.—

19 (7) The council and the peer review panel shall establish
 20 and follow rigorous guidelines for ethical conduct and adhere to
 21 a strict policy with regard to conflict of interest. A member of
 22 the council or panel may not participate in any council or panel
 23 discussion or decision with respect to a research proposal by
 24 any firm, entity, or agency with which the member is associated
 25 as a member of the governing body or as an employee, or with
 26 which the member has entered into a contractual arrangement.
 27 Meetings of the council are ~~and the peer review panels shall be~~

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

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30 subject to the provisions of chapter 119, s. 286.011, and s. 24,
 31 Art. I of the State Constitution.

32 Section 2. Paragraph (c) of subsection (3) of section
 33 381.922, Florida Statutes, is amended to read:

34 381.922 William G. "Bill" Bankhead, Jr., and David Coley
 35 Cancer Research Program.—

36 (3)

37 (c) The council and the peer review panel shall establish
 38 and follow rigorous guidelines for ethical conduct and adhere to
 39 a strict policy with regard to conflicts of interest. A member
 40 of the council or panel may not participate in any council or
 41 panel discussion or decision with respect to a research proposal
 42 by any firm, entity, or agency with which the member is
 43 associated as a member of the governing body or as an employee
 44 or with which the member has entered into a contractual
 45 arrangement. Meetings of the council ~~and the peer review panels~~
 46 are subject to chapter 119, s. 286.011, and s. 24, Art. I of the
 47 State Constitution.

48 Section 3. The Legislature finds that it is a public
 49 necessity that information discussed by a peer review panel
 50 regarding the funding of a biomedical grant proposal be made
 51 confidential and exempt from the requirements of s. 119.07(1),
 52 Florida Statutes, and s. 24(a), Article I of the State
 53 Constitution. The Legislature further finds that maintaining
 54 confidentiality is a hallmark of scientific peer review when
 55 awarding grants, is practiced by the National Science Foundation
 56 and the National Institutes of Health, and allows for candid
 57 exchanges between reviewers critiquing proposals submitted for
 58 funding. The Legislature further finds that maintaining the

Page 2 of 3

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

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59 confidentiality of meetings of scientific peer review panels
60 serves a public good by ensuring that decisions are based upon
61 merit without bias or undue influence.

62 Section 4. This act shall take effect on the same date that
63 SB ____ or similar legislation takes effect, if such legislation
64 is adopted in the same legislative session or an extension
65 thereof and becomes law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Budget
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Reapportionment
Rules

SENATOR ANITERE FLORES

Majority Whip
38th District

January 18, 2012

The Honorable Rene Garcia
Chair of Committee on Health Regulation
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Garcia:

I respectfully request that you place SB 1856, regarding public records and public meetings, on the next Health Regulation Committee agenda. SB 1856 is a link bill to SB 616 which passed unanimously in the committee for Health Regulation.

I look forward to presenting this bill before your committee.

Please do not hesitate to contact me should you have any questions. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Anitere Flores".

Anitere Flores

CC: Ms. Sandra Stovall, Staff Director, Committee on Health Regulation, 530 Knott Building



REPLY TO:

- 10691 North Kendall Drive, Suite 309, Miami, Florida 33176 (305) 270-6550
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5130

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 594

INTRODUCER: Senator Storms

SUBJECT: Medical Care

DATE: January 22, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Pre-meeting
2.	_____	_____	GO	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends s. 395.3025, F.S., to authorize disclosure of patient records without the consent of the patient or his or her legal representative to the Department of Health (DOH), rather than the Agency for Health Care (AHCA), upon issuance of a subpoena to investigate, prosecute, or appeal disciplinary proceedings against a health care practitioner. The fee amount authorized to be charged to the DOH for copies of patient records is revised.

This bill amends s. 456.057, F.S., to authorize the DOH to obtain patient records pursuant to a subpoena without attempting to obtain written authorization from the patient, but only if the DOH and the probable cause panel of the appropriate board find reasonable cause to believe that obtaining authorization from the patient would jeopardize an investigation.

This bill amends s. 456.074, F.S., to authorize the DOH to issue an emergency order suspending or restricting the license of a health care practitioner who has committed, or is under investigation or prosecution for, an act that the practitioner could be disciplined for under the applicable practice act or ch. 456, F.S.

This bill substantially amends the following sections of the Florida Statutes: 395.3025, 456.057, and 456.074.

II. Present Situation:

The Department of Health

The DOH, Division of Medical Quality Assurance (MQA), regulates health care practitioners to protect and promote the health of residents and visitors in Florida. Currently, the MQA supports licensure and disciplinary activities for 43 health care professions and 37 types of facilities.¹ The Bureau of Health Care Practitioner Regulation (HCPR), under the MQA, is comprised of a bureau chief and eight offices under the supervision of executive directors. Each of the eight offices represent a different health care profession, including:

- Nursing and Certified Nursing Assistants.
- Chiropractic Medicine, Optometry, Podiatric Medicine, Clinical Laboratory Personnel, Orthotists and Prosthetists, Nursing Home Administrators, and Medical Physicists.
- Certified Master Social Workers, Clinical Social Workers, Marriage & Family Therapy and Mental Health Counseling, Dentists, Dental Hygienists and Dental Laboratories, Opticianry, Hearing Aid Specialists, and Athletic Trainers.
- EMTs, Paramedics, Radiologic Technologists (Certification Unit).
- Electrolysis, Physical Therapy, Dietetics and Nutrition, Occupational Therapy, Respiratory Care, Psychology, and School Psychology.
- Acupuncture, Osteopathic Medicine, Midwifery, Speech-Language Pathology and Audiology, and Massage Therapy.
- Medicine, Physician Assistants, Naturopaths, Anesthesiologist Assistants, Office Surgery Registration, and Pain Management Clinic Registration.
- Pharmacists and Pharmacies.²

The HCPR coordinates with 22 boards and 6 councils to regulate health care professions and facilities.³

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.⁴ Board members share authority with the DOH to develop rules for licensure, establish exams, set fees, establish guidelines for discipline, and reduce the unlicensed practice of health care professions.⁵ Boards are also responsible for approving or denying applications for licensure and making disciplinary decisions on whether a practitioner practices within the authority of their practice act.⁶ The range of disciplinary actions taken by a board includes citations, suspensions, reprimands, probations, and revocations.⁷

¹ Florida Dept. of Health, Division of Medical Quality Assurance, *About MQA*, available at: <http://www.doh.state.fl.us/MQA/wearemqa.htm> (Last visited on January 23, 2012). See also Florida Dept. of Health, Division of Medical Quality Assurance, *2010-2011 Annual Report*, pg. 10, available at: <http://www.doh.state.fl.us/MQA/Publications/10-11mqa-ara.pdf> (Last visited on January 23, 2012).

² Florida Dept. of Health, Division of Medical Quality Assurance, *Bureau of Health Care Practitioner Regulation*, available at: http://www.doh.state.fl.us/MQA/info_hcpr.pdf (Last visited on January 23, 2012).

³ *Id.*

⁴ Section 456.001(1), F.S.

⁵ *Supra* fn. 2.

⁶ Practice acts refer to the legal authority in state statute that grants a profession the authority to provide services to the public.

⁷ Florida Dept. of Health, Division of Medical Quality Assurance, *2010-2011 Annual Report*, pg. 7, available at: <http://www.doh.state.fl.us/MQA/Publications/10-11mqa-ara.pdf> (Last visited on January 23, 2012).

Section 456.072(2), F.S., provides a board with the authority to take disciplinary action against a licensee. These actions include:

- Refusal to certify, or to certify with restrictions, an application for a license;
- Suspension or permanent revocation of a license;
- Restriction of a practice or a license;
- Imposition of an administrative fine not to exceed \$10,000 per offense, unless the licensee commits fraud for which the board must impose a fine of \$10,000 per offense;
- Issuance of a reprimand or letter of concern;
- Imposition of probationary conditions on the licensee;
- Corrective action.
- Imposition of an administrative fine for a violation pertaining to patient rights;
- Refund of fees billed and collected from the patient or a third party on behalf of the patient; and
- Remedial education.

The board can take action for any legally sufficient, written and signed complaint that is filed before it.⁸ Section 456.073(1), F.S., provides that a complaint is legally sufficient if it contains the ultimate facts that show a violation of ch. 456, F.S., the relevant practice act, or any rule adopted by the DOH or the relevant board. The DOH also has the authority to investigate a complaint when the original complainant withdraws the complaint or when the complainant is anonymous if the alleged violation is substantial. The DOH may initiate an investigation if it has reasonable cause to believe that a licensee has violated a Florida Statute, or a rule of either the board or the DOH.⁹

The subject of an investigation has 20 days to respond in writing to the complaint or document after service.¹⁰ Whatever is submitted is considered by the probable cause panel of the respective board.¹¹ The right to respond does not preclude the State Surgeon General from issuing a summary emergency order, if it is necessary to protect the public.¹²

The DOH has 6 months to complete an investigation and submit it to the appropriate probable cause panel.¹³ A determination as to probable cause is made by a majority vote of the panel.¹⁴ The panel may request additional investigative information from the DOH, and this must be done within 15 days of receiving the investigative report from the department or agency.¹⁵ The panel has 30 days from receiving the final investigative report to make a determination of probable cause.¹⁶ However, the State Surgeon General may grant extensions of these time limits.¹⁷ If the

⁸ Section 456.073(1), F.S.

⁹ Section 456.073, F.S. *See also* s. 456.074(2), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Section 456.073(2), F.S.

¹⁴ Section 456.073(4), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

panel does not make a determination within the statutory timeframe, the DOH is directed to do so within 10 days of the expiration of the time limit.¹⁸

The DOH is directed to follow the determination of the probable cause panel, and if probable cause exists, the DOH is directed to file a formal complaint against the subject, and prosecute pursuant to ch. 120, F.S. If the DOH decides not to prosecute, it may refer the issue back to the appropriate board, which may then choose to file a formal complaint and prosecute pursuant to ch. 120, F.S. Referrals to the Division of Administrative Hearings, must occur within 1 year of filing the complaint.¹⁹ Chapter 120, F.S., provides the practitioner with the right to appeal the action.

The DOH is further directed to notify the person who filed the complaint, and if probable cause is not found, provide them with an opportunity 60 days from the determination, to bring additional information to the DOH.²⁰

Emergency Orders

Section 120.60(6), F.S., provides the DOH with broad authority to take disciplinary action in the case of immediate serious danger to the public health, safety, or welfare. A license may be suspended, restricted, or limited on an emergency basis if:

- The procedure provides at least the same procedural protection as is given by other statutes, the state Constitution, or the U.S. Constitution;
- The action is necessary to protect the public interest under the emergency procedure;
- There are specific facts that outline the finding of an immediate danger to public health, safety, or welfare and reasons for concluding the process was fair under the circumstances.

Section 456.074, F.S., provides the DOH with separate authority from s. 120.60(6), F.S., to issue an emergency order suspending the license of certain health care practitioners under very specific circumstances.

An emergency order *must* be issued when a medical doctor, doctor of osteopathy, chiropractor, podiatrist, naturopath, optometrist, nurse, pharmacist, dentist or hypnotist pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication to:

- A felony under:
 - ch. 409, F.S., relating to social and economic assistance;
 - ch. 817, F.S., relating to fraudulent practices;
 - ch. 893, F.S., relating to drug abuse prevention and control;
 - 21 U.S.C. ss. 801-970, relating to controlled substances; or
 - 42 U.S.C. ss. 1395-1396, relating to Medicaid and Medicare.
- A misdemeanor or felony under:
 - 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, relating to specified crimes; or
 - 42 U.S.C. ss 1320a-7b, relating to Medicaid.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Section 456.073(9)(c), F.S.

The DOH has discretionary authority pursuant s. 456.074, F.S., to issue an emergency order suspending or restricting the license of certain health care practitioners when:

- The board has found a physician or osteopathic physician in violation of s. 458.331(1)(t), F.S., or s. 459.015(1)(x), F.S., relating to medical malpractice, in regard to treatment of three or more patients and there is probable cause to find an additional violation of these sections.
- A healthcare practitioner, as defined in s. 456.001(4), F.S., tests positive for a pre-employment or employer-ordered drug test, when the practitioner does not have a lawful prescription and a legitimate medical reason for using such a drug.

The DOH must suspend the license of a health care practitioner who has defaulted on state or federally guaranteed student loans after 45 days of providing notice to a practitioner of the impending suspension, unless the practitioner provides proof within the 45 days that new payment terms have been agreed upon by all parties to the loan.²¹

While Florida law does not specify the interaction between these two sections, courts have interpreted s. 456.074, F.S., to operate independently of s. 120.60(6), F.S. Courts appear to interpret s. 456.074(1), F.S., in a way that is analogous to strict liability, such that the due process requirements of s. 120.60(6), F.S., including proof of immediate danger to public safety, do not apply. Courts that have interpreted that s. 456.074(1), F.S., mandates an emergency suspension and leaves the DOH with no discretion.²² In contrast, s. 456.074(3), F.S., provides the DOH with discretion as to an emergency suspension.

Following the issuance of an emergency suspension, the person has an immediate right of appeal.²³ An emergency suspension order is effective until it is overturned by an appellate court, vacated by the State Surgeon General or superseded by a final order. The DOH is required to initiate non-emergency administrative proceedings within 20 days of the emergency suspension.²⁴ The DOH issued 326 emergency suspensions in fiscal year 2010-11.²⁵

Access to Patient Records without Consent

In Florida, patients have a constitutional right to privacy under Article I, Section 23 of the State Constitution. The Florida Supreme court has recognized patients' right to privacy of their medical records. However, the right to privacy of medical records must be balanced with and yields to any compelling state interest.²⁶ Section 395.3025(4), F.S., relating to patient records in hospitals, and s. 456.057, F.S., relating to patient records held by health care practitioners, authorize the release of patient records without consent of the person to whom they pertain under certain circumstances.

²¹ Section 456.074, F.S.

²² See *Mendelsohn v. Department of Health*, 68 So.3d 965 (Fla 1st DCA, 2011) (The DOH could not issue emergency suspension because petitioner did not commit enumerated violation of s. 456.074(1), F.S.); *Bethencourt-Miranda v. Department of Health*, 910 So.2d 927, (Fla 1st DCA, 2005) (No findings were necessary for an emergency suspension for violation of 21 U.S.C. s. 846).

²³ Section 120.569(2)(n), F.S.

²⁴ Rule 28-106.501, F.A.C.

²⁵ Florida Department of Health analysis for SB 594 (2012). On file with Senate Committee on Health Regulation.

²⁶ *State v. Johnson*, 814 So.2d 390 (Fla. 2002).

III. Effect of Proposed Changes:

Section 1 amends s. 395.3025, F.S., to authorize the DOH, rather than the AHCA, to obtain patient records without consent of the patient or his or her legal representative, upon the issuance of a subpoena if for the purpose of investigating, prosecuting, or appealing a disciplinary proceeding. This change reflects the current statutory authority for the DOH to regulate health care practitioners.

This section revises the fee amount to be charged to the department for requests for copies of patient records. The facility providing the copies may charge a fee no to exceed \$1 per page, including sales tax and postage, and a fee not to exceed \$2 for nonpaper records. Currently the AHCA is charged no more than the facility's actual copying costs, including reasonable staff time.

This section also makes conforming changes, to require the existing public records exemption for the copied patient records to apply to the records obtained by the DOH and require the DOH make such records available to a practitioner when he or she makes a written request for the copied records.

Section 2 amends s. 456.057, F.S., to authorize the DOH to obtain patient records pursuant to a subpoena without attempting to obtain written authorization from the patient, if the probable cause panel of the appropriate board finds reasonable cause to believe that obtaining authorization from the patient would jeopardize an investigation.

Section 3 amends s. 456.074, F.S., to authorize the DOH to issue an emergency order suspending or restricting the license of any health care practitioner as defined in s. 456.001(4), F.S., who has committed, or is under investigation for, any act that would constitute the basis for discipline under the applicable practice act or ch. 456, F.S. Section 456.001(4), F.S., defines "health care practitioner" as any person licensed under:

- Chapter 457 (acupuncture);
- Chapter 458 (medical practice);
- Chapter 459 (osteopathic medicine);
- Chapter 460 (chiropractic medicine);
- Chapter 461 (podiatric medicine);
- Chapter 462 (naturopathy);
- Chapter 463 (optometry);
- Chapter 464 (nursing);
- Chapter 465 (pharmacy);
- Chapter 466 (dentistry);
- Chapter 467 (midwifery);
- Part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics);
- Chapter 478 (electrolysis);
- Chapter 480 (massage practice);

- Part III or part IV of chapter 483 (clinical laboratory personnel and medical physicists);
- Chapter 484 (dispensing of optical devices and hearing aids);
- Chapter 486 (physical therapy practice);
- Chapter 490 (psychological services); or
- Chapter 491 (clinical, counseling, and psychotherapy services).

Section 456.072, F.S., lists acts that are grounds for disciplinary action applicable to all health care practitioners. In addition, each practice act includes additional grounds for disciplinary action for the specific practitioner.

Section 4 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities or counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill reduces the amount that may be collected by a facility for making copies of patient's medical records because the facility may no longer charge for reasonable staff time.

C. Government Sector Impact:

The bill reduces the amount that the DOH will have to pay for copies of patient's medical records because the facility will no longer be able to charge for reasonable staff time.

Because the proposed bill specifies that the DOH may obtain patient records, this change will likely reduce subpoena challenges and the costs associated with such challenges.²⁷

The bill would allow the DOH to expedite the process of obtaining patient records, thereby saving the DOH time and money.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the DOH, although the bill appears to grant the DOH, rather than the AHCA, authority to obtain patient records, the DOH currently obtains patient records pursuant to subpoena under s. 395.3025, F.S.²⁹ The DOH claims that they obtained the authority to request such records when the prosecution of ch. 456, F.S., licensees was transferred from the AHCA to the DOH.

VIII. Additional Information:

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

None.

B. **Amendments:**

None.

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

²⁷ *Supra* fn. 25.

²⁸ *Id.*

²⁹ *Id.*



629692

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 456.074, Florida Statutes, is amended to
read:

456.074 Certain health care practitioners; immediate
suspension or restriction of license.-

(1) The department shall issue an emergency order
suspending the license of any person licensed under chapter 458,
chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
chapter 464, chapter 465, chapter 466, or chapter 484 who pleads



629692

13 guilty to, is convicted or found guilty of, or who enters a plea
14 of nolo contendere to, regardless of adjudication, to:

15 (a) A felony under chapter 409, chapter 817, or chapter 893
16 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396;
17 or

18 (b) A misdemeanor or felony under 18 U.S.C. s. 669, ss.
19 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s.
20 1349, or s. 1518 or 42 U.S.C. ss. 1320a-7b, relating to the
21 Medicaid program.

22 (2) If the board has previously found any physician or
23 osteopathic physician in violation of the provisions of s.
24 458.331(1)(t) or s. 459.015(1)(x), in regard to her or his
25 treatment of three or more patients, and the probable cause
26 panel of the board finds probable cause of an additional
27 violation of that section, then the State Surgeon General shall
28 review the matter to determine if an emergency suspension or
29 restriction order is warranted. Nothing in this section shall be
30 construed so as to limit the authority of the State Surgeon
31 General to issue an emergency order.

32 (3) The department may issue an emergency order suspending
33 or restricting the license of any health care practitioner as
34 defined in s. 456.001(4) who tests positive for any drug on any
35 government or private sector preemployment or employer-ordered
36 confirmed drug test, as defined in s. 112.0455, when the
37 practitioner does not have a lawful prescription and legitimate
38 medical reason for using such drug. The practitioner shall be
39 given 48 hours from the time of notification to the practitioner
40 of the confirmed test result to produce a lawful prescription
41 for the drug before an emergency order is issued.



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42 (4) Upon receipt of information that a Florida-licensed
43 health care practitioner has defaulted on a student loan issued
44 or guaranteed by the state or the Federal Government, the
45 department shall notify the licensee by certified mail that he
46 or she shall be subject to immediate suspension of license
47 unless, within 45 days after the date of mailing, the licensee
48 provides proof that new payment terms have been agreed upon by
49 all parties to the loan. The department shall issue an emergency
50 order suspending the license of any licensee who, after 45 days
51 following the date of mailing from the department, has failed to
52 provide such proof. Production of such proof does ~~shall~~ not
53 prohibit the department from proceeding with disciplinary action
54 against the licensee pursuant to s. 456.073.

55 (5) The department may issue an emergency order restricting
56 the license of any health care practitioner licensed under
57 chapter 458, chapter 459, chapter 461, or chapter 466 from
58 prescribing controlled substances, as defined in chapter 893, if
59 the licensee:

60 (a) Is arrested for, is criminally prosecuted for, or
61 commits, any act that is a violation of chapter 782;

62 (b) Is arrested for, or is criminally prosecuted, for any
63 act that directly relates to the importation, manufacture,
64 distribution, possession, transfer, sale, or prescribing of
65 controlled substances as defined in chapter 893; or

66 (c) Violates a provision of 21 U.S.C. ss. 801-971, relating
67 to the possession, transfer, sale, or prescribing of controlled
68 substances.

69
70 The department shall initiate administrative proceedings



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71 pursuant to chapter 120 for any emergency order issued under
72 this paragraph.

73 Section 2. Paragraph (m) is added to subsection (2) of
74 section 903.046, Florida Statutes, to read:

75 903.046 Purpose of and criteria for bail determination.—

76 (2) When determining whether to release a defendant on bail
77 or other conditions, and what that bail or those conditions may
78 be, the court shall consider:

79 (m) Whether the suspension of a license or the restriction
80 on the ability to practice a licensed profession as defined in
81 s. 456.001 is necessary to protect the community against
82 unreasonable danger from the criminal defendant.

83 Section 3. This act shall take effect July 1, 2012.

84
85 ===== T I T L E A M E N D M E N T =====

86 And the title is amended as follows:

87 Delete everything before the enacting clause
88 and insert:

89 A bill to be entitled
90 An act relating to suspension or restriction of the
91 license of a health care practitioner; amending s.
92 456.074, F.S.; authorizing that the Department of
93 Health issue an emergency order restricting the
94 license of a health care practitioner from prescribing
95 controlled substances if the practitioner is arrested
96 for, is criminally prosecuted for, or commits certain
97 criminal acts involving homicide or controlled
98 substances; requiring that the department initiate
99 administrative proceedings for the issuance of the



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100 emergency order; amending s. 903.046, F.S.; requiring
101 that the court, in determining whether to release a
102 defendant on bail or other conditions, consider
103 whether the suspension of a license or restriction on
104 the ability to practice a licensed health care
105 profession is necessary to protect the community
106 against unreasonable danger; providing an effective
107 date.

By Senator Storms

10-00624-12

2012594

1 A bill to be entitled
 2 An act relating to medical care; amending s. 395.3025,
 3 F.S.; providing powers of the Department of Health
 4 with regard to access to patient health records;
 5 amending s. 456.057, F.S.; providing for the
 6 department to obtain patient records without written
 7 authorization from the patient under certain
 8 circumstances; amending s. 456.074, F.S.; authorizing
 9 the department to issue an emergency order to suspend
 10 or restrict the license of a health care practitioner
 11 under certain circumstances; providing an effective
 12 date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Paragraph (e) of subsection (4) of section
 17 395.3025, Florida Statutes, is amended to read:

18 395.3025 Patient and personnel records; copies;
 19 examination.—

20 (4) Patient records are confidential and must not be
 21 disclosed without the consent of the patient or his or her legal
 22 representative, but appropriate disclosure may be made without
 23 such consent to:

24 (e) The department agency upon subpoena issued pursuant to
 25 s. 456.071, ~~but~~ The records obtained thereby must be used
 26 solely for the purpose of the agency, the department, and the
 27 appropriate professional board in their ~~its~~ investigation,
 28 prosecution, and appeal of disciplinary proceedings. If the
 29 department agency requests copies of the records, the facility

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

10-00624-12

2012594

30 shall charge a fee pursuant to subsection (1) ~~no more than its~~
 31 ~~actual copying costs, including reasonable staff time.~~ The
 32 records must be sealed and may ~~must~~ not be available to the
 33 public pursuant to s. 119.07(1) or any other statute providing
 34 access to records, nor may they be available to the public as
 35 part of the record of investigation for and prosecution in
 36 disciplinary proceedings made available to the public by the
 37 agency, the department, or the appropriate regulatory board.
 38 However, the department agency must make available, upon written
 39 request by a practitioner against whom probable cause has been
 40 found, any such records that form the basis of the determination
 41 of probable cause.

42 Section 2. Paragraph (a) of subsection (9) of section
 43 456.057, Florida Statutes, is amended to read:

44 456.057 Ownership and control of patient records; report or
 45 copies of records to be furnished.—

46 (9) (a) 1. The department may obtain patient records pursuant
 47 to a subpoena without written authorization from the patient if
 48 the department and the probable cause panel of the appropriate
 49 board, if any, find reasonable cause to believe that a health
 50 care practitioner has excessively or inappropriately prescribed
 51 any controlled substance specified in chapter 893 in violation
 52 of this chapter or any professional practice act or that a
 53 health care practitioner has practiced his or her profession
 54 below that level of care, skill, and treatment required as
 55 defined by this chapter or any professional practice act and
 56 also find that appropriate, reasonable attempts were made to
 57 obtain a patient release. Notwithstanding the foregoing, the
 58 department need not attempt to obtain a patient release when

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

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 59 investigating an offense involving the inappropriate
 60 prescribing, overprescribing, or diversion of controlled
 61 substances and the offense involves a pain-management clinic.
 62 The department may obtain patient records without patient
 63 authorization or subpoena from any pain-management clinic
 64 required to be licensed if the department has probable cause to
 65 believe that a violation of any provision of s. 458.3265 or s.
 66 459.0137 is occurring or has occurred and reasonably believes
 67 that obtaining such authorization is not feasible due to the
 68 volume of the dispensing and prescribing activity involving
 69 controlled substances and that obtaining patient authorization
 70 or the issuance of a subpoena would jeopardize the
 71 investigation.

72 2. The department may obtain patient records and insurance
 73 information pursuant to a subpoena without written authorization
 74 from the patient if the department and the probable cause panel
 75 of the appropriate board, if any, find reasonable cause to
 76 believe that a health care practitioner has provided inadequate
 77 medical care based on termination of insurance and also find
 78 that appropriate, reasonable attempts were made to obtain a
 79 patient release.

80 3. The department may obtain patient records, billing
 81 records, insurance information, provider contracts, and all
 82 attachments thereto pursuant to a subpoena without written
 83 authorization from the patient if the department and probable
 84 cause panel of the appropriate board, if any, find reasonable
 85 cause to believe that a health care practitioner has submitted a
 86 claim, statement, or bill using a billing code that would result
 87 in payment greater in amount than would be paid using a billing

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 88 code that accurately describes the services performed, requested
 89 payment for services that were not performed by that health care
 90 practitioner, used information derived from a written report of
 91 an automobile accident generated pursuant to chapter 316 to
 92 solicit or obtain patients personally or through an agent
 93 regardless of whether the information is derived directly from
 94 the report or a summary of that report or from another person,
 95 solicited patients fraudulently, received a kickback as defined
 96 in s. 456.054, violated the patient brokering provisions of s.
 97 817.505, or presented or caused to be presented a false or
 98 fraudulent insurance claim within the meaning of s.
 99 817.234(1)(a), and also find that, within the meaning of s.
 100 817.234(1)(a), patient authorization cannot be obtained because
 101 the patient cannot be located or is deceased, incapacitated, or
 102 suspected of being a participant in the fraud or scheme, and if
 103 the subpoena is issued for specific and relevant records.

104 4. Notwithstanding subparagraphs 1.-3., when the department
 105 investigates a professional liability claim or undertakes action
 106 pursuant to s. 456.049 or s. 627.912, the department may obtain
 107 patient records pursuant to a subpoena without written
 108 authorization from the patient if the patient refuses to
 109 cooperate or if the department attempts to obtain a patient
 110 release and the failure to obtain the patient records would be
 111 detrimental to the investigation.

112 5. If the department and the probable cause panel of the
 113 appropriate board, if any, find reasonable cause to believe that
 114 obtaining authorization from the patient would jeopardize the
 115 investigation, the department may obtain patient records
 116 pursuant to a subpoena without attempting to obtain written

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117 authorization from the patient.

118 Section 3. Subsection (5) is added to section 456.074,
119 Florida Statutes, to read:

120 456.074 Certain health care practitioners; immediate
121 suspension of license.—

122 (5) The department may issue an emergency order suspending
123 or restricting the license of any health care practitioner as
124 defined in s. 456.001(4) who has committed, or is under
125 investigation or prosecution for, any act that would constitute
126 the basis for discipline under the applicable practice act or
127 this chapter.

128 Section 4. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Children, Families, and Elder Affairs, *Chair*
Budget - Subcommittee on Criminal and Civil Justice
Appropriations
Community Affairs
Military Affairs, Space, and Domestic Security
Reapportionment
Transportation

SENATOR RONDA STORMS

10th District

January 17, 2012

Senator Rene Garcia, Chair
Senate Committee on Health Regulation
310 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

5301K

Dear Chairman Garcia:

Senate Bill 594, relating to *Medical Care*, has been referred to your committee for its first committee of reference.

I would greatly appreciate you placing SB 594 on the Health Regulation committee's agenda at your earliest convenience. Please do not hesitate to contact me should you have any questions.

Thank you for your consideration of this request.

Sincerely,

Senator Ronda Storms
Florida State Senate
10th District

Cc: Ms. Sandra R. Stovall, Staff Director
510 Knott Building



REPLY TO:

- Lithia Oaks Business Center, 421 Lithia Pinecrest Road, Brandon, Florida 33511 (813) 651-2189 FAX: (813) 651-2188
 - 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5072
- Internet Address: storms.ronda.web@flsenate.gov

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

spoke

1/25/12

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

Meeting Date

Topic ESO bill

Bill Number SB 594
(if applicable)

Name Ron Watson

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 118 E Jefferson St.

Phone 850-224-1089

Street Tallahassee FL 32301

E-mail rwatson@floridadental.org

City State Zip

Speaking: For Against Information

Representing FDA Florida Dental Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

spoke

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

1-25-12
Meeting Date

Topic Dept. of Health Emergency Orders

Bill Number 594
(if applicable)

Name Dr. Neal Dunn

Amendment Barcode Amendment
(if applicable)

Job Title Physician

Address 80 Doctor's Dr.
Street
Panama City, FL 32405
City State Zip

Phone 850 785 8557

E-mail _____

Speaking: For Against Information

Representing Florida Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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APPEARANCE RECORD



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

01/25/2012
Meeting Date

Topic MEDICAL CARE

Bill Number SB 594
(if applicable)

Name ERIC WESTFALL

Amendment Barcode _____
(if applicable)

Job Title LIEUTENANT

Address 123 W. INDIANA AVE
Street

Phone _____

DE LAMO FL 32720
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA SHERIFF'S ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

Spoke

1/25/12

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

Meeting Date

Topic _____

Bill Number 594
(if applicable)

Name Renee Alsobrook

Amendment Barcode _____
(if applicable)

Job Title Dep. General Counsel

Address 4052 Bald Cypress Way
Street
Tallahassee, FL 32395
City State Zip

Phone _____

E-mail renee.alsobrook@
doh.state.fl.us

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 278

INTRODUCER: Senator Sachs

SUBJECT: Preventing Deaths from Drug-related Overdoses

DATE: January 21, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.	Wilson	Stovall	HR	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates the “911 Good Samaritan Act” and provides that:

- A person making a good faith effort to obtain medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person’s seeking medical assistance.
- A person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions. The bill also adds the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence: The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

The effective date of the act is October 1, 2012.

This bill substantially amends section 921.0026, Florida Statutes. The bill creates section 893.21, Florida Statutes.

II. Present Situation:

Florida law currently contains a number of provisions that provide immunity from civil liability to persons in specified instances. Florida law also contains various provisions that allow criminal defendants to have their sentences reduced or suspended in certain instances. A description of these provisions follows.

Florida “Good Samaritan” Laws

The Good Samaritan Act, codified in s. 768.13, F.S., provides immunity from civil liability for those who render emergency care and treatment to individuals in need of assistance. The statute provides immunity for liability for civil damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations or at the scene of an emergency, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.¹
- Participates in emergency response activities of a local, state, or federal emergency response or management agency, if that person is providing services gratuitously and acts as a reasonably prudent person would have acted under the same or similar circumstances.²
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.³

Section 768.1325(3), F.S., provides that a person is immune from civil liability for any harm resulting from the use or attempted use of an automated external defibrillator device on a victim of a perceived medical emergency, without objection of the victim.

Section 768.1355(1), F.S., entitled the Florida Volunteer Protection Act, provides that any person who volunteers to perform any service for any nonprofit organization without compensation will incur no civil liability for any act or omission that results in personal injury or property damage if:

- The person was acting in good faith within the scope of any official duties performed under the volunteer service and the person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct on the part of the person in the performance of the duties.

Reduction or Suspension of Criminal Sentence

Section 921.186, F.S., allows the state attorney to move the sentencing court to reduce or suspend the sentence of persons convicted of a felony who provide substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant, or of any other person engaged in felonious criminal activity.

¹ Section 768.13(2)(a), F.S.

² Section 768.13(2)(d), F.S.

³ Section 768.13(3), F.S.

Mitigating Circumstances

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the “offense severity ranking chart”⁴ from level one (least severe) to level 10 (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.⁵

The points are added in order to determine the “lowest permissible sentence” for the offense. A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are “circumstances or factors that reasonably justify the downward departure.”⁶ Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include:

- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- The defendant acted under extreme duress or under the domination of another person.
- The defendant cooperated with the state to resolve the current offense or any other offense.⁷

Currently, there are no mitigating circumstances related to defendants who make a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

Possession of a Controlled Substance

Controlled substances are designated in s. 893.03, F.S., and are commonly referred to as “scheduled” drugs. The scheduled drugs are listed in Schedules I-V according to the potential for abuse or addiction, currently accepted medical use in treatment in the United States, and relative degree of danger to the user.

Generally, simple possession of a controlled substance is a third-degree felony punishable by up to five years in prison and a fine up to \$5,000.⁸ This is the “catch-all” offense, and all other drug offenses are specified “exceptions” to this general rule.

For example, two exceptions to the general rule are that simple possession of not more than 20 grams of cannabis⁹ and simple possession of not more than 3 grams of the substances listed in paragraphs 46-50 of Schedule I (c) are first-degree misdemeanors punishable by up to one year in jail and a fine up to \$1,000.¹⁰

⁴ Section 921.0022, F.S.

⁵ Section 921.0024, F.S., provides that a defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; and the defendant’s prior record and other aggravating factors.

⁶ Section 921.0026, F.S.

⁷ *Id.*

⁸ Section 893.13(6)(a), F.S.

⁹ For the purposes of s. 893.13(6)(b), F.S., cannabis is defined as all parts of any plant of the genus *Cannabis*, whether growing or not, and the seeds thereof.

¹⁰ Section 893.13(6)(b), F.S.

Simple possession of *more than* 10 grams of any substance named in paragraphs (a) and (b) of Schedule I¹¹ is specified as a first-degree felony punishable by up to 30 years in prison and a fine up to \$10,000.¹² Because it is not otherwise specified and therefore falls under the general rule, possession of *not more than* 10 grams of those same substances constitutes a third degree felony offense.¹³

Paragraphs (1)(a)-(l) of s. 893.135, F.S., prohibit the possession of various *larger quantities* of controlled substances as trafficking offenses. Drug trafficking offenses carry minimum mandatory prison sentences that increase in severity as the amount or weight of the drug possessed increases, including capital crimes if deaths result from the manufacture or importation of the drug.

To further illustrate the application of the general rule that simple possession of a controlled substance is a third degree felony unless there is a specified “exception,” remember that possession of *not more than 20 grams* of cannabis is a first degree misdemeanor. Under the trafficking statute, possession of *more than 25 pounds* of cannabis is a first degree felony. Because it is not otherwise specified, possession of *more than 20 grams but 25 pounds or less* of cannabis is a third degree felony offense under the general simple possession statute, s. 893.13(6)(a), F.S.

Proving the Crimes of Possession and Possession “With Intent to...”

Possession of controlled substances are generally punished according to the gram-weight of the substance and the listing of the substance in the Schedules found in s. 893.03, F.S. Sale, delivery, manufacture and purchase of controlled substances are punished more severely than simple possession of those substances and the sentences are also increased if the crime is committed within the specified vicinity of certain areas. The same holds true for the offenses of possession *with intent to* sell, manufacture, deliver or purchase controlled substances.

Proof of *actual* sale, manufacture, delivery or purchase is provided by direct evidence, generally eyewitness testimony from a person who actually participated in or saw a transaction occur or who witnessed drug manufacturing taking place.

In order to prove that a person possesses a controlled substance *with intent to* sell, manufacture, deliver or purchase the substance, prosecutors must prove the element of intent. This can be much more difficult. The evidence should show that the controlled substance is not intended for personal use, thereby allowing a jury to draw the inference that the substance is possessed with the intent to sell, manufacture, deliver or purchase it. In order to prove intent, such evidence as incriminating statements can be used but it is more likely to be shown using circumstantial evidence like the quantity of the substance in the person’s possession, its packaging, or whether drug paraphernalia is available.¹⁴

¹¹ These controlled substances include such designer drugs (created from synthetic substances) as Flunitrazepam, commonly known as “roofies,” as well as codeine, heroin and morphine.

¹² Section 893.13(6)(c), F.S.

¹³ Section 893.13(6)(a), F.S.

¹⁴ See *Lee v. State*, 51 So.3d 600 (Fla.2d DCA 2011); *Richards v. State*, 37 So.3d 925 (Fla. 4th DCA 2010).

911 Good Samaritan Laws in Other States

In New Mexico, the 911 Good Samaritan Act prevents the prosecution for drug possession based on evidence “gained as a result of the seeking of medical assistance” to treat a drug overdose.¹⁵ This law, which took effect in June 2007, was the first of its kind in the country.¹⁶

While many states have considered similar Good Samaritan immunity legislation, Alaska, Connecticut, New York, and Washington are the only other states to have passed such a law.¹⁷

Drug Overdose Statistics

In the United States in 2007, unintentional poisonings were the second leading cause of injury death (after motor-vehicle crashes) and approximately 93 percent of all unintentional poisoning deaths were caused by a drug poisoning, also known as drug overdose.¹⁸ During 2003-2009, a total of 16,550 drug overdose deaths were recorded by Florida medical examiners and 85.9 percent of drug overdose deaths were unintentional, 11.1 percent were suicides, 2.6 percent were of undetermined intent, and 0.4 percent were homicides or pending.¹⁹ Prescription medications were implicated in 76.1 percent of all drug overdose deaths, and illicit drugs were implicated in 33.9 percent of deaths; in 10.0 percent of deaths, both prescription and illicit drugs were found in lethal concentrations.²⁰

In 2010 there were 2,420 deaths in Florida resulting from unintentional injuries from poisoning by drugs and biological substances.²¹

III. Effect of Proposed Changes:

Section 1 provides that this act may be cited as the “911 Good Samaritan Act.”

Section 2 creates s. 893.21, F.S., to provide that a person who in good faith seeks medical assistance for an individual experiencing a drug-related overdose may not be charged, prosecuted, or penalized for possession of a controlled substance if the evidence for possession was obtained as a result of the person’s seeking medical assistance.

The bill provides that a person who experiences a drug-related overdose and is in need of medical assistance may not be charged, prosecuted, or penalized for possession of a controlled

¹⁵ Drug Policy Alliance, “Preventing Overdose, Saving Lives,” March 2009. Found at: <http://www.drugpolicy.org/library/overdose2009.cfm> (Last visited January 20, 2012).

¹⁶ *Id.*

¹⁷ Alaska Statute section 12.55.155(d)(19); effective September 2008. Connecticut Public Act No. 11-210.; effective 2011. Laws of New York s. 220.78; effective September 2011. Revised Code of Washington 69.50.315; effective June 2010.

¹⁸ Centers for Disease Control and Prevention, *Drug Overdose Deaths – Florida, 2003-2009*, Morbidity and Mortality Weekly Report, July 8, 2011, 60(26);869-872. Found at: http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6026a1.htm?s_cid=mm6026a1_w (Last visited on January 20, 2012).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Florida Department of Health, *Florida Vital Statistics Annual Report 2010, Deaths*, p. 126. Found at: <http://www.flpublichealth.com/VBOOK/pdf/2010/Deaths.pdf> (Last visited on January 20, 2012).

substance if the evidence for possession was obtained as a result of the overdose and the need for medical assistance.

The bill states that the above-described protection from prosecution for possession offenses may not be grounds for suppression of evidence in other criminal prosecutions.

Because there is no stated exclusion from being charged, prosecuted or penalized for a person who has committed any other offenses or who has an outstanding arrest warrant, such an exclusion should not be presumed.

Section 3 amends s. 921.0026, F.S., to add the following to the list of mitigating circumstances a judge may consider when departing from the lowest permissible sentence: “The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.”

Section 4 provides an effective date for the bill of October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

On March 2, 2011, the Criminal Justice Impact Conference (CJIC) determined that an identical bill considered during the 2011 Legislative Session would have no impact on the Department of Corrections. Although the bill has not yet been reviewed by the CJIC

this Session, it is unlikely that the analysis or outcome will change relative to last Session's determination.

VI. Technical Deficiencies:

Although no technical deficiencies are noted it is suggested that, depending upon the intended effect of the bill, a reference to section 893.13(6), Florida Statutes, (the simple possession statute) would clarify that persons who are in possession of trafficking amounts of controlled substances are not meant to benefit from the bill's provisions. Likewise persons who possess a controlled substance with the intent to sell, deliver, manufacture or purchase would be eliminated from claiming the benefits of the bill.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

By Senator Sachs

30-00340-12

2012278__

1 A bill to be entitled
 2 An act relating to preventing deaths from drug-related
 3 overdoses; providing a short title; creating s.
 4 893.21, F.S.; providing that a person acting in good
 5 faith who seeks medical assistance for an individual
 6 experiencing a drug-related overdose may not be
 7 charged, prosecuted, or penalized for specified
 8 offenses in certain circumstances; providing that a
 9 person who experiences a drug-related overdose and
 10 needs medical assistance may not be charged,
 11 prosecuted, or penalized for specified offenses in
 12 certain circumstances; providing that the protections
 13 from prosecution for specified offenses are not
 14 grounds for suppression of evidence in other
 15 prosecutions; amending s. 921.0026, F.S.; amending
 16 mitigating circumstances under which a departure from
 17 the lowest permissible criminal sentence is reasonably
 18 justified to include circumstances in which a
 19 defendant was making a good faith effort to obtain or
 20 provide medical assistance for an individual
 21 experiencing a drug-related overdose; providing an
 22 effective date.
 23
 24 WHEREAS, some research suggests that in a majority of cases
 25 of fatal drug overdose another person was aware of or present
 26 during the decedent's fatal drug use and that in one-third of
 27 the cases someone recognized the decedent's distress, and
 28 WHEREAS, many people cite fear of police involvement or
 29 fear of arrest as their primary reason for not seeking immediate

Page 1 of 3

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

30-00340-12

2012278__

30 help for a person thought to be experiencing a drug overdose,
 31 and
 32 WHEREAS, it is in the public interest to encourage a person
 33 who is aware of or present during another individual's drug
 34 overdose to seek medical assistance for that individual, NOW,
 35 THEREFORE,
 36
 37 Be It Enacted by the Legislature of the State of Florida:
 38
 39 Section 1. This act may be cited as the "911 Good Samaritan
 40 Act."
 41 Section 2. Section 893.21, Florida Statutes, is created to
 42 read:
 43 893.21 Drug-related overdoses; medical assistance; immunity
 44 from prosecution.—
 45 (1) A person acting in good faith who seeks medical
 46 assistance for an individual experiencing a drug-related
 47 overdose may not be charged, prosecuted, or penalized pursuant
 48 to this chapter for possession of a controlled substance if the
 49 evidence for possession of a controlled substance was obtained
 50 as a result of the person's seeking medical assistance.
 51 (2) A person who experiences a drug-related overdose and is
 52 in need of medical assistance may not be charged, prosecuted, or
 53 penalized pursuant to this chapter for possession of a
 54 controlled substance if the evidence for possession of a
 55 controlled substance was obtained as a result of the overdose
 56 and the need for medical assistance.
 57 (3) Protection in this section from prosecution for
 58 possession offenses under this chapter may not be grounds for

Page 2 of 3

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

30-00340-12

2012278__

59 suppression of evidence in other criminal prosecutions.

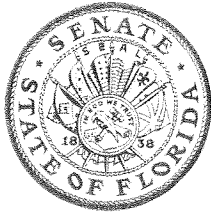
60 Section 3. Paragraph (n) is added to subsection (2) of
61 section 921.0026, Florida Statutes, to read:

62 921.0026 Mitigating circumstances.—This section applies to
63 any felony offense, except any capital felony, committed on or
64 after October 1, 1998.

65 (2) Mitigating circumstances under which a departure from
66 the lowest permissible sentence is reasonably justified include,
67 but are not limited to:

68 (n) The defendant was making a good faith effort to obtain
69 or provide medical assistance for an individual experiencing a
70 drug-related overdose.

71 Section 4. This act shall take effect October 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR MARIA LORTS SACHS

Democratic Whip
30th District

January 12, 2012

Florida Senate Committee on Health Regulation

The Honorable Rene Garcia, Chairman
530 Knott Building

HAND DELIVER

Dear Chairman Garcia,

I respectfully request that **SB 278: Preventing Deaths from Drug-related Overdoses** be placed on the agenda for the next meeting of the Health Regulation Committee.

Very truly yours,

Maria Sachs

 **ENTERED**

COMMITTEES:
Military Affairs, Space, and Domestic Security,
Chair
Regulated Industries, *Vice Chair*
Budget - Subcommittee on Finance and Tax
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Communications, Energy, and Public Utilities
Reapportionment

JOINT COMMITTEE:
Legislative Auditing Committee

REPLY TO:

- 955 NW 17th Avenue, Suite E, Delray Beach, Florida 33445 (561) 279-1427
- 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5091

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

* WAIVE TIME IN
SUPPORT OF BILL

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

25 Jun 2012

Meeting Date

"Good Samaritan Act"

Topic Preventing Deaths from Drug-Related OD'S

Bill Number SB 278

(if applicable)

Name Jill Gran

Amendment Barcode _____

(if applicable)

Job Title Consultant

Address 2868 Mahan Dr

Street

Phone 878-2196

Tallahassee FL 32308

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Florida Alcohol & Drug Abuse Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/25/12

Meeting Date

Topic Preventing Drug Related Overdoses Bill Number 275
(if applicable)

Name PAUL ADEE Amendment Barcode _____
(if applicable)

Job Title _____

Address 2008 8TH AVE Phone 813-247-8000
Street

TAMPA FL E-mail _____
City State Zip

Speaking: For Against Information

Representing Florida Sheriff's Association

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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



1 / 25 / 2012
Meeting Date

Topic _____

Bill Number 278
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH
Street

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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 _____

Bill Number SB 278
(if applicable)

Name Robert Trammell

Amendment Barcode _____
(if applicable)

Job Title Gen Counsel

Address PO Box 1799

Phone 850 510 2187

Street Tallahassee, FL 32302

E-mail _____

City State Zip

Speaking: For Against Information

Representing Public Defender's Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 1258

INTRODUCER: Health Regulation Committee and Senator Benacquisto

SUBJECT: Continuing Education for Athletic Trainers and Massage Therapists

DATE: January 25, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Steele	Stovall	HR	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill repeals s. 456.034, F.S., to delete the requirement for a massage therapist or an athletic trainer to complete an educational course in HIV/AIDS as part of the initial application for licensure and continuing education in HIV/AIDS as part of licensure renewal.

This bill repeals the following sections of the Florida Statutes: 456.034.

II. Present Situation:

Acquired Immune Deficiency Syndrome (AIDS) is a disorder that results in the irreparable degradation of a patient's immune system. It is caused by a retrovirus known as the Human Immunodeficiency Virus (HIV). HIV and AIDS remain leading causes of illness and death in the United States.

The Centers for Disease Control and Prevention (CDC) estimated that at the end of 2006, over one million persons in the United States were living with HIV or AIDS.¹ According to the CDC,

¹ *HIV in the United States: An Overview*, Revised July 2010, CDC. Available at: http://www.cdc.gov/hiv/topics/surveillance/resources/factsheets/pdf/us_overview.pdf (Last visited on January 20, 2011).

the annual number of AIDS cases and deaths declined substantially after 1994; and stabilized during the period 1999-2004.² Florida ranks third³ among the states in the cumulative number of reported AIDS cases, with 123,112 cases reported through August 2011.⁴

HIV can be transmitted through certain body fluids (blood, semen, vaginal secretions, and breast milk) from an HIV-infected person. These specific fluids must come in contact with a mucous membrane or damaged tissue or be directly injected into the bloodstream (from a needle or syringe) for transmission to possibly occur. In the United States, HIV is most commonly transmitted through specific sexual behaviors (anal or vaginal sex) or sharing needles with an infected person.⁵

The risk of healthcare workers acquiring HIV on the job is very low, especially if they carefully follow universal precautions (e.g., using protective practices and personal protective equipment to prevent HIV and other blood-borne infections).⁶ The greatest risk of exposure is from an injury, such as a cut from a contaminated sharp object, but can also occur from a splash to the eyes, nose, or mouth; contact on non-intact (broken or cracked) skin; or a human bite. HIV is not transmitted through normal skin contact.⁷

According to the CDC, implementation of “Standard Precautions” constitutes the primary strategy for the prevention of health care-associated transmission of infectious agents among patients and health care personnel. Standard precautions are based on the principle that all blood, body fluids, secretions, excretions (except sweat), non-intact skin, and mucous membranes may contain transmissible infectious agents. Standard precautions include a group of infection prevention practices that apply to all patients, regardless of suspected or confirmed infection status, in any setting in which health care is delivered. These include hand hygiene; use of gloves, gowns, masks, eye protection, or face shields, depending on the anticipated exposure; and safe injection practices. Also, equipment or items in the patient environment likely to have been contaminated with infectious body fluids must be handled in a manner to prevent transmission of infectious agents (e.g., wear gloves for direct contact, contain heavily soiled equipment, and properly clean and disinfect or sterilize reusable equipment before use on another patient).⁸

² CDC Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health Care Settings. *MMWR (Morbidity and Mortality Weekly Report)*, September 22, 2006; 55(RR 14):1-17. Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm> (Last visited on January 20, 2011).

³ Florida – 2010 Profile. Found at: http://www.cdc.gov/nchstp/stateprofiles/pdf/florida_profile.pdf (Last visited on January 20, 2011).

⁴ The Florida Department of Health, Division of Disease Control, *Monthly Surveillance Report (Hepatitis, HIV/AIDS, STD and TB)*, September 2011, p. 16. Available at: http://www.doh.state.fl.us/disease_ctrl/aids/trends/msr/2011/MSR0911b.pdf (Last visited on January 20, 2011).

⁵ CDC, HIV Transmission, *How is HIV passed from one person to another?* Found at: <http://www.cdc.gov/hiv/resources/qa/transmission.htm> (Last visited on January 20, 2011).

⁶ Paul J. Kaprocki, *HIV/AIDS: Information for Massage Therapists*, 1 Ed., January 2011. Available at: <http://www.body-balancing.com/CEU%20Documents/CEU%20Document%20-%20HIV%20Aids%20for%20Massage%20Therapists.pdf> (Last visited on January 20, 2012); Center for Disease Control and Prevention. *HIV Transmission*. Available at: <http://www.cdc.gov/hiv/resources/qa/transmission.htm> (Last visited on January 20, 2012).

⁷ Australasian College of Dermatologists. *A-Z of Skin: HIV and the Skin*. Available at: http://www.dermcoll.asn.au/public/a-z_of_skin-hiv_and_the_skin.asp (Last visited on January 20, 2012).

⁸ Jane D. Siegel, MD; Emily Rhinehart, RN MPH CIC; Marguerite Jackson, PhD; Linda Chiarello, RN MS; the Healthcare Infection Control Practices Advisory Committee, CDC, *2007 Guideline for Isolation Precautions: Preventing Transmission*

The CDC and state health departments have been investigating cases of HIV infection in health care personnel without identified risk factors since the early days of the AIDS epidemic. There have been no confirmed cases of occupational HIV transmission to health care workers in the United States since 1999.⁹ Of those health care professionals in the “other healthcare occupation” category for whom case investigations were completed from 1981 to 2010 there were six *possible* cases of professionals having acquired HIV infection through occupational exposure, but no documented cases.¹⁰

Athletic Trainers, Standards and Certification

Athletic training is the recognition, prevention, and treatment of athletic injuries.¹¹ An athletic injury is an injury sustained during an athletic activity which affects the athlete's ability to participate or perform.¹² An athletic activity includes the participation in an event that is conducted by an educational institution, a professional athletic organization, or an amateur athletic organization, involving exercises, sports, games, or recreation requiring any of the physical attributes of strength, agility, flexibility, range of motion, speed, and stamina.¹³

In 1994, the Florida Legislature began licensing and fully regulating athletic trainers to protect the public and ensure that athletes are assisted by individuals adequately trained to recognize, prevent, and treat physical injuries sustained during athletic activities.¹⁴ Athletic trainers are regulated by the Florida Department of Health (DOH), Division of Medical Quality Assurance and the Board of Athletic Training.¹⁵ There are 1,488 active, licensed athletic trainers in Florida.¹⁶

An applicant seeking licensure as an athletic trainer must:¹⁷

- Complete the application form and remit the required fees;
- Be at least 21 years of age;
- Possess a baccalaureate degree from a college or university accredited by the United States Department of Education (U.S. DOE) or the Commission on Recognition of Postsecondary Accreditation (Commission), or from a program approved by the board;

of Infectious Agents in Healthcare Settings, p. 66. Available at: <<http://www.cdc.gov/hicpac/pdf/isolation/Isolation2007.pdf>> (Last visited on January 20, 2011).

⁹ Center for Disease Control and Prevention. *Occupational HIV Transmission and Prevention among Health Care Workers*. Aug. 2011. Available at: <<http://www.cdc.gov/hiv/resources/factsheets/PDF/hcw.pdf>> (Last visited on January 20, 2011).

¹⁰ CDC, *Surveillance of Occupationally Acquired HIV/AIDS in Healthcare Personnel, as of December 2010*, updated May, 2011. Available at: <<http://www.cdc.gov/HAI/organisms/hiv/Surveillance-Occupationally-Acquired-HIV-AIDS.html>> (Last visited on January 20, 2011).

¹¹ S. 468.701(5), F.S.

¹² S. 468.701(3), F.S.

¹³ S. 468.701(2), F.S.

¹⁴ S. 320, ch. 94-119; s 468.70, F.S.

¹⁵ S. 468.701(8), F.S.; S. 468.701(6), F.S.

¹⁶ Florida Department of Health, Division of Medical Quality Assurance, Athletic Training: Application & Licensure Requirements. Available at: <<http://www.doh.state.fl.us/mqa/Publications/10-11mqa-ara.pdf>> (Last visited on January 20, 2011).

¹⁷ S. 468.707, F.S.

- Complete an approved athletic training curriculum from a college or university accredited by an accrediting agency recognized and approved by the U.S. DOE or the Commission, or approved by the board;
- Be certified in cardiopulmonary resuscitation (CPR) from the American Red Cross, the American Heart Association, or an equivalent certification entity as determined by the board;
- Submit proof of taking a 2-hour course on the prevention of medical errors;
- Submit a certified copy of the National Athletic Trainers Association Board of Certification certificate or a notarized copy of examination results; and
- Submit a certificate of completion for a 1-hour course on HIV/AIDS.¹⁸

Licensed athletic trainers are required to complete 24 hours of continuing education courses biennially, including a minimum of 1 hour in HIV/AIDS, a 2-hour course in prevention of medical errors, and current certification in CPR with an automated external defibrillator (AED) at the professional rescue level. According to the DOH, HIV/AIDS is covered in the CPR-AED Professional Rescuer course and the medical errors course that must be taken every 2 years by athletic trainers.¹⁹

The additional hours of continuing education must focus on the prevention of athletic injuries; recognition, evaluation, and immediate care of athletic injuries; rehabilitation and reconditioning of athletic injuries; health care administration; or professional development and responsibility of athletic trainers.²⁰

The Board of Athletic Training unanimously approved deletion of the biennial HIV/AIDS requirement at its board meeting on April 8, 2011.²¹

Massage Therapists, Standards and Certification

Massage is the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.²² Massage therapists are regulated by the Florida Department of Health, Division of Medical Quality Assurance and the Board of Massage Therapy.²³ There are 30,323 active, licensed massage therapists in Florida.²⁴ All massage therapists are required to renew their licenses biennially on or before August 31.²⁵

¹⁸ Florida Department of Health, Division of Medical Quality Assurance, Athletic Training: Application & Licensure Requirements. Available at: <http://www.doh.state.fl.us/mqa/athtrain/info_AT_Lic_req.pdf> (Last visited on January 20, 2011). See also Rule 64B33-2.002, F.A.C.

¹⁹ Department of Health *Bill Analysis, Economic State and Fiscal Note* for SB 1258 (dated January 12, 2012), on file with the Senate Health Regulation Committee.

²⁰ S. 456.034, F.S., and Rule 64B33-2.003, F.A.C.

²¹ *Supra* fn. 20.

²² S. 480.033(3), F.S.

²³ S. 480.033(1), F.S. and S. 480.033(2), F.S.

²⁴ Florida Department of Health, Division of Medical Quality Assurance, Athletic Training: Application & Licensure Requirements. Available at: <<http://www.doh.state.fl.us/mqa/Publications/10-11mqa-ara.pdf>> (Last visited on January 20, 2011).

²⁵ Rule 64B7-28.001, F.A.C.

Currently, an individual is qualified for an active license as a massage therapist in Florida if the individual:²⁶

- Completes the application form and remits the required fees;
- Is at least 18 years of age or possesses a high school diploma or graduate equivalency diploma;
- Has completed a course of study at a board-approved massage school or completed an apprenticeship program that meets the standards adopted by the board;
- Received a passing grade on the national examination administered by the DOH, and
- Completes a 3-hour educational course that has been approved by the board on HIV/AIDS.

Finally, licensed massage therapists are required to complete one continuing education hour for each month or part of a month that has elapsed since the issuance of the license for which renewal is sought, up to a maximum of 24 hours.²⁷ The courses must focus on massage therapy techniques, the prevention of medical errors, professional ethics, and laws and rules of massage therapy.²⁸ In addition, the licensee must complete a 1-hour continuing education course on HIV/AIDS for biennial licensure renewal.

The Board of Massage Therapy unanimously approved deletion of the biennial HIV/AIDS requirement at its board meeting on May 23, 2011.²⁹

III. Effect of Proposed Changes:

This bill repeals s. 456.034, F.S., to delete the requirement for a massage therapist or athletic trainer to complete an educational course in HIV/AIDS as part of the initial application for licensure and continuing education in HIV/AIDS as part of their biennial licensure renewals. The corresponding rulemaking authority in this section is also repealed.

This bill has an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of article I, section 24(a) and (b) of the Florida Constitution.

²⁶ S. 480.041, F.S., and Rule 64B7-25.0012, F.A.C.

²⁷ S. 456.034, F.S.; Rules 64B7-28.001 and 64B7-28.009, F.A.C.

²⁸ Rule 64B7-28.009(3)(a)-(c), F.A.C.

²⁹ *Supra* fn. 20.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of article III, subsection 19(f) of the Florida Constitution.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There would be an impact to the providers of both initial and continuing education courses for instruction on HIV/AIDS awareness. Massage therapists and athletic trainers may see a reduction in course fees related to the elimination of the specific course requirements.

C. Government Sector Impact:

The Boards of Athletic Training and Massage Therapy will need to repeal or amend current rules relating to the educational requirements.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

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

CS by Health Regulation Committee on January 25, 2012:

The title was revised to remove references to “continuing education,” because the bill concerns both continuing education and initial training.

B. Amendments:

None.



774778

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Jones) recommended the following:

Senate Amendment

In title, delete lines 2 - 5
and insert:

An act relating to education for athletic trainers and
massage therapists; repealing s. 456.034, F.S.,
relating to the requirement for athletic trainers and
massage therapists to complete

By Senator Benacquisto

27-01076-12

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A bill to be entitled

An act relating to continuing education for athletic trainers and massage therapists; repealing s. 456.034, F.S., relating to the requirement for athletic trainers and massage therapists to complete continuing education on the modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome; providing an effective date.

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

Section 1. Section 456.034, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities, *Chair*
Budget - Subcommittee on General Government
Appropriations, *Vice Chair*
Budget
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Education Pre-K - 12
Governmental Oversight and Accountability
Reapportionment
Transportation

SENATOR LIZBETH BENACQUISTO

27th District

January 12, 2012

The Honorable Rene Garcia
Senate Budget, Chair
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

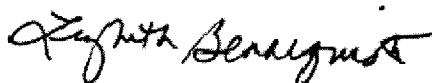
RE: SB 1258 – Continuing Education to Athletic Trainers

Dear Mr. Chairman:

Please allow this letter to serve as my respectful request to agenda 1258, relating to Continuing Education to Athletic Trainers, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,



Lizbeth Benacquisto
Senate District 27

Cc: Sandra R. Stovall

 **ENTERED**

REPLY TO:

- 12165 West Forest Hill Boulevard, Suite 1B, Wellington, Florida 33414 (561) 753-2440
- 17595 South Tamiami Trail, Suite 200-9, Fort Myers, Florida 33908 (239) 433-6599
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5356

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1358

INTRODUCER: Senator Hays

SUBJECT: Drug-Free Workplace Act

DATE: January 23, 2012 REVISED: 01/26/2012

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantès	Stovall	HR	Fav/1 amendment
2.			GO	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill allows state agencies to administer drug tests to all job applicants and random drug tests to all employees every 3 months. A state agency employee may be disciplined, discharged, or referred to employee assistance or a drug and alcohol rehabilitation program on the sole basis of his or her first positive drug test. If the employee enters an employee assistance program, the employer must determine whether he or she is fit to continue current job duties while participating in the program; if it is determined that the employee is not, he or she must be placed in a more adequate job assignment during the program or placed on leave.

The bill substitutes the term “mandatory-testing position” for “safety-sensitive position” for purposes of the Drug-Free Workplace Program in s. 440.120, F.S.

The bill expands eligibility for employer drug-free workplace program discounts for those programs that are broader in scope than statutory requirements and deletes language regarding collective bargaining requirements relating to drug-free workplace provisions.

This bill amends ss. 112.0455, 440.102, and 944.474, F.S.

II. Present Situation:

Drug-Free Workplace Laws

The Drug-Free Workplace Act, s. 112.0455, F.S., provides guidelines and incentives for agencies within state government to prevent substance abuse among their employees, to encourage employees with drug or alcohol problems to seek rehabilitative treatment, and to maintain the confidentiality of records relating to employee drug use and treatment. Similar provisions are established in s. 440.102, F.S., for non-state agency employers who are covered by the Workers' Compensation Law. Employers are not required¹ to conduct drug testing on employees or job applicants or to provide support for drug and alcohol rehabilitation, but they will receive up to a 5 percent discount on workers' compensation insurance as well as be allowed to deny medical and indemnity benefits to drug-abusing employees if they meet the provisions for a drug-free workplace.²

According to statute, the term "drug" includes alcohol, amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or metabolites of any of these substances.³

Who May Be Tested

Any employer may conduct drug tests on employees as part of routine fitness-for-duty medical examinations, to follow up on former participants in employee drug rehabilitation programs, at random (in the private sector), or if there is reasonable suspicion of drug abuse.⁴ Reasonable suspicion means that an employer believes an employee is abusing drugs based on "specific objective and articulable facts and reasonable inferences," such as direct observation of drug use at work, observation that the employee behaves as if under the influence of a drug, report of drug use from a reliable source which has been independently corroborated, or evidence that an employee has tampered with a drug test. For state agencies, reasonable suspicion drug testing must be authorized by a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question.⁵

Public employers⁶ are also permitted to randomly test employees who hold special-risk or safety-sensitive positions.⁷ A special-risk position requires an employee to be certified under ch. 633, F.S., relating to firefighters and fire marshals, or ch. 953, F.S., relating to law enforcement officers. A safety-sensitive position is one in which drug impairment constitutes a threat to public health or safety, such as a position that requires the use of a firearm; that entails

¹ Construction, electrical, or alarm system contractors regulated under ch. 489, F.S., are required to follow drug-free workplace laws if they are working on state educational facilities, public property, or state correctional facilities. Drug-free workplace program requirements are also a mandatory topic of negotiations in any collective bargaining agreement for nonfederal public sector employees. See: ss. 440.102(13) and (15), F.S.

² Sections 112.0455(1)-(4) and 440.102(2), F.S., and Rule 69L-5.220, F.A.C.

³ Section 112.0455(5), F.S. Identical provisions are found in s. 440.102(1)(c), F.S.

⁴ Sections 112.0455(7) and 440.102(4), F.S.

⁵ Sections 112.0455(5)(j) and 440.102(1)(n), F.S.

⁶ Per s. 440.102(1), F.S., a public employer is any agency within state, county, or municipal government that employs individuals for a salary, wages, or other remuneration.

⁷ Section 440.102(7), F.S.

special responsibility or work in a sensitive location, such as a position with the central abuse hotline, the Division of Treasury, or the developmentally disabled; or in which a momentary lapse in attention could result in injury or death to another person.⁸ If applicable, such random testing must be specified in a collective bargaining agreement before it may be implemented.⁹

Employers without drug-testing programs must give at least 60 days notice to all employees before beginning such a program. All employees must also be given a written statement which provides:

- The employer's policy on drug abuse,
- Drug testing indications and procedures,
- Actions taken against violators of the drug policy,
- A confidentiality statement,
- A list of common medications which may interfere with drug tests,
- A list of local employee assistance and substance abuse rehabilitation programs,
- A statement that the employee has 5 business days after receiving a positive drug test to explain the results to the employer and may contest the test result, and
- A statement of any collective bargaining agreement related to drug testing.

Job applicants may also be required to submit to drug testing, although public employers may only test individuals applying for special-risk or safety-sensitive positions.¹⁰ Any applicant to be tested must receive a similar statement to the one listed above, and the requirement for drug testing must be noticed on vacancy announcements.¹¹ Employers must cover the costs of any drug testing they require.¹²

Employers reserve the right to discipline or discharge any employee or refuse to hire any job applicant who does not submit to a drug test.¹³ Employees who test positive or refuse to be tested may also forfeit eligibility for medical and indemnity benefits.¹⁴

Drug Testing Procedures

Drug tests must be conducted at laboratories licensed by the Agency for Health Care Administration (the agency) and meet certain personnel and quality control standards which are specified in statute and rule.¹⁵ Samples for drug testing must be collected by qualified personnel according to specific protocols to maximize security and privacy.¹⁶ Chain of custody procedures must also be followed to maintain control over all samples from initial collection to final disposition and to provide accountability at each stage in handling, testing, storing specimens, and reporting of test results.¹⁷

⁸ Sections 440.102(1) and 110.1127, F.S.

⁹ Section 440.102(7), F.S.

¹⁰ Sections 112.0455(5) and 440.102(1) and (2), F.S.

¹¹ Sections 112.0455(6) and 440.102(3), F.S.

¹² Sections 112.0455(8)(r) and 440.102(5)(m), F.S.

¹³ Sections 112.0455(10)(f) and (g) and 440.102(7)(f), F.S.

¹⁴ Section 440.101(2), F.S.

¹⁵ Sections 112.0455(12) and 440.102(9), F.S., and Rule 59A-24.006, F.A.C.

¹⁶ Sections 112.0455(8) and (13) and 440.102(5) and (10), F.S., and Rule 59A-24.005, F.A.C.

¹⁷ Section 112.0455(5)(e) and 440.102(1)(a), F.S., and Ruel 59A-24.005, F.A.C.

Employers who conduct drug testing must have a medical review officer (MRO) who evaluates the results of employee drug tests in light of pertinent medical history, ensures that chain of custody procedures were adequately followed, and verifies and makes the final determination of employee test results. An MRO must be a licensed physician who has been certified by the American Association of Medical Review Officers, the American Society of Addiction Medicine, or the Medical Review Officer Certification Council.¹⁸

All samples are first evaluated using an immunoassay, which returns a result as positive or negative for a specific panel of drugs. Those samples which test positive are then confirmed using a second, more accurate analysis. Cutoff points for the drug concentrations at which hair, urine, or blood samples are declared positive or negative are defined in statute and rule.¹⁹ Test results must be transmitted to the employer within 7 business days.

If a drug test is positive, the MRO must contact the relevant employee within 3 business days to discuss possible reasons for this positive result and to outline procedures for optional retest of the sample. If the employee admits to drug use, a verified positive test report will be sent to the employer.²⁰ If the employee wishes to contest the test result, the original sample may be retested at his or her expense, at a different laboratory of his or her choosing. The second laboratory must test the sample at equal or greater sensitivity for the drug in question as the original laboratory. The laboratory which performed the first round of testing is responsible for ensuring that chain of custody procedures are followed during transport of the sample.²¹

Consequences of a Positive Drug Test

Within 5 days of receiving notice of an employee's or job applicant's positive drug test, the employer must inform the person of the results of the test, the consequences, and available options for further proceedings. The employee or applicant may contest the results or describe why the results do not constitute a violation of the employer's policy, and the employer may accept or decline such reasoning via a written explanation.²²

No employer may take action against an employee or applicant whose positive test results have not been verified by a confirmation test and an MRO or, for state agencies, on the basis of any medical history revealed as part of the drug testing process.²³ Also, no employees except state agency special-risk personnel may be disciplined or discharged for voluntarily seeking treatment for a drug-related problem if they have not previously tested positive for illicit drugs, entered an employee assistance program for drug-related problems, or entered an alcohol and drug rehabilitation program.^{24,25}

¹⁸ Rules 59A-24.003(9) and 59A-24.008, F.A.C.

¹⁹ Section 11.20455(13)(b), F.S., and Rule 59A-24.006(4)(e) and (f), F.A.C.

²⁰ Rule 59A-24.008, F.A.C.

²¹ Rule 59A-24.006(4)(h), F.A.C.

²² Sections 112.0455(8)(h)-(l) and 440.102(5)(g)-(j), F.S.

²³ Sections 112.0455(8)(m) and (p) and 440.102(5)(k), F.S.

²⁴ An employee assistance program is a program capable of providing expert assessment of personal concerns; confidential and timely identification services related to employee drug abuse; referrals for appropriate diagnosis, treatment, and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work. A drug rehabilitation program is an agency, practitioner, or hospital which is licensed under ch. 397, F.S., to provide

No disciplinary action may be taken against a state agency employee on the sole basis of his or her first positive confirmed drug test, unless he or she has been given the opportunity to participate in an employee assistance program or drug and alcohol rehabilitation program and has either declined to participate, failed to complete, or refused to allow the employer to monitor the progress of such a program. These provisions do not apply to any publicly-employed special-risk personnel, who may be disciplined or discharged after a first offense.

Any public employee in a safety-sensitive or special-risk position may not hold such a position while participating in an employee assistance program or drug and alcohol rehabilitation program. He or she must be placed in a non-safety-sensitive position, or, if none is available, on leave status. A state agency employee may also be placed on leave status while participating in an inpatient rehabilitation program. Upon completion of the program, state agency employees will be reinstated to the same or equivalent positions as those they previously held.²⁶

An executive branch employee who is disciplined or who is a job applicant for another position and is not hired pursuant to drug testing may file an appeal with the Public Employees Relations Commission. Appeals to this commission are the sole administrative remedy for such situations, although the employee may also submit a complaint through the collective bargaining grievance-arbitration process, if applicable. Any claims from any state employees which are not remediable through the actions of the commission or an arbitrator may be presented as a civil suit in a court of competent jurisdiction.²⁷

Department of Corrections Drug Policy

Department of Corrections (department) employees are subject to random drug and alcohol testing, which occurs quarterly to a group of employees chosen by a computer program. Department staff in safety-sensitive or special-risk positions may also be tested if reasonable suspicion is present. In addition to the aforementioned guidelines for establishing reasonable suspicion, suspicion may also be based on violent behavior of an employee who is on or off duty. Regulations concerning the administration and security of drug tests, notification of results, and the appeals process are similar to those for other employees.

First-time failure of a drug test by staff other than law enforcement officers licensed under s. 943.13, F.S.—either through receiving a positive result, failing to submit to testing or follow appropriate protocols, or tampering with a sample—results in a mandatory referral to an employee assistance program and notification of the employee’s licensing board. If the employee does not comply with the recommendations of the employee assistance program, he or she will be dismissed; otherwise, he or she may return to work in the same or an equivalent position after completion of the program and will be subject to follow-up drug testing.

substance abuse services and provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse. See: s. 440.102(1) and 397.311(33), F.S.

²⁵ Sections 112.0455(8)(t) and 440.102(5)(n), F.S.

²⁶ Sections 112.0455(8)(m)-(v) and 440.102(11), F.S.

²⁷ Section 112.0455(14) and (15), F.S.

First-time failure of a drug test by law enforcement officers results in dismissal.²⁸

Confidentiality

Any information revealed by an employee during any part of the drug testing process is held confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Such information may only be released by written consent of the person tested, by a court of competent jurisdiction, or by a licensing board as part of disciplinary proceedings. Information related to a safety-sensitive or special-risk employee may also be released if the MRO believes that it is relevant to the safety of the employee or others. Positive confirmed drug test results may be released to certifying bodies of special-risk employees for certification review purposes.²⁹

Executive Order 11-58

In March 2011, Governor Rick Scott signed Executive Order 11-58, which required executive agencies to perform drug testing on all prospective new hires and to randomly test current employees, regardless of job classification, at least quarterly. However, the validity of this order has been challenged on the grounds that random drug testing constitutes a violation of the Fourth Amendment of the U.S. Constitution, relating to unreasonable search and seizure.³⁰ The case is currently ongoing, and the executive order has been suspended until the issue can be resolved.^{31,32}

III. Effect of Proposed Changes:

Section 1 amends s. 112.0455, F.S., to delete the definition of “safety-sensitive” and any reference or language related to this term in the section. It also deletes language relating to special-risk positions from the definition of “job applicant” to allow state agencies to test any applicant for drugs. The bill authorizes random drug testing of employees, which may occur every 3 months.

The bill deletes provisions which stated that no state agency employee may be disciplined or discharged on the sole basis of his or her first positive drug test unless certain conditions are met as well as provisions relating to the work status of special-risk employees currently participating in employee assistance or drug and alcohol rehabilitation programs.

After receiving a first-time positive drug test result, an employee may be disciplined, discharged, or referred to an employee assistance or drug and alcohol rehabilitation program, in which the

²⁸ Section 974.474, F.S., and Rule 33-206.503, F.A.C.

²⁹ Sections 112.0455(11) and 440.102(8), F.S., and Rule 59A-24.008, F.A.C.

³⁰ The Fourth Amendment to the U.S. Constitution states “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall be issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

³¹ *American Federation of State, County and Mun. Employees (AFSCME) Council 79 v. Scott*, 2011 WL 6157383, (S.D.Fla., 2011).

³² Governor Memorandum to Agency Heads, June 10, 2011. Available at: <http://www.aclufi.org/pdfs/ScottSuspensionMemo062011.pdf> (last visited on January 19, 2012).

employee may participate at his or her expense or at the expense of a health insurance plan. If the employee enters an employee assistance program, the employer must determine whether he or she is able to continue to safely and effectively perform job duties while part of such a program. An employee is automatically considered unable to continue job duties while in treatment if he or she:

- Carries a firearm or works closely with someone who carries a firearm,
- Performs life-threatening procedures,
- Works with heavy or dangerous machinery,
- Works as a safety inspector,
- Works with children or detainees in the correctional system,
- Works with confidential information or documents pertaining to criminal investigations,
- Works with controlled substances,
- Holds a position subject to s. 110.1127, F.S.,³³ or,
- Holds a position in which a momentary lapse in attention could result in injury or death of another person.

An employee who is deemed unable to safely and effectively perform job duties while in treatment will be placed in a job assignment which the employer determines can be performed during treatment. If such a job is not available, the employee will be placed on leave status.

Section 2 amends s. 440.102, F.S., to require that, relating to public employers, only job applicants for special-risk or mandatory-testing positions may be subjected to drug testing. The term “mandatory-testing position” is defined to mean, with respect to a public employer, a job assignment that requires the employee to:

- Carry a firearm or work closely with someone who carries a firearm,
- Perform life-threatening procedures,
- Work with heavy or dangerous machinery,
- Work as a safety inspector,
- Work with children or detainees in the correctional system,
- Work with confidential information or documents pertaining to criminal investigations,
- Work with controlled substances,
- Hold a position subject to s. 110.1127, F.S., or,
- Hold a position in which a momentary lapse in attention could result in injury or death of another person.

“Mandatory-testing” replaces “safety-sensitive” wherever it is found in this section.

The bill expands language concerning applicability for employer drug-free workplace program discounts to provide that employers who exceed the minimum standards for the program will still qualify.

³³ This section requires additional security checks for employees whose work entails special trust or responsibility or a sensitive location. Such positions include any job with the Division of Treasury, positions providing care to vulnerable adults or the developmentally disabled, central abuse hotline operators, and others.

The bill deletes requirements that random drug testing must be specified in any collective bargaining agreement before testing is implemented and that drug-free workplace program requirements be a mandatory topic of negotiations in any collective bargaining agreement with nonfederal public employees. A provision stating that s. 440.102, F.S., does not eliminate the bargainable rights as provided in the collective bargaining process is also deleted.

Section 3 amends s. 944.474, F.S., to allow the department to drug test all job applicants and deletes a reference to safety-sensitive positions. This change conforms this section to language in section 1 of the bill which allows state agencies to test all job applicants for drugs.

Section 4 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution

D. Other Constitutional Issues:

Fourth Amendment Searches

The proposed bill may elicit a federal constitutional challenge under the Fourth Amendment's prohibition against unreasonable searches as incorporated under the Fourteenth Amendment. The Supreme Court has ruled on multiple occasions that random and suspicionless drug testing of employees is only allowable if an individual's privacy interest is outweighed by the government's "special need" to ensure public safety. "Special need" generally relates to employees who work in dangerous or hazardous professions.³⁴

Privacy Rights

In addition, the proposed bill may be challenged under the federal constitution's right to privacy, implicitly provided under the Bill of Rights and under the Fourteenth Amendment. The Supreme Court has held that a right to privacy shall be upheld unless the government's policy meets the strict scrutiny test, meaning that the government's

³⁴ *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602 (1989); *Chandler v. Miller*, 520 U.S. at 308; *Marchwinski v. Howard*, 113 F.Supp.2d 1134, 1135 (E.D. Mich. 2000), and *Ferguson v. City of Charleston*, 532 U.S. 67 (2001).

action may only be justified by a compelling state interest which is narrowly tailored to carry out the legitimate state interest at stake.³⁵

The proposed bill may elicit a challenge under Florida's constitutional privacy clause pursuant to s. 23, Art. I, of the Florida Constitution. Florida's constitutional right to privacy provides greater protection than the federal constitution, stating that every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein (although access to public records is allowed). The Florida Supreme Court has found that, if an individual has a "legitimate expectation of privacy," the state must demonstrate not only a compelling interest for intruding on one's privacy, but also that the least intrusive means were used in accomplishing its goal.³⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Job applicants for any position in a state agency could be required to take drug tests. Additional employers may qualify for drug-free workplace program discounts. Employers who implement drug testing programs which exceed the minimum standards provided in statute and rule might incur costs to legally defend such programs depending on the nature and scope of the program implemented.

C. Government Sector Impact:

State agencies may incur increased costs due to drug testing of additional job applicants and random testing of employees. However, such tests are administered at each agency's discretion. Drug tests cost about \$30, on average.

Agencies may also incur additional costs related to detecting additional drug-abusing employees due to increased testing. If such employees are dismissed, placed on leave, or transferred to other jobs during treatment, their jobs must be performed by someone else in the interim. Likewise, the Public Employees Relations Commission may experience a higher volume of claims related to drug testing.

The agency and the Department of Management Services are likely to experience negligible impact from the provisions of this bill. Fiscal impacts on state government, local government, and the private sector are indeterminate as the impact relies on the

³⁵ *Roe v. Wade*, 410 U.S. 113 (1973).

³⁶ *City of North Miami v. Kurtz*, 653 So. 2d 1025 (Fla. 1995).

extent to which each organization decides to expand its drug testing procedures in response to new statutory authority.³⁷

This bill is likely to generate litigation against the state government related both to expansion in drug testing authority and to deletion of collective bargaining provisions.

VI. Technical Deficiencies:

The bill's title states that it is an act relating to the Drug-Free Workplace Act. However, both s.112.0455, F.S., (the Drug-Free Workplace Act) and s. 440.102, F.S., are amended in this bill.

The bill's title does not include a reference to the redefinition of "job applicant" made in line 103 of the bill.

The title also does not state that participation in an employee assistance program may be at the employee's own expense or at the expense of a health insurance plan (lines 19-20), although such provisions are made in line 364.

Throughout the bill, the term "safety-sensitive" has been deleted and replaced with "mandatory-testing. In line 574, however, "safety-sensitive" has been deleted but has not been replaced with "mandatory-testing. Perhaps this should be amended to conform to language in the remainder of the bill.

VII. Related Issues:

Lines 368-372 state that if an employer refers an employee to an employee assistance program, the employer must determine whether the employee is able to safely and effectively perform his or her job duties while in the program. However, the bill makes no reference to when such a determination must be made. Presumably, the decision should be made before the employee begins an employee assistance program, but this provision is introduced in the bill's title (line 23) as occurring anytime before the employee completes the program.

Lines 358-398 provide guidelines for the placement of employees in employee assistance programs and drug and alcohol treatment programs. While current statute provides reference to both employee assistance programs and drug and alcohol treatment programs, the bill's new language in this section only refers to employee assistance programs. Perhaps this language should be amended to include drug and alcohol treatment programs as well to provide more options for employees and to conform to current statute.

VIII. Additional Information:

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

None.

³⁷ Department of Management Services, *2012 Bill Analysis for SB 1358*. A copy is on file with the Senate Health Regulation Committee.

B. Amendments:

Barcode 654020 by Health Regulation on January 25, 2012:

Requires that, relating to random drug testing, the size of any random sample may not exceed 30 percent of the total employee population.

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



937602

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/25/2012	.	
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	.	
	.	

The Committee on Health Regulation (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete lines 368-575
and insert:

1. If an employer refers an employee to an employee assistance program or an alcohol and drug rehabilitation program, the employer must determine whether the employee is able to safely and effectively perform the job duties assigned to the employee while the employee participates in such a program.

2. An employee whose assigned duties require the employee to carry a firearm, work closely with an employee who carries a



937602

13 firearm, perform life-threatening procedures, work with heavy or
14 dangerous machinery, work as a safety inspector, work with
15 children, work with detainees in the correctional system, work
16 with confidential information or documents pertaining to
17 criminal investigations, work with controlled substances, hold a
18 position subject to s. 110.1127, or hold a position in which a
19 momentary lapse in attention could result in injury or death to
20 another person, is deemed unable to safely and effectively
21 perform the job duties assigned to the employee while the
22 employee participates in the employee assistance program or
23 alcohol and drug rehabilitation program.

24 3. If an employer refers an employee to an employee
25 assistance program or an alcohol and drug rehabilitation program
26 and the employer determines that the employee is unable, or the
27 employee is deemed unable, to safely and effectively perform the
28 job duties assigned to the employee before he or she completes
29 such a program, the employer shall place the employee in a job
30 assignment that the employer determines the employee can safely
31 and effectively perform while participating in the program.

32 4. If a job assignment in which the employee may safely and
33 effectively perform is unavailable, the employer shall place the
34 employee on leave status while the employee is participating in
35 an employee assistance program or an alcohol and drug
36 rehabilitation program. If placed on leave status without pay,
37 the employee may use accumulated leave credits before being
38 placed on leave without pay.

39 (i) ~~Nothing in~~ This section does not ~~shall be construed to~~
40 prohibit an employer from conducting medical screening or other
41 tests required by any statute, rule, or regulation for the



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42 purpose of monitoring exposure of employees to toxic or other
43 unhealthy substances in the workplace or in the performance of
44 job responsibilities. Such screening or tests shall be limited
45 to the specific substances expressly identified in the
46 applicable statute, rule, or regulation, unless prior written
47 consent of the employee is obtained for other tests.

48 ~~(j) An employer shall place a safety-sensitive position~~
49 ~~employee whose drug test result is confirmed positive in a non-~~
50 ~~safety-sensitive position, or if such a position is unavailable,~~
51 ~~on leave status while the employee participates in an employee~~
52 ~~assistance program or an alcohol and drug rehabilitation~~
53 ~~program. If placed on leave status without pay, the employee~~
54 ~~shall be permitted to use any accumulated leave credits prior to~~
55 ~~being placed on leave without pay.~~

56 ~~(k) A special risk employee may be discharged or disciplined on~~
57 ~~the first positive confirmed drug test result when illicit~~
58 ~~drugs, pursuant to s. 893.13, are confirmed. No special risk~~
59 ~~employee shall be permitted to continue work in a safety-~~
60 ~~sensitive position, but may be placed either in a non-safety-~~
61 ~~sensitive position or on leave status while participating in an~~
62 ~~employee assistance program or an alcohol and drug~~
63 ~~rehabilitation program.~~

64 Section 2. Paragraphs (j) and (o) of subsection (1),
65 subsection (2), paragraph (g) of subsection (7), and subsections
66 (11), (13), (14), and (15) of section 440.102, Florida Statutes,
67 are amended to read:

68 440.102 Drug-free workplace program requirements.—The
69 following provisions apply to a drug-free workplace program
70 implemented pursuant to law or to rules adopted by the Agency



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71 for Health Care Administration:

72 (1) DEFINITIONS.—Except where the context otherwise
73 requires, as used in this act:

74 (j) "Job applicant" means a person who has applied for a
75 position with an employer and has been offered employment
76 conditioned upon successfully passing a drug test, and may have
77 begun work pending the results of the drug test. ~~For a public
78 employer, "job applicant" means only a person who has applied
79 for a special-risk or safety-sensitive position.~~

80 (o) "Mandatory-testing position" means, with respect to a
81 public employer, a job assignment that requires the employee to
82 carry a firearm, work closely with an employee who carries a
83 firearm, perform life-threatening procedures, work with heavy or
84 dangerous machinery, work as a safety inspector, work with
85 children, work with detainees in the correctional system, work
86 with confidential information or documents pertaining to
87 criminal investigations, or work with controlled substances; a
88 job assignment that requires an employee security background
89 check pursuant to s. 110.1127; or a job assignment in which a
90 momentary lapse in attention could result in injury or death to
91 another person. "Safety-sensitive position" means, with respect
92 to a public employer, a position in which a drug impairment
93 constitutes an immediate and direct threat to public health or
94 safety, such as a position that requires the employee to carry a
95 firearm, perform life-threatening procedures, work with
96 confidential information or documents pertaining to criminal
97 investigations, or work with controlled substances; a position
98 subject to s. 110.1127; or a position in which a momentary lapse
99 in attention could result in injury or death to another person.



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100 (2) DRUG TESTING.—An employer may test an employee or job
101 applicant for any drug described in paragraph (1)(c). In order
102 to qualify as having established a drug-free workplace program
103 under this section and to qualify for the discounts provided
104 under s. 627.0915 and deny medical and indemnity benefits under
105 this chapter, an employer must, at a minimum, implement drug
106 testing that conforms to the standards and procedures
107 established in this section and all applicable rules adopted
108 pursuant to this section as required in subsection (4). However,
109 an employer does not have a legal duty under this section to
110 request an employee or job applicant to undergo drug testing. If
111 an employer fails to maintain a drug-free workplace program in
112 accordance with the standards and procedures established in this
113 section and in applicable rules, the employer is ineligible for
114 discounts under s. 627.0915. However, an employer qualifies for
115 discounts under s. 627.0915 if the employer maintains a drug-
116 free workplace program that is broader in scope than that
117 provided for by the standards and procedures established in this
118 section. An employer who qualifies ~~All employers qualifying~~ for
119 and receives ~~receiving~~ discounts provided under s. 627.0915 must
120 be reported annually by the insurer to the department.

121 (7) EMPLOYER PROTECTION.—

122 (g) This section does not prohibit an employer from
123 conducting medical screening or other tests required, permitted,
124 or not disallowed by any statute, rule, or regulation for the
125 purpose of monitoring exposure of employees to toxic or other
126 unhealthy substances in the workplace or in the performance of
127 job responsibilities. Such screening or testing is limited to
128 the specific substances expressly identified in the applicable



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129 statute, rule, or regulation, unless prior written consent of
130 the employee is obtained for other tests. Such screening or
131 testing need not be in compliance with the rules adopted by the
132 Agency for Health Care Administration under this chapter or
133 under s. 112.0455. A public employer may, through the use of an
134 unbiased selection procedure, conduct random drug tests of
135 employees occupying mandatory-testing ~~safety-sensitive~~ or
136 special-risk positions if the testing is performed in accordance
137 with drug-testing rules adopted by the Agency for Health Care
138 Administration and the department. ~~If applicable, random drug~~
139 ~~testing must be specified in a collective bargaining agreement~~
140 ~~as negotiated by the appropriate certified bargaining agent~~
141 ~~before such testing is implemented.~~

142 (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING ~~SAFETY-SENSITIVE~~
143 OR SPECIAL-RISK POSITIONS.—

144 (a) If an employee who is employed by a public employer in
145 a mandatory-testing ~~safety-sensitive~~ position enters an employee
146 assistance program or drug rehabilitation program, the employer
147 must assign the employee to a position other than a mandatory-
148 testing ~~safety-sensitive~~ position or, if such position is not
149 available, place the employee on leave while the employee is
150 participating in the program. However, the employee shall be
151 permitted to use any accumulated annual leave credits before
152 leave may be ordered without pay.

153 (b) An employee who is employed by a public employer in a
154 special-risk position may be discharged or disciplined by a
155 public employer for the first positive confirmed test result if
156 the drug confirmed is an illicit drug under s. 893.03. A
157 special-risk employee who is participating in an employee



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158 assistance program or drug rehabilitation program may not be
159 allowed to continue to work in any special-risk or mandatory-
160 testing safety-sensitive position of the public employer, but
161 may be assigned to a position other than a mandatory-testing
162 safety-sensitive position or placed on leave while the employee
163 is participating in the program. However, the employee shall be
164 permitted to use any accumulated annual leave credits before
165 leave may be ordered without pay.

166 ~~(13) COLLECTIVE BARGAINING RIGHTS.—~~

167 ~~(a) This section does not eliminate the bargainable rights~~
168 ~~as provided in the collective bargaining process if applicable.~~

169 ~~(b) Drug-free workplace program requirements pursuant to~~
170 ~~this section shall be a mandatory topic of negotiations with any~~
171 ~~certified collective bargaining agent for nonfederal public~~
172 ~~sector employers that operate under a collective bargaining~~
173 ~~agreement.~~

174 (13) ~~(14)~~ APPLICABILITY.—A drug testing policy or procedure
175 adopted by an employer pursuant to this chapter shall be applied
176 equally to all employee classifications where the employee is
177 subject to workers' compensation coverage.

178 (14) ~~(15)~~ STATE CONSTRUCTION CONTRACTS.—Each construction
179 contractor regulated under part I of chapter 489, and each
180 electrical contractor and alarm system contractor regulated
181 under part II of chapter 489, who contracts to perform
182 construction work under a state contract for educational
183 facilities governed by chapter 1013, for public property or
184 publicly owned buildings governed by chapter 255, or for state
185 correctional facilities governed by chapter 944 shall implement
186 a drug-free workplace program under this section.



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187 Section 3. Section 944.474, Florida Statutes, is amended to
188 read:

189 944.474 Legislative intent; employee wellness program; drug
190 and alcohol testing.—

191 (1) It is the intent of the Legislature that the state
192 correctional system provide a safe and secure environment for
193 both inmates and staff. A healthy workforce is a productive
194 workforce, and security of the state correctional system can
195 best be provided by strong and healthy employees. The Department
196 of Corrections may develop and implement an employee wellness
197 program. The program may include, but is not limited to,
198 wellness education, smoking cessation, nutritional education,
199 and overall health-risk reduction, including the effects of
200 using drugs and alcohol.

201 (2) An employee ~~Under no circumstances shall employees of~~
202 the department may not test positive for illegal use of
203 controlled substances. An employee of the department may not be
204 under the influence of alcohol while on duty. In order to ensure
205 that these prohibitions are adhered to by all employees of the
206 department and notwithstanding s. 112.0455, the department may
207 develop a program for the drug testing of all job applicants and
208 for the random drug testing of all employees. The department may
209 randomly evaluate employees for the contemporaneous use or
210 influence of alcohol through the use of alcohol tests and
211 observation methods. Notwithstanding s. 112.0455, the department
212 may develop a program for the reasonable suspicion drug testing
213 of employees who are in mandatory-testing ~~safety-sensitive or~~
214 special risk positions, as defined in ss. 440.102(1)(o) and
215 112.0455(5), respectively, for the controlled



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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to drug-free workplaces; amending s.
112.0455, F.S.; removing the definition of the term
"safety-sensitive position" and defining the term
"random testing;" revising the definition of the term
"job applicant;" authorizing an agency within state
government to conduct random drug testing every 3
months; removing provisions prohibiting a state agency
from discharging or disciplining an employee under
certain circumstances based on the employee's first
positive confirmed drug test; removing provisions
limiting the circumstances under which an agency may
discharge an employee in a special risk or safety-
sensitive position; providing that an agency may
discharge or discipline an employee following a first-
time positive confirmed drug test result; authorizing
an agency to refer an employee to an employee
assistance program or an alcohol and drug
rehabilitation program if the employee is not
discharged; requiring participation in an employee
assistance program or an alcohol and drug
rehabilitation program at the employee's own expense
or pursuant to a health insurance plan; requiring the
employer to determine if the employee is able to



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245 safely and effectively perform the job duties assigned
246 to the employee before the employee enters the
247 employee assistance program or the alcohol and drug
248 rehabilitation program; deeming that certain specified
249 job activities cannot be performed safely and
250 effectively while the employee is participating in the
251 employee assistance program or the alcohol and drug
252 rehabilitation program; requiring the employer to
253 transfer the employee to a job assignment that he or
254 she can perform safely and effectively while the
255 employee participates in the employee assistance
256 program or the alcohol and drug rehabilitation
257 program; requiring the employer to place the employee
258 on leave status while the employee is participating in
259 an employee assistance program or an alcohol and drug
260 rehabilitation program if such a position is
261 unavailable; authorizing the employee to use
262 accumulated leave credits before being placed on leave
263 without pay; amending s. 440.102, F.S.; revising the
264 definition of the term "job applicant;" removing the
265 definition of the term "safety-sensitive position" and
266 replacing it with the definition for the term
267 "mandatory-testing position;" providing that an
268 employer remains qualified for an insurer rate plan
269 that discounts rates for worker's compensation and
270 employer's liability insurance policies if the
271 employer maintains a drug-free workplace program that
272 is broader in scope than that provided for by the
273 standards and procedures established in the act;



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274 authorizing a public employer, using an unbiased
275 selection procedure, to conduct random drug tests of
276 employees occupying mandatory-testing or special-risk
277 positions if the testing is performed in accordance
278 with drug-testing rules adopted by the Agency for
279 Health Care Administration; requiring that a public
280 sector employer assign a public sector employee to a
281 position other than a mandatory-testing position if
282 the employee enters an employee assistance program or
283 alcohol and drug rehabilitation program; removing
284 provisions related to collective bargaining rights for
285 nonfederal public sector employers; conforming cross-
286 references; amending s. 944.474, F.S.; revising
287 provisions governing employees of the state
288 correctional system, to conform to changes made by the
289 act; providing an effective date.



958750

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/25/2012	.	
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The Committee on Health Regulation (Garcia) recommended the following:

Senate Amendment to Amendment (937602)

In title, delete lines 227 - 228
and insert:
government to conduct random drug testing every three
months, with certain exceptions; removing provisions
prohibiting a state agency



439728

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/25/2012	.	
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The Committee on Health Regulation (Garcia) recommended the following:

Senate Amendment

Delete line 169
and insert:
once every three months. A random sample may not constitute more than 30 percent of the total employee population. If an employee's random drug test result is negative for all drugs, he or she is exempt from further random drug testing for the following 12 months.



608998

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/25/2012	.	
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The Committee on Health Regulation (Garcia) recommended the following:

Senate Substitute for Amendment (439728)

Delete line 169
and insert:
once every three months. A random sample may not constitute more than 30 percent of the total employee population. If an employee's random drug test result is confirmed negative for all drugs, he or she is exempt from further random drug testing for the following six months.



654020

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/25/2012	.	
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The Committee on Health Regulation (Garcia) recommended the following:

Senate Amendment

Delete line 169
and insert:
once every three months. A random sample may not constitute more than 30 percent of the total employee population.



361530

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/25/2012	.	
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The Committee on Health Regulation (Garcia) recommended the following:

Senate Amendment

In title, delete line 7
and insert:
three months, with certain exceptions; removing
provisions prohibiting a state

By Senator Hays

20-00710D-12

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1 A bill to be entitled
 2 An act relating to the Drug-Free Workplace Act;
 3 amending s. 112.0455, F.S.; removing the definition of
 4 the term "safety-sensitive position" and defining the
 5 term "random testing"; authorizing an agency within
 6 state government to conduct random drug testing every
 7 3 months; removing provisions prohibiting a state
 8 agency from discharging or disciplining an employee
 9 under certain circumstances based on the employee's
 10 first positive confirmed drug test; removing
 11 provisions limiting the circumstances under which an
 12 agency may discharge an employee in a special risk or
 13 safety-sensitive position; providing that an agency
 14 may discharge or discipline an employee following a
 15 first-time positive confirmed drug test result;
 16 authorizing an agency to refer an employee to an
 17 employee assistance program or an alcohol and drug
 18 rehabilitation program if the employee is not
 19 discharged; requiring participation in an employee
 20 assistance program at the employee's own expense;
 21 requiring the employer to determine if the employee is
 22 able to safely and effectively perform the job duties
 23 assigned to the employee before the employee completes
 24 the employee assistance program; deeming that certain
 25 specified job activities cannot be performed safely
 26 and effectively while the employee is participating in
 27 the employee assistance program; requiring the
 28 employer to transfer the employee to a job assignment
 29 that he or she can perform safely and effectively

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30 while the employee participates in the employee
 31 assistance program; requiring the employer to place
 32 the employee on leave status while the employee is
 33 participating in an employee assistance program if
 34 such a position is unavailable; authorizing the
 35 employee to use accumulated leave credits before being
 36 placed on leave without pay; amending s. 440.102,
 37 F.S.; revising the definition of the term "job
 38 applicant" as it pertains to a public employer;
 39 removing the definition of the term "safety-sensitive
 40 position" and replacing it with the definition for the
 41 term "mandatory-testing position;" providing that an
 42 employer remains qualified for an insurer rate plan
 43 that discounts rates for worker's compensation and
 44 employer's liability insurance policies if the
 45 employer maintains a drug-free workplace program that
 46 is broader in scope than that provided for by the
 47 standards and procedures established in the act;
 48 authorizing a public employer, using an unbiased
 49 selection procedure, to conduct random drug tests of
 50 employees occupying mandatory-testing or special-risk
 51 positions if the testing is performed in accordance
 52 with drug-testing rules adopted by the Agency for
 53 Health Care Administration; requiring that a public
 54 sector employer assign a public sector employee to a
 55 position other than a mandatory-testing position if
 56 the employee enters an employee assistance program or
 57 drug rehabilitation program; removing provisions
 58 related to collective bargaining rights for nonfederal

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59 public sector employers; conforming cross-references;
60 amending s. 944.474, F.S.; revising provisions
61 governing employees of the state correctional system,
62 to conform to changes made by the act; providing an
63 effective date.

64
65 Be It Enacted by the Legislature of the State of Florida:

66
67 Section 1. Subsections (5), (7), and (8) and paragraphs
68 (h), (i), (j), and (k) of subsection (10) of section 112.0455,
69 Florida Statutes, are amended to read:

70 112.0455 Drug-Free Workplace Act.—

71 (5) DEFINITIONS.—Except where the context otherwise
72 requires, as used in this act:

73 (a) "Drug" means alcohol, including distilled spirits,
74 wine, malt beverages, and intoxicating liquors; amphetamines;
75 cannabinoids; cocaine; phencyclidine (PCP); hallucinogens;
76 methaqualone; opiates; barbiturates; benzodiazepines; synthetic
77 narcotics; designer drugs; or a metabolite of any of the
78 substances listed herein.

79 (b) "Drug test" or "test" means any chemical, biological,
80 or physical instrumental analysis administered for the purpose
81 of determining the presence or absence of a drug or its
82 metabolites.

83 (c) "Initial drug test" means a sensitive, rapid, and
84 reliable procedure to identify negative and presumptive positive
85 specimens. All initial tests must ~~shall~~ use an immunoassay
86 procedure or an equivalent, or must ~~shall~~ use a more accurate
87 scientifically accepted method approved by the Agency for Health

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88 Care Administration as ~~such~~ more accurate technology becomes
89 available in a cost-effective form.

90 (d) "Confirmation test," "confirmed test," or "confirmed
91 drug test" means a second analytical procedure used to identify
92 the presence of a specific drug or metabolite in a specimen. The
93 confirmation test must be different in scientific principle from
94 that of the initial test procedure. This confirmation method
95 must be capable of providing requisite specificity, sensitivity,
96 and quantitative accuracy.

97 (e) "Chain of custody" refers to the methodology of
98 tracking specified materials or substances for the purpose of
99 maintaining control and accountability from initial collection
100 to final disposition for all such materials or substances and
101 providing for accountability at each stage in handling, testing,
102 storing specimens, and reporting of test results.

103 (f) "Job applicant" means a person who has applied for a
104 ~~special risk or safety-sensitive~~ position with an employer and
105 has been offered employment conditioned upon successfully
106 passing a drug test.

107 (g) "Employee" means a ~~any~~ person who works for salary,
108 wages, or other remuneration for an employer.

109 (h) "Employer" means an ~~any~~ agency within state government
110 that employs individuals for salary, wages, or other
111 remuneration.

112 (i) "Prescription or nonprescription medication" means a
113 drug or medication obtained pursuant to a prescription as
114 defined by s. 893.02 or a medication that is authorized pursuant
115 to federal or state law for general distribution and use without
116 a prescription in the treatment of human diseases, ailments, or

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117 injuries.

118 (j) "Random testing" means a drug test conducted on
 119 employees who are selected through the use of a computer-
 120 generated random sample of an employer's employees.

121 ~~(k)-(j)~~ "Reasonable suspicion drug testing" means drug
 122 testing based on a belief that an employee is using or has used
 123 drugs in violation of the employer's policy drawn from specific
 124 objective and articulable facts and reasonable inferences drawn
 125 from those facts in light of experience. Reasonable suspicion
 126 drug testing may ~~shall~~ not be required except upon the
 127 recommendation of a supervisor who is at least one level of
 128 supervision higher than the immediate supervisor of the employee
 129 in question. Among other things, such facts and inferences may
 130 be based upon:

- 131 1. Observable phenomena while at work, such as direct
 132 observation of drug use or of the physical symptoms or
 133 manifestations of being under the influence of a drug.
- 134 2. Abnormal conduct or erratic behavior while at work or a
 135 significant deterioration in work performance.
- 136 3. A report of drug use, provided by a reliable and
 137 credible source, which has been independently corroborated.
- 138 4. Evidence that an individual has tampered with a drug
 139 test during employment with the current employer.
- 140 5. Information that an employee has caused, or contributed
 141 to, an accident while at work.
- 142 6. Evidence that an employee has used, possessed, sold,
 143 solicited, or transferred drugs while working or while on the
 144 employer's premises or while operating the employer's vehicle,
 145 machinery, or equipment.

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146 ~~(l)-(k)~~ "Specimen" means a tissue, hair, or product of the
 147 human body capable of revealing the presence of drugs or their
 148 metabolites.

149 ~~(m)-(l)~~ "Employee assistance program" means an established
 150 program for employee assessment, counseling, and possible
 151 referral to an alcohol and drug rehabilitation program.

152 ~~(n) "Safety sensitive position" means any position,~~
 153 ~~including a supervisory or management position, in which a drug~~
 154 ~~impairment would constitute an immediate and direct threat to~~
 155 ~~public health or safety.~~

156 (n) "Special risk" means employees who are required as a
 157 condition of employment to be certified under chapter 633 or
 158 chapter 943.

159 (7) TYPES OF TESTING.—An employer may conduct ~~is~~
 160 ~~authorized,~~ but is not required, to conduct, the following types
 161 of drug tests:

162 (a) *Job applicant testing.*—An employer may require job
 163 applicants to submit to a drug test and may use a refusal to
 164 submit to a drug test or a positive confirmed drug test as a
 165 basis for refusal to hire the job applicant.

166 (b) *Reasonable suspicion.*—An employer may require an
 167 employee to submit to reasonable suspicion drug testing.

168 (c) *Random testing.*—An employer may conduct random testing
 169 once every 3 months.

170 ~~(d)-(c)~~ *Routine fitness for duty.*—An employer may require an
 171 employee to submit to a drug test if the test is conducted as
 172 part of a routinely scheduled employee fitness-for-duty medical
 173 examination that is part of the employer's established policy or
 174 that is scheduled routinely for all members of an employment

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175 classification or group.

176 ~~(e)~~ (d) *Followup testing.*—If the employee in the course of
177 employment enters an employee assistance program for drug-
178 related problems, or an alcohol and drug rehabilitation program,
179 the employer may require the said employee to submit to a drug
180 test as a followup to such program, and on a quarterly,
181 semiannual, or annual basis for up to 2 years thereafter.

182 (8) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen
183 collection and testing for drugs under this section shall be
184 performed in accordance with the following procedures:

185 (a) A sample shall be collected with due regard to the
186 privacy of the individual providing the sample, and in a manner
187 reasonably calculated to prevent substitution or contamination
188 of the sample.

189 (b) Specimen collection shall be documented, and the
190 documentation procedures shall include:

191 1. Labeling of specimen containers so as to reasonably
192 preclude the likelihood of erroneous identification of test
193 results.

194 2. A form for the employee or job applicant to provide any
195 information he or she considers relevant to the test, including
196 identification of currently or recently used prescription or
197 nonprescription medication, or other relevant medical
198 information. Such form shall provide notice of the most common
199 medications by brand name or common name, as applicable, as well
200 as by chemical name, which may alter or affect a drug test. The
201 providing of information does shall not preclude the
202 administration of the drug test, but shall be taken into account
203 in interpreting any positive confirmed results.

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204 (c) Specimen collection, storage, and transportation to the
205 testing site shall be performed in a manner that ~~which~~ will
206 reasonably preclude specimen contamination or adulteration.

207 (d) Each initial and confirmation test conducted under this
208 section, not including the taking or collecting of a specimen to
209 be tested, shall be conducted by a licensed laboratory as
210 described in subsection (12).

211 (e) A specimen for a drug test may be taken or collected by
212 any of the following persons:

213 1. A physician, a physician's assistant, a registered
214 professional nurse, a licensed practical nurse, a nurse
215 practitioner, or a certified paramedic who is present at the
216 scene of an accident for the purpose of rendering emergency
217 medical service or treatment.

218 2. A qualified person employed by a licensed laboratory.

219 (f) A person who collects or takes a specimen for a drug
220 test conducted pursuant to this section shall collect an amount
221 sufficient for two drug tests as determined by the Agency for
222 Health Care Administration.

223 (g) Any drug test conducted or requested by an employer may
224 occur before, during, or immediately after the regular work
225 period of the employee, and shall be deemed to be performed
226 during work time for the purposes of determining compensation
227 and benefits for the employee.

228 (h) Every specimen that produces a positive confirmed
229 result shall be preserved by the licensed laboratory that
230 conducts the confirmation test for a period of at least 210 days
231 from the time the results of the positive confirmation test are
232 mailed or otherwise delivered to the employer. However, if an

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233 employee or job applicant undertakes an administrative or legal
 234 challenge to the test result, the employee or job applicant
 235 shall notify the laboratory and the sample shall be retained by
 236 the laboratory until the case or administrative appeal is
 237 settled. During the 180-day period after written notification of
 238 a positive test result, the employee or job applicant who has
 239 provided the specimen shall be permitted by the employer to have
 240 a portion of the specimen retested, at the employee or job
 241 applicant's expense, at another laboratory, licensed and
 242 approved by the Agency for Health Care Administration, chosen by
 243 the employee or job applicant. The second laboratory must test
 244 at equal or greater sensitivity for the drug in question as the
 245 first laboratory. The first laboratory that ~~which~~ performed the
 246 test for the employer is ~~shall be~~ responsible for the transfer
 247 of the portion of the specimen to be retested, and for the
 248 integrity of the chain of custody during such transfer.

(i) Within 5 working days after receipt of a positive
 250 confirmed test result from the testing laboratory, an employer
 251 shall inform an employee or job applicant in writing of such
 252 positive test result, the consequences of such results, and the
 253 options available to the employee or job applicant.

(j) The employer shall provide to the employee or job
 255 applicant, upon request, a copy of the test results.

(k) Within 5 working days after receiving notice of a
 257 positive confirmed test result, the employee or job applicant
 258 may submit information to an employer explaining or contesting
 259 the test results, and why the results do not constitute a
 260 violation of the employer's policy.

(l) If an employee or job applicant's explanation or

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262 challenge of the positive test results is unsatisfactory to the
 263 employer, a written explanation as to why the employee or job
 264 applicant's explanation is unsatisfactory, along with the report
 265 of positive results, shall be provided by the employer to the
 266 employee or job applicant. All such documentation shall be kept
 267 confidential and exempt from the provisions of s. 119.07(1) by
 268 the employer pursuant to subsection (11) and shall be retained
 269 by the employer for at least 1 year.

(m) An ~~No~~ employer may not discharge, discipline, refuse to
 271 hire, discriminate against, or request or require rehabilitation
 272 of an employee or job applicant on the sole basis of a positive
 273 test result that has not been verified by a confirmation test.

~~(n) In addition to the limitation under paragraph (m):~~

1. ~~Except as provided in subparagraph 3., no employer may
 276 discharge, discipline, or discriminate against an employee on
 277 the sole basis of the employee's first positive confirmed drug
 278 test, unless the employer has first given the employee an
 279 opportunity to participate in, at the employee's own expense or
 280 pursuant to coverage under a health insurance plan, an employee
 281 assistance program or an alcohol and drug rehabilitation
 282 program, and:~~

a. ~~The employee has either refused to participate in the
 284 employee assistance program or the alcohol and drug
 285 rehabilitation program or has failed to successfully complete
 286 such program, as evidenced by withdrawal from the program before
 287 its completion or a report from the program indicating
 288 unsatisfactory compliance, or by a positive test result on a
 289 confirmation test after completion of the program; or~~

b. ~~The employee has failed or refused to sign a written~~

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291 ~~consent form allowing the employer to obtain information~~
 292 ~~regarding the progress and successful completion of an employee~~
 293 ~~assistance program or an alcohol and drug rehabilitation~~
 294 ~~program.~~

295 ~~2. An employee in a safety-sensitive position shall be~~
 296 ~~placed by the employer in a non-safety-sensitive position, or if~~
 297 ~~such position is unavailable, on leave status while~~
 298 ~~participating in an employee assistance program or an alcohol~~
 299 ~~and drug rehabilitation program. If placed on leave status~~
 300 ~~without pay, the employee shall be permitted to use any~~
 301 ~~accumulated leave credits prior to being placed on leave without~~
 302 ~~pay.~~

303 ~~3. A special risk employee may be discharged or disciplined~~
 304 ~~for the first positive confirmed drug test result when illicit~~
 305 ~~drugs, pursuant to s. 893.13, are confirmed. No special risk~~
 306 ~~employee shall be permitted to continue work in a safety-~~
 307 ~~sensitive position, but may be placed either in a non-safety-~~
 308 ~~sensitive position or on leave status while participating in an~~
 309 ~~employee assistance program or an alcohol and drug~~
 310 ~~rehabilitation program.~~

311 ~~(n)(e)~~ Upon successful completion of an employee assistance
 312 program or an alcohol and drug rehabilitation program, the
 313 employee shall be reinstated to the same or equivalent position
 314 that was held prior to such rehabilitation.

315 ~~(o)(p)~~ An ~~No~~ employer may not discharge, discipline, or
 316 discriminate against an employee, or refuse to hire a job
 317 applicant, on the basis of any prior medical history revealed to
 318 the employer pursuant to this section.

319 ~~(p)(q)~~ An employer who performs drug testing or specimen

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320 collection shall use chain-of-custody procedures as established
 321 by the Agency for Health Care Administration to ensure proper
 322 recordkeeping, handling, labeling, and identification of all
 323 specimens to be tested.

324 ~~(q)(r)~~ An employer shall pay the cost of all drug tests,
 325 initial and confirmation, which the employer requires of
 326 employees.

327 ~~(r)(s)~~ An employee or job applicant shall pay the costs of
 328 any additional drug tests not required by the employer.

329 ~~(s)(t)~~ An ~~No~~ employer may not ~~shall~~ discharge, discipline,
 330 or discriminate against an employee solely upon voluntarily
 331 seeking treatment, while under the employ of the employer, for a
 332 drug-related problem if the employee has not previously tested
 333 positive for drug use, entered an employee assistance program
 334 for drug-related problems, or entered an alcohol and drug
 335 rehabilitation program. However, special risk employees may be
 336 subject to discharge or disciplinary action when the presence of
 337 illicit drugs, pursuant to s. 893.13, is confirmed.

338 ~~(t)(u)~~ If ~~Where~~ testing is conducted based on reasonable
 339 suspicion, each employer shall promptly detail in writing the
 340 circumstances which formed the basis of the determination that
 341 reasonable suspicion existed to warrant the testing. A copy of
 342 this documentation shall be given to the employee upon request
 343 and the original documentation shall be kept confidential and
 344 exempt from the provisions of s. 119.07(1) by the employer
 345 pursuant to subsection (11) and retained by the employer for at
 346 least 1 year.

347 ~~(u)(v)~~ If an employee is unable to participate in
 348 outpatient rehabilitation, the employee may be placed on leave

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 349 status while participating in an employee assistance program or
 350 an alcohol and drug rehabilitation program. If placed on leave-
 351 without-pay status, the employee shall be permitted to use any
 352 accumulated leave credits prior to being placed on leave without
 353 pay. Upon successful completion of an employee assistance
 354 program or an alcohol and drug rehabilitation program, the
 355 employee shall be reinstated to the same or equivalent position
 356 that was held prior to such rehabilitation.

357 (10) EMPLOYER PROTECTION.—

358 (h) An employer may discharge or discipline ~~shall refer~~ an
 359 employee following with a first-time positive confirmed drug
 360 test result. If the employer does not discharge the employee,
 361 the employer may refer the employee to an employee assistance
 362 program or an alcohol and drug rehabilitation program in which
 363 the employee may participate at the expense of the employee or
 364 pursuant to a health insurance plan, unless such employee is
 365 discharged as provided in subparagraph (8) (n)3. ~~If the results~~
 366 ~~of a subsequent confirmed drug test are positive, the employer~~
 367 ~~may discharge or discipline the employee.~~

368 1. If an employer refers an employee to an employee
 369 assistance program, the employer must determine whether the
 370 employee is able to safely and effectively perform the job
 371 duties assigned to the employee while the employee participates
 372 in the employee assistance program.

373 2. An employee whose assigned duties require the employee
 374 to carry a firearm, work closely with an employee who carries a
 375 firearm, perform life-threatening procedures, work with heavy or
 376 dangerous machinery, work as a safety inspector, work with
 377 children, work with detainees in the correctional system, work

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 378 with confidential information or documents pertaining to
 379 criminal investigations, work with controlled substances, hold a
 380 position subject to s. 110.1127, or hold a position in which a
 381 momentary lapse in attention could result in injury or death to
 382 another person, is deemed unable to safely and effectively
 383 perform the job duties assigned to the employee while the
 384 employee participates in the employee assistance program.

385 3. If an employer refers an employee to an employee
 386 assistance program and the employer determines that the employee
 387 is unable, or the employee is deemed unable, to safely and
 388 effectively perform the job duties assigned to the employee
 389 before he or she completes the employee assistance program, the
 390 employer shall place the employee in a job assignment that the
 391 employer determines the employee can safely and effectively
 392 perform while participating in the employee assistance program.

393 4. If a job assignment in which the employee may safely and
 394 effectively perform is unavailable, the employer shall place the
 395 employee on leave status while the employee is participating in
 396 an employee assistance program. If placed on leave status
 397 without pay, the employee may use accumulated leave credits
 398 before being placed on leave without pay.

399 (i) ~~Nothing in~~ This section ~~does not~~ ~~shall be construed to~~
 400 prohibit an employer from conducting medical screening or other
 401 tests required by any statute, rule, or regulation for the
 402 purpose of monitoring exposure of employees to toxic or other
 403 unhealthy substances in the workplace or in the performance of
 404 job responsibilities. Such screening or tests shall be limited
 405 to the specific substances expressly identified in the
 406 applicable statute, rule, or regulation, unless prior written

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407 consent of the employee is obtained for other tests.

408 ~~(j) An employer shall place a safety-sensitive position~~
 409 ~~employee whose drug test result is confirmed positive in a non-~~
 410 ~~safety-sensitive position, or if such a position is unavailable,~~
 411 ~~on leave status while the employee participates in an employee~~
 412 ~~assistance program or an alcohol and drug rehabilitation~~
 413 ~~program. If placed on leave status without pay, the employee~~
 414 ~~shall be permitted to use any accumulated leave credits prior to~~
 415 ~~being placed on leave without pay.~~

416 ~~(k) A special risk employee may be discharged or~~
 417 ~~disciplined on the first positive confirmed drug test result~~
 418 ~~when illicit drugs, pursuant to s. 893.13, are confirmed. No~~
 419 ~~special risk employee shall be permitted to continue work in a~~
 420 ~~safety-sensitive position, but may be placed either in a non-~~
 421 ~~safety-sensitive position or on leave status while participating~~
 422 ~~in an employee assistance program or an alcohol and drug~~
 423 ~~rehabilitation program.~~

424 Section 2. Paragraphs (j) and (o) of subsection (1),
 425 subsection (2), paragraph (g) of subsection (7), and subsections
 426 (11), (13), (14), and (15) of section 440.102, Florida Statutes,
 427 are amended to read:

428 440.102 Drug-free workplace program requirements.—The
 429 following provisions apply to a drug-free workplace program
 430 implemented pursuant to law or to rules adopted by the Agency
 431 for Health Care Administration:

432 (1) DEFINITIONS.—Except where the context otherwise
 433 requires, as used in this act:

434 (j) "Job applicant" means a person who has applied for a
 435 position with an employer and has been offered employment

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436 conditioned upon successfully passing a drug test, and may have
 437 begun work pending the results of the drug test. For a public
 438 employer, "job applicant" means only a person who has applied
 439 for a special-risk or mandatory-testing safety-sensitive
 440 position.

441 (o) "Mandatory-testing position" means, with respect to a
 442 public employer, a job assignment that requires the employee to
 443 carry a firearm, work closely with an employee who carries a
 444 firearm, perform life-threatening procedures, work with heavy or
 445 dangerous machinery, work as a safety inspector, work with
 446 children, work with detainees in the correctional system, work
 447 with confidential information or documents pertaining to
 448 criminal investigations, or work with controlled substances; a
 449 job assignment that requires an employee security background
 450 check pursuant to s. 110.1127; or a job assignment in which a
 451 momentary lapse in attention could result in injury or death to
 452 another person. "~~Safety-sensitive position~~" means, with respect
 453 ~~to a public employer, a position in which a drug impairment~~
 454 ~~constitutes an immediate and direct threat to public health or~~
 455 ~~safety, such as a position that requires the employee to carry a~~
 456 ~~firearm, perform life-threatening procedures, work with~~
 457 ~~confidential information or documents pertaining to criminal~~
 458 ~~investigations, or work with controlled substances; a position~~
 459 ~~subject to s. 110.1127; or a position in which a momentary lapse~~
 460 ~~in attention could result in injury or death to another person.~~

461 (2) DRUG TESTING.—An employer may test an employee or job
 462 applicant for any drug described in paragraph (1)(c). In order
 463 to qualify as having established a drug-free workplace program
 464 under this section and to qualify for the discounts provided

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 465 under s. 627.0915 and deny medical and indemnity benefits under
 466 this chapter, an employer must, at a minimum, implement drug
 467 testing that conforms to the standards and procedures
 468 established in this section and all applicable rules adopted
 469 pursuant to this section as required in subsection (4). However,
 470 an employer does not have a legal duty under this section to
 471 request an employee or job applicant to undergo drug testing. If
 472 an employer fails to maintain a drug-free workplace program in
 473 accordance with the standards and procedures established in this
 474 section and in applicable rules, the employer is ineligible for
 475 discounts under s. 627.0915. However, an employer qualifies for
 476 discounts under s. 627.0915 if the employer maintains a drug-
 477 free workplace program that is broader in scope than that
 478 provided for by the standards and procedures established in this
 479 section. An employer who qualifies ~~All employers qualifying~~ for
 480 and receives ~~receiving~~ discounts provided under s. 627.0915 must
 481 be reported annually by the insurer to the department.

482 (7) EMPLOYER PROTECTION.—

483 (g) This section does not prohibit an employer from
 484 conducting medical screening or other tests required, permitted,
 485 or not disallowed by any statute, rule, or regulation for the
 486 purpose of monitoring exposure of employees to toxic or other
 487 unhealthy substances in the workplace or in the performance of
 488 job responsibilities. Such screening or testing is limited to
 489 the specific substances expressly identified in the applicable
 490 statute, rule, or regulation, unless prior written consent of
 491 the employee is obtained for other tests. Such screening or
 492 testing need not be in compliance with the rules adopted by the
 493 Agency for Health Care Administration under this chapter or

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 494 under s. 112.0455. A public employer may, through the use of an
 495 unbiased selection procedure, conduct random drug tests of
 496 employees occupying mandatory-testing ~~safety-sensitive~~ or
 497 special-risk positions if the testing is performed in accordance
 498 with drug-testing rules adopted by the Agency for Health Care
 499 Administration and the department. ~~If applicable, random drug~~
 500 ~~testing must be specified in a collective bargaining agreement~~
 501 ~~as negotiated by the appropriate certified bargaining agent~~
 502 ~~before such testing is implemented.~~

503 (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING ~~SAFETY-SENSITIVE~~
 504 OR SPECIAL-RISK POSITIONS.—

505 (a) If an employee who is employed by a public employer in
 506 a mandatory-testing ~~safety-sensitive~~ position enters an employee
 507 assistance program or drug rehabilitation program, the employer
 508 must assign the employee to a position other than a mandatory-
 509 testing ~~safety-sensitive~~ position or, if such position is not
 510 available, place the employee on leave while the employee is
 511 participating in the program. However, the employee shall be
 512 permitted to use any accumulated annual leave credits before
 513 leave may be ordered without pay.

514 (b) An employee who is employed by a public employer in a
 515 special-risk position may be discharged or disciplined by a
 516 public employer for the first positive confirmed test result if
 517 the drug confirmed is an illicit drug under s. 893.03. A
 518 special-risk employee who is participating in an employee
 519 assistance program or drug rehabilitation program may not be
 520 allowed to continue to work in any special-risk or mandatory-
 521 testing ~~safety-sensitive~~ position of the public employer, but
 522 may be assigned to a position other than a mandatory-testing

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523 ~~safety-sensitive~~ position or placed on leave while the employee
524 is participating in the program. However, the employee shall be
525 permitted to use any accumulated annual leave credits before
526 leave may be ordered without pay.

527 ~~(13) COLLECTIVE BARGAINING RIGHTS.--~~

528 ~~(a) This section does not eliminate the bargainable rights~~
529 ~~as provided in the collective bargaining process if applicable.~~

530 ~~(b) Drug-free workplace program requirements pursuant to~~
531 ~~this section shall be a mandatory topic of negotiations with any~~
532 ~~certified collective bargaining agent for nonfederal public~~
533 ~~sector employers that operate under a collective bargaining~~
534 ~~agreement.~~

535 (13)(14) APPLICABILITY.—A drug testing policy or procedure
536 adopted by an employer pursuant to this chapter shall be applied
537 equally to all employee classifications where the employee is
538 subject to workers' compensation coverage.

539 (14)(15) STATE CONSTRUCTION CONTRACTS.—Each construction
540 contractor regulated under part I of chapter 489, and each
541 electrical contractor and alarm system contractor regulated
542 under part II of chapter 489, who contracts to perform
543 construction work under a state contract for educational
544 facilities governed by chapter 1013, for public property or
545 publicly owned buildings governed by chapter 255, or for state
546 correctional facilities governed by chapter 944 shall implement
547 a drug-free workplace program under this section.

548 Section 3. Section 944.474, Florida Statutes, is amended to
549 read:

550 944.474 Legislative intent; employee wellness program; drug
551 and alcohol testing.—

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552 (1) It is the intent of the Legislature that the state
553 correctional system provide a safe and secure environment for
554 both inmates and staff. A healthy workforce is a productive
555 workforce, and security of the state correctional system can
556 best be provided by strong and healthy employees. The Department
557 of Corrections may develop and implement an employee wellness
558 program. The program may include, but is not limited to,
559 wellness education, smoking cessation, nutritional education,
560 and overall health-risk reduction, including the effects of
561 using drugs and alcohol.

562 (2) An employee ~~Under no circumstances shall employees~~ of
563 the department may not test positive for illegal use of
564 controlled substances. An employee of the department may not be
565 under the influence of alcohol while on duty. In order to ensure
566 that these prohibitions are adhered to by all employees of the
567 department and notwithstanding s. 112.0455, the department may
568 develop a program for the drug testing of all job applicants and
569 for the random drug testing of all employees. The department may
570 randomly evaluate employees for the contemporaneous use or
571 influence of alcohol through the use of alcohol tests and
572 observation methods. Notwithstanding s. 112.0455, the department
573 may develop a program for the reasonable suspicion drug testing
574 of employees who are in ~~safety-sensitive or~~ special risk
575 positions, as defined in s. 112.0455(5), for the controlled
576 substances listed in s. 893.03(3)(d). The reasonable suspicion
577 drug testing authorized by this subsection shall be conducted in
578 accordance with s. 112.0455, but may also include testing upon
579 reasonable suspicion based on violent acts or violent behavior
580 of an employee who is on or off duty. The department shall adopt

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581 rules pursuant to ss. 120.536(1) and 120.54 that are necessary
582 to administer this subsection.

583 Section 4. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget - Subcommittee on General Government
Appropriations, *Chair*
Agriculture
Banking and Insurance
Budget
Budget - Subcommittee on Higher Education
Appropriations
Children, Families, and Elder Affairs
Reapportionment

SENATOR D. ALAN HAYS
20th District

January 12, 2011

Senator Rene Garcia, Chair
Health Regulation Committee
310 Senate Office Building
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: SB 1358 Relating to Drug-Free Workplace Act
SB 1364 Relating to Controlled Substances

Dear Chair Garcia:

I respectfully request my above bills be heard before your committee. I feel these bills would be a benefit to the citizens of this state.

Thank you in advance for your consideration, and please contact me if you have any questions.

Sincerely,

Senator D. Alan Hays
District 20

 **ENTERED**
1-13-12

CC: **Sandra R. Stovall**, *Staff Director*
Celia Georgiades, *Committee Administrative Assistant*

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

Spoke

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/2012
Meeting Date

Topic DRUG TESTING

Bill Number 1358
(if applicable)

Name GAIL MARIE PERRY

Amendment Barcode _____
(if applicable)

Job Title CHAIR

Address PO Box 1766

Phone 954 850-4055

POMPANO BEACH FLA 33061
Street City State Zip

E-mail workingfolk@hotmail.com

Speaking: For Against Information

Representing COMMUNICATIONS WORKERS OF AMERICA COUNCIL OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD



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

1/25/12
Meeting Date

Topic Drug-free Workplace

Bill Number 1358
(if applicable)

Name Pamela Burch Fort

Amendment Barcode _____
(if applicable)

Job Title Legislative Consultant

Address 104 S. Monroe St

Phone 850-425-1344

Tallahassee FL 32301
City State Zip

E-mail Tcghobby@aol.com

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.

Spoke

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 / 25 / 2012

Meeting Date

Topic _____

Bill Number 1358
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH
Street

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 850

INTRODUCER: Senator Oelrich

SUBJECT: Pharmacists

DATE: January 23, 2012 REVISED: 01/26/2012

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlanter	Stovall	HR	Fav/1 amendment
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill expands the types of vaccines that may be administered by a pharmacist and authorizes a pharmacy intern having proper certification and working under a pharmacist's supervision to also administer such vaccines. The bill also authorizes a pharmacist or a supervised and certified pharmacy intern to administer epinephrine autoinjections.

In order to administer a vaccine or an epinephrine autoinjection, the pharmacist and pharmacy intern must:

- Follow a written protocol during administration of the vaccine or epinephrine autoinjection, which must be approved by an allopathic or osteopathic physician and by the owner of the pharmacy employing the pharmacist;
- Maintain at least \$200,000 of professional liability insurance (pharmacist only);
- Maintain and make available patient records for a minimum of 5 years;
- Be certified to administer the vaccines or epinephrine autoinjection pursuant to a certification program approved by the Board of Pharmacy (board);
- Have a supervising physician review the administration of the vaccine or epinephrine autoinjection; and

- Submit to the board a copy of the protocol to administer the vaccines or epinephrine autoinjection (pharmacist only).

This bill also amends the definition of the term “practice of the profession of pharmacy” to include the administration of certain vaccines and epinephrine autoinjections to adults.

This bill substantially amends the following sections of the Florida Statutes: 465.189 and 465.003.

II. Present Situation:

Pharmacists and Pharmacy Interns

Pharmacists and pharmacy interns are regulated under ch. 465, F.S., the Florida Pharmacy Act (Act), by the board within the Department of Health (DOH). A “pharmacist” is any person licensed under the Act to practice the profession of pharmacy.¹ A “pharmacy intern” is a person who is currently registered in and attending a duly accredited college or school of pharmacy, or who is a graduate of such a school or college of pharmacy, and who is duly and properly registered with the DOH as provided for under the DOH’s rules.²

The practice of the profession of pharmacy includes: compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of any medicinal drug; consulting concerning therapeutic values and interactions of patent or proprietary preparations, whether pursuant to prescriptions or in the absence and entirely independent of such prescriptions or orders; and other pharmaceutical services. Other pharmaceutical services include the monitoring of a patient’s drug therapy, assisting the patient in the management of his or her drug therapy, and review of the patient’s drug therapy and communication with the patient’s prescribing health care provider or the provider’s agent or other persons as specifically authorized by the patient, regarding the drug therapy. However, a person practicing pharmacy is not authorized to alter a prescriber’s directions, diagnoses or treat any disease, initiate any drug therapy, or practice medicine or osteopathic medicine, unless specifically permitted by law. A pharmacist is authorized to transmit information from persons authorized to prescribe medicinal drugs to their patients. The practice of the profession of pharmacy also includes the administration of influenza virus immunizations to adults.³

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

- Completed an application form and remitted an examination fee set by the board not to exceed \$100 plus the actual per-applicant cost to the DOH for purchase of portions of the examination from the National Association of Boards of Pharmacy or a similar national organization.
- Submitted satisfactory proof that the applicant is not less than 18 years of age and is a recipient of a degree from a school or college of pharmacy accredited by an accrediting agency recognized and approved by the United States Office of Education; or is a graduate of

¹ Section 465.003(10), F.S.

² Section 465.003(12), F.S.

³ Section 465.003(13), F.S.

a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, has demonstrated proficiency in English by passing two English-speaking competency tests, has passed the Foreign Pharmacy Graduate Equivalency Examination that is approved by rule of the board, and has completed a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a pharmacist licensed by the DOH, which program is approved by the board.

- Submitted satisfactory proof that the applicant has completed an internship program approved by the board, which must not exceed 2,080 hours.

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

For pharmacy interns, the board may refuse to certify to the DOH or may revoke the registration of any intern for good cause, including grounds enumerated in ch. 465, F.S., for revocation of pharmacists' licenses. A pharmacy student or graduate is required to be registered by the DOH before being employed as an intern in a pharmacy in Florida. An intern may not perform any acts relating to the filing, compounding, or dispensing of medicinal drugs unless it is done under the direct and immediate personal supervision of a person actively licensed to practice pharmacy in Florida.⁴

Pharmacies utilized for the obtaining of internship experience must meet the following minimum requirements:

- The pharmacy must hold a current license or permit issued by the state in which it is operating and must have available all necessary equipment for professional services, including necessary reference works, official standards, and current professional journals.
- The pharmacy must be operated at all times under the supervision of a pharmacist and must be willing to train persons desiring to obtain professional experience.
- The pharmacy must establish to the program's satisfaction that the pharmacy fills, compounds, and dispenses a sufficient number, kind, and variety of prescriptions during the course of a year so as to afford to an intern a broad experience in the filling, compounding, and dispensing of prescription drugs.
- The pharmacy must have a clear record as to observance of federal, state, and municipal laws and ordinances covering any phase of activity in which it is engaged.
- A pharmacist may not be responsible for the supervision of more than one intern at any one time.⁵

Administration of Influenza Virus Immunizations by Pharmacists

In Florida, pharmacists may administer influenza virus immunizations to adults within the framework of an established protocol under a supervisory practitioner who is an allopathic or

⁴ Rule 64B16-26.2032, F.A.C.

⁵ *Id.*

osteopathic physician. Each protocol must contain specific procedures for addressing any unforeseen allergic reaction to influenza virus immunizations.⁶

A pharmacist may not enter into a protocol unless he or she maintains at least \$200,000 of professional liability insurance and has completed training in influenza virus immunizations.

A pharmacist administering influenza virus immunizations must maintain and make available patient records using the same standards for confidentiality and maintenance of such records as those that are imposed on health care practitioners under s. 456.057, F.S. These records are required to be maintained for a minimum of 5 years.⁷

The decision by a supervisory practitioner to enter into a protocol is a professional decision on the part of the practitioner, and a person may not interfere with a supervisory practitioner's decision as to entering into such a protocol. A pharmacist may not enter into a protocol that is to be performed while acting as an employee without the written approval of the owner of the pharmacy.⁸

Any pharmacist seeking to administer influenza virus immunizations to adults must be certified to administer influenza virus immunizations pursuant to a certification program approved by the board in consultation with the Board of Medicine and the Board of Osteopathic Medicine. The certification program must, at a minimum, require that the pharmacist attend at least 20 hours of continuing education classes approved by the board and the program must have a curriculum of instruction concerning the safe and effective administration of influenza virus immunizations, including, but not limited to, potential allergic reactions to influenza virus immunizations.⁹ The fee for influenza immunization certification is \$55.¹⁰

The written protocol between the pharmacist and supervising physician must include particular terms and conditions imposed by the supervising physician upon the pharmacist, relating to the administration of influenza virus immunizations by the pharmacist. Supervising physicians are required to review the administration of influenza virus immunizations by the pharmacists under such physician's supervision pursuant to the written protocol, and this review must take place as outlined in the written protocol. The pharmacist must submit to the board a copy of his or her protocol or written agreement to administer influenza virus immunizations.¹¹

Vaccines and Epinephrine Autoinjections

All 50 states authorize pharmacists to vaccinate people.¹² Therefore, the most accessible healthcare provider can positively impact public health and prevent disease by making vaccinations more readily available and less expensive.

⁶ Section 465.189, F.S.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Rule 64B16-26.1001, F.A.C.

¹¹ *Supra* fn. 6.

¹² Immunization Action Coalition, *Vaccination Information for Healthcare Professionals*, July 21, 2009, available at: <http://www.immunize.org/laws/pharm.asp> (Last visited on December 8, 2011).

Although every state allows pharmacists to administer immunizations, each state approaches immunizations differently. Some states require specific education or certification. Some limit the types of immunizations that can be administered, while other states limit the age of patients. Some states require pharmacists to have a prescription before administering an immunization, while others allow administration pursuant to protocol. Finally, some states limit the routes of immunization administration.¹³

Before being permitted to administer immunizations, most states require pharmacists to receive education in immunization administration. The most common educational requirements include completing state-specific courses in immunization administration, certificate programs in immunization administration, and immunization administration continuing education. Most states also require basic life support or cardiopulmonary resuscitation certification. Some states require ongoing continuing education and list specific timeframes for completion of the education, while other states require continuing education but give no specific guidelines for completion. Other states do not require any continuing education.¹⁴

The formulary of vaccines that can be administered by pharmacists also varies by state. Many states limit the formulary to the influenza and pneumococcal vaccines. Other states, such as Delaware, allow pharmacists to administer any injectable immunization or biologic contained in the *Orange Book*¹⁵ that is administered in accordance with its Food and Drug Administration-approved indications. Still other states expand the scope of administration to include other routes of administration in addition to injection, such as oral or intranasal administration, while others allow pharmacists to administer immunizations by all routes of administration. Many states' laws limit administration to subcutaneous injection.¹⁶

Another variance between states is the minimum age restriction for which patients may receive the immunization in the protocol for a specific immunization. New York law allows pharmacists to administer the influenza or pneumococcal vaccines to patients 18 years of age or older. Oregon allows pharmacists to administer a large formulary of vaccines to patients older than 11 years of age. Some states do not set a minimum age limit.¹⁷

Influenza Vaccine

There are two types of vaccines to protect people from influenza (the flu):

- The “flu shot” — an inactivated vaccine (containing killed virus) that is given with a needle, usually in the arm. The flu shot is approved for use in people older than 6 months, including healthy people and people with chronic medical conditions.

¹³ Laura Carpenter, RPh, JD; *Pharmacist-administered immunizations: Trends in state laws*; September 2009, available at: http://www.cedrugstorenews.com/userapp/lessons/page_view_ui.cfm?lessonuid=&pageid=B923321F24938AEE0854C1225838355F (Last visited on December 8, 2011).

¹⁴ *Id.*

¹⁵ The Electronic Orange Book for Approved Drug Products with Therapeutic Equivalence Evaluations is available on the U.S. Food and Drug Administration's website at: <http://www.accessdata.fda.gov/scripts/cder/ob/default.cfm> (Last visited on December 8, 2011).

¹⁶ *Supra* fn. 12.

¹⁷ *Id.*

- The nasal-spray flu vaccine—a vaccine made with live, weakened flu viruses that do not cause the flu is approved for use in healthy people 2 to 49 years of age who are not pregnant.¹⁸

The seasonal flu vaccine protects against three influenza viruses that research indicates will be most common during the upcoming season.¹⁹ The viruses in the vaccine change each year based on international surveillance and scientists' estimations about which types and strains of viruses will circulate in a given year. About 2 weeks after vaccination, antibodies that provide protection against influenza virus infection develop in the body.

Varicella-Zoster Vaccine

Varicella-zoster virus is one of eight herpes viruses known to infect humans. The initial infection of any person with this virus leads to varicella, or chickenpox. Once infected, the person carries the virus in his or her body for life, although this often does not lead to any further symptoms. As a person's immune system declines either from normal aging or disease, however, the virus can reactivate to cause zoster, or shingles, a condition in which painful sores erupt on the skin over a person's rib cage. Although these diseases are two forms of the same virus, they are treated differently and have different vaccines.

The varicella vaccine is the best way to prevent chickenpox and can be administered to patients of any age. Vaccination not only protects vaccinated persons, it also reduces the risk for exposure in the community for persons unable to be vaccinated because of illness or other conditions, including those who may be at greater risk for severe disease. While no vaccine is 100 percent effective in preventing disease, the chickenpox vaccine is very effective: about 8 to 9 of every 10 people who are vaccinated are completely protected from chickenpox. In addition, the vaccine almost always prevents severe disease. If a vaccinated person does get chickenpox, it is usually a very mild case lasting only a few days and involving fewer skin lesions (usually less than 50), mild or no fever, and few other symptoms.²⁰

Almost one out of every three people in the United States will develop shingles. There are an estimated 1 million cases each year in the United States, about half of which occur among men and women 60 years old or older.²¹ The only way to reduce the risk of developing shingles and the long-term pain that can follow shingles is to get the zoster vaccine. The vaccine is licensed for persons aged 60 years and older.²²

¹⁸ Centers for Disease Control and Prevention (CDC), *Seasonal Influenza (Flu)*, available at: <http://www.cdc.gov/flu/protect/keyfacts.htm> (Last visited on December 8, 2011).

¹⁹ CDC, *Vaccine Selection for the 2011-2012 Influenza Season*, available at: <http://www.cdc.gov/flu/about/qa/vaccine-selection.htm> (Last visited on December 8, 2011).

²⁰ CDC, *Varicella (Chickenpox) Vaccination*, available at: <http://www.cdc.gov/vaccines/vpd-vac/varicella/default.htm> (Last visited on December 8, 2011).

²¹ CDC, *Shingles (Herpes Zoster): Overview*, available at: <http://www.cdc.gov/shingles/about/overview.html> (Last visited on December 8, 2011).

²² CDC, *Shingles (Herpes Zoster): Prevention and Treatment*, available at: <http://www.cdc.gov/shingles/about/prevention-treatment.html> (Last visited on December 8, 2011).

The zoster vaccine is approximately 14 times as powerful as the varicella vaccine, and the two cannot be interchanged.²³

Pneumococcal Vaccine

Pneumococcal disease is an infection caused by a type of bacteria called *Streptococcus pneumoniae* (pneumococcus). The bacteria can lead to various types of disease, depending on what part of the body is infected and the state of the person's immune system. Diseases that can be caused by pneumococcus include lung infections (pneumonia), blood infections (bacteremia), ear infections (otitis media), and brain infections (meningitis). Pneumococcus is in many people's noses and throats and is spread by coughing, sneezing, or contact with respiratory secretions. Why it suddenly invades the body and causes disease is unknown.²⁴

The symptoms of pneumococcal pneumonia include fever, cough, shortness of breath, and chest pain. The symptoms of pneumococcal meningitis include stiff neck, fever, mental confusion and disorientation, and visual sensitivity to light (photophobia). The symptoms of pneumococcal bacteremia may be similar to some of the symptoms of pneumonia and meningitis, along with joint pain and chills. The symptoms of otitis media typically include a painful ear, a red or swollen eardrum, and sometimes sleeplessness, fever and irritability.²⁵

Pneumococcal vaccine is very good at preventing severe disease, hospitalization, and death. However, it is not guaranteed to prevent infection and symptoms in all people. The pneumococcal vaccine is recommended for certain categories of children, all adults over age 65, and people between ages 2 and 65 who have long-term health problems.²⁶

Epinephrine Autoinjection

Epinephrine may be administered by a one-dose autoinjector, known as an EpiPen or Twinject. Epinephrine is used in emergencies to treat very serious allergic reactions (anaphylactic reactions) to insect stings or bites, foods, drugs, or other substances. Epinephrine acts quickly to improve breathing, stimulate the heart, raise a dropping blood pressure, reverse hives, and reduce swelling of the face, lips, and throat.²⁷

Epinephrine autoinjectors should be only used on the thigh, through clothing if necessary. To avoid injecting into a vein, which would cause a dangerous reaction, the medicine should be injected into the front outer thigh and never into the buttocks. The effects of epinephrine are rapid, but not long-lasting. After injecting epinephrine, a person should seek immediate medical attention.²⁸

²³ CDC, *Herpes Zoster Vaccination for Health Care Professionals*, available at: <http://www.cdc.gov/vaccines/vpd-vac/shingles/hcp-vaccination.htm> (Last visited on December 9, 2011).

²⁴ CDC, *Vaccines and Immunizations: Pneumococcal Disease In-Short*, available at: <http://www.cdc.gov/vaccines/vpd-vac/pneumo/in-short-both.htm> (December 8, 2011).

²⁵ *Id.*

²⁶ *Id.*

²⁷ MedicineNet.com, *Epinephrine Auto-Injector*, available at: http://www.medicinenet.com/epinephrine_auto-injector/article.htm (Last visited on December 8, 2011).

²⁸ *Id.*

III. Effect of Proposed Changes:

This bill authorizes a pharmacist or a pharmacy intern, having proper certification and working under a pharmacist's supervision, to administer within the framework of an established protocol under a supervising physician licensed under ch. 458, F.S. (allopathic physician) or licensed under ch. 459, F.S. (osteopathic physician) the following:

- Influenza vaccines to adults 18 years of age or older. (The bill authorizes a pharmacy intern to administer the influenza vaccine since pharmacists already may administer influenza vaccines.)
- Varicella zoster vaccines to adults 60 years of age or older.
- Pneumococcal vaccines to adults 65 years of age or older.
- Epinephrine using an autoinjector delivery system to adults 18 years of age or older who are suffering from an anaphylactic reaction.

However, in order to administer a vaccine or an epinephrine autoinjection, the pharmacist and pharmacy intern must:

- Maintain at least \$200,000 of professional liability insurance (pharmacist only);
- Maintain and make available patient records for a minimum of 5 years, using the same standards for confidentiality and maintenance of such records as those that are imposed on health care practitioners under s. 456.057, F.S.;
- Be certified to administer the vaccines or epinephrine autoinjection pursuant to a certification program approved by the board, and proof of such certification must be shown to the supervising physician. The program must require that the pharmacist or pharmacy intern attend at least 20 hours of continuing education classes approved by the board and must include instruction concerning the safe and effective administration of the influenza, varicella zoster, and pneumococcal vaccines and the epinephrine autoinjection, including potential adverse reactions; and
- Have a supervising physician review the administration of the vaccines or epinephrine autoinjections.

The pharmacist or pharmacy intern must also follow a written protocol for the administration of vaccines or epinephrine autoinjections. The protocol must include particular terms and conditions imposed by a supervising allopathic or osteopathic physician, which must be appropriate to the pharmacist's or the pharmacy intern's training and certification for the vaccine or epinephrine autoinjection; include specific categories and conditions among patients for whom the supervising physician authorizes the pharmacist or pharmacy intern to administer a vaccine or epinephrine autoinjection; be approved by the owner of the pharmacy employing the pharmacist; and contain specific procedures for addressing any unforeseen adverse reaction to the vaccine or epinephrine autoinjection. The pharmacist must submit to the board a copy of the protocol to administer the vaccines or epinephrine autoinjections.

This bill also amends the definition of the term "practice of the profession of pharmacy" to include the administration of influenza, varicella zoster, and pneumococcal vaccines and the epinephrine autoinjection to adults.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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

None.

B. Private Sector Impact:

Pharmacies may generate additional revenue because they will be able to offer more vaccination services to customers. Pharmacy interns will be able to administer certain vaccines and epinephrine autoinjections.

C. Government Sector Impact:

The board will experience a recurring increase in workload related to processing certifications for the administration of vaccines or epinephrine autoinjections from pharmacists and pharmacy interns. Licensed pharmacists who are already certified to provide influenza vaccines will be able to provide additional vaccines and epinephrine autoinjections for no additional fee upon completion of a board-approved training course. A \$55 fee is required for initial vaccine administration certification, and the board will experience a positive fiscal impact related to this as pharmacy interns apply for certification.

Estimated processing costs will be \$22,955 in the first fiscal year after implementation and \$3,122 in the second year, although these costs do not include processing of extended certifications for pharmacists already permitted to administer influenza vaccines. Estimated fee revenues are \$151,041 for the first fiscal year after implementation and \$20,544 for the second.²⁹

²⁹ Department of Health, *Bill Analysis, Economic Statement, and Fiscal Note for SB 850*. A copy is on file with the Senate Health Regulation Committee.

VI. Technical Deficiencies:

The term “varicella zoster vaccine” in lines 30-31 is incorrect. The varicella vaccine and the zoster vaccine are two separate entities and cannot be combined or interchanged. The varicella vaccine is recommended for all persons who have not had chickenpox, while the zoster vaccine is recommended for persons over age 60.

The term “supervision” is used in lines 24, 86, 96, and 104 to require a pharmacist to supervise a pharmacy intern. It is not clear whether the pharmacist is required to provide “direct supervision.” Rule 64B16-26.2032, F.A.C., relating to pharmacy interns, requires an intern to perform certain acts under the “direct and immediate personal supervision” of a pharmacist. If the intent of the bill is to require direct supervision by a pharmacist over a pharmacy intern, the language in this rule should be used for consistency.

VII. Related Issues:

It is unclear in lines 32-33 why the bill authorizes pharmacists and pharmacy interns to provide pneumococcal vaccines only to adults aged 65 and older when this vaccine is also recommended for adults under age 65 with certain chronic medical conditions.

The relationship between the physician and the pharmacy intern is unclear. For example, is the pharmacy intern required to enter into a protocol with the supervising physician? The pharmacy intern is not required to maintain professional liability insurance, and it is not clear whether the intern would be covered under the pharmacist’s policy or the physician’s policy.

Similarly, there is no statute or rule which states how the supervising physician is to supervise the pharmacist. It is unclear whether direct or indirect supervision is required and whether the pharmacist or the supervising physician will ultimately be held liable for adverse events related to vaccine administration.

Issues concerning amendment barcode 741504:

Anaphylactic reactions are medical emergencies which can lead to the death of patients within minutes. Obtaining a prescription before a pharmacist administers an epinephrine autoinjection might be impracticable.

Physician assistants and nurse practitioners are also authorized to prescribe vaccines, but no provision is made to accept their prescriptions in this bill. Vaccines are an important element of primary care, and physician assistants and nurse practitioners constitute a large proportion of the primary care providers in the state.

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

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

None.

B. Amendments:

Barcode 741504 by Health Regulation on January 25, 2012:

This amendment removes all reference to pharmacy interns from the bill and corrects a technical error in the name of one of the vaccines. The amendment also requires pharmacists may only administer vaccines or epinephrine autoinjections pursuant to a prescription from a licensed allopathic or osteopathic physician. Provisions concerning vaccine and epinephrine autoinjection administration certification programs are changed to require completion of a ten-hour program offered by a statewide professional organization of physicians which is accredited as AMA PRA Category 1.

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



366132

LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
01/26/2012	.	
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The Committee on Health Regulation (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 465.189, Florida Statutes, is amended to read:

465.189 Administration of vaccines and epinephrine autoinjection ~~influenza virus immunizations~~.—

(1) A pharmacist ~~Pharmacists~~ may administer the following ~~influenza virus immunizations to adults~~ within the framework of an established protocol under a supervising ~~supervisory~~ ~~practitioner who is~~ a physician licensed under chapter 458 or



366132

13 chapter 459:

14 (a) Influenza vaccine to an adult 18 years of age or older.

15 (b) Shingles vaccine to an adult 60 years of age or older.

16 (c) Pneumococcal vaccine to an adult 65 years of age or
17 older.

18 (d) Epinephrine using an autoinjector delivery system to an
19 adult 18 years of age or older who is suffering an anaphylactic
20 reaction.

21
22 The ~~Each~~ protocol ~~must~~ shall contain specific procedures for
23 addressing any unforeseen adverse ~~allergic~~ reaction to the
24 vaccine or epinephrine autoinjection ~~influenza virus~~
25 ~~immunizations~~.

26 (2) A pharmacist may not enter into a protocol unless he or
27 she maintains at least \$200,000 of professional liability
28 insurance and has completed training on administration of the
29 vaccines and epinephrine autoinjection ~~in influenza virus~~
30 ~~immunizations~~ as provided in this section.

31 (3) A pharmacist who administers a vaccine or epinephrine
32 autoinjection ~~must~~ administering influenza virus immunizations
33 ~~shall~~ maintain and make available patient records using the same
34 standards for confidentiality and maintenance of such records as
35 those that are imposed on health care practitioners under s.
36 456.057. These records must ~~shall~~ be maintained for a minimum of
37 5 years.

38 (4) The decision by a supervising physician ~~supervisory~~
39 ~~practitioner~~ to enter into a protocol under this section is a
40 professional decision on the part of the physician ~~practitioner~~,
41 and a person may not interfere with a supervising physician's



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42 ~~supervisory practitioner's~~ decision to enter ~~as to entering~~ into
43 such a protocol. A pharmacist may not enter into a protocol that
44 is to be performed while acting as an employee without the
45 written approval of the owner of the pharmacy. Pharmacists shall
46 forward immunization records to the department for inclusion in
47 the state registry of immunization information.

48 (5) Any pharmacist seeking to administer a vaccine or
49 epinephrine autoinjection ~~influenza virus immunizations to~~
50 ~~adults~~ under this section must be certified to administer the
51 vaccine or epinephrine autoinjection ~~influenza virus~~
52 ~~immunizations~~ pursuant to a certification program approved by
53 the Board of Pharmacy in consultation with the Board of Medicine
54 and the Board of Osteopathic Medicine. The certification program
55 shall, at a minimum, require that the pharmacist attend at least
56 20 hours of continuing education classes approved by the board.
57 The program shall have a curriculum of instruction concerning
58 the safe and effective administration of the vaccines and
59 epinephrine autoinjection listed in subsection (1) ~~influenza~~
60 ~~virus immunizations~~, including, but not limited to, potential
61 adverse allergic reactions to the vaccines or epinephrine
62 autoinjection ~~influenza virus immunizations~~.

63 (6) The written protocol between the pharmacist and
64 supervising physician must include particular terms and
65 conditions imposed by the supervising physician upon the
66 pharmacist relating to the administration of a vaccine or
67 epinephrine autoinjection ~~influenza virus immunizations~~ by the
68 pharmacist. The written protocol must ~~shall~~ include, at a
69 minimum, specific categories and conditions among patients for
70 whom the supervising physician authorizes the pharmacist to



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71 administer a vaccine or epinephrine autoinjection ~~influenza~~
72 ~~virus immunizations~~. The terms, scope, and conditions set forth
73 in the written protocol between the pharmacist and the
74 supervising physician must be appropriate to the pharmacist's
75 training and certification for the vaccine or epinephrine
76 autoinjection immunization. ~~A pharmacist~~ ~~Pharmacists~~ who ~~is~~ ~~have~~
77 ~~been~~ delegated the authority to administer a vaccine or
78 epinephrine autoinjection ~~influenza virus immunizations~~ by the
79 supervising physician must ~~shall~~ provide evidence of current
80 certification by the Board of Pharmacy to the supervising
81 physician. A supervising physician must ~~physicians shall~~ review
82 the administration of the vaccine or epinephrine autoinjection
83 ~~influenza virus immunizations~~ by the pharmacist ~~pharmacists~~
84 under such physician's supervision pursuant to the written
85 protocol, and this review shall take place as outlined in the
86 written protocol. The process and schedule for the review shall
87 be outlined in the written protocol between the pharmacist and
88 the supervising physician.

89 (7) The pharmacist shall submit to the Board of Pharmacy a
90 copy of his or her protocol or written agreement to administer
91 the vaccine or epinephrine autoinjection ~~influenza virus~~
92 ~~immunizations~~.

93 Section 2. Subsection (13) of section 465.003, Florida
94 Statutes, is amended to read:

95 465.003 Definitions.—As used in this chapter, the term:

96 (13) "Practice of the profession of pharmacy" includes
97 compounding, dispensing, and consulting concerning contents,
98 therapeutic values, and uses of any medicinal drug; consulting
99 concerning therapeutic values and interactions of patent or



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100 proprietary preparations, whether pursuant to prescriptions or
101 in the absence and entirely independent of such prescriptions or
102 orders; and other pharmaceutical services. For purposes of this
103 subsection, "other pharmaceutical services" means the monitoring
104 of the patient's drug therapy and assisting the patient in the
105 management of his or her drug therapy, and includes review of
106 the patient's drug therapy and communication with the patient's
107 prescribing health care provider as licensed under chapter 458,
108 chapter 459, chapter 461, or chapter 466, or similar statutory
109 provision in another jurisdiction, or such provider's agent or
110 such other persons as specifically authorized by the patient,
111 regarding the drug therapy. However, ~~nothing in~~ this subsection
112 does not ~~may be interpreted to~~ permit an alteration of a
113 prescriber's directions, the diagnosis or treatment of any
114 disease, the initiation of any drug therapy, the practice of
115 medicine, or the practice of osteopathic medicine, unless
116 otherwise permitted by law. The term "practice of the profession
117 of pharmacy" ~~also~~ includes any other act, service, operation,
118 research, or transaction incidental to, or forming a part of,
119 any of the foregoing acts, requiring, involving, or employing
120 the science or art of any branch of the pharmaceutical
121 profession, study, or training, and shall expressly permit a
122 pharmacist to transmit information from persons authorized to
123 prescribe medicinal drugs to their patients. The term practice
124 ~~of the profession of pharmacy~~ also includes the administration
125 of certain vaccines and epinephrine autoinjection influenza
126 ~~virus immunizations~~ to adults pursuant to s. 465.189.

127 Section 3. This act shall take effect July 1, 2012.
128



366132

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

130 And the title is amended as follows:

131 Delete everything before the enacting clause

132 and insert:

133 A bill to be entitled

134 An act relating to pharmacy; amending s. 465.189,
135 F.S.; revising the types of vaccines that pharmacists
136 may administer; authorizing pharmacists to administer
137 an epinephrine autoinjection under certain
138 circumstances; revising protocol requirements for
139 vaccine administration and the duties of supervising
140 physicians under such protocols; revising requirements
141 for training programs, certifications, and patient
142 records related to vaccine administration; amending s.
143 465.003, F.S.; conforming terminology; providing an
144 effective date.



224732

LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
01/26/2012	.	
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The Committee on Health Regulation (Gaetz) recommended the following:

Senate Amendment to Amendment (366132)

Delete line 9
and insert:

(1) A pharmacist ~~Pharmacists~~ may administer, pursuant to a written or electronic prescription issued to the patient by a physician licensed under chapter 458 or chapter 459, the following



240938

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/26/2012	.	
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The Committee on Health Regulation (Gaetz) recommended the following:

Senate Amendment to Amendment (366132)

Delete lines 50 - 57
and insert:
adults under this section must first complete a 20-hour certification program on the administration of vaccines and epinephrine autoinjection offered by a statewide professional association of physicians in this state which is accredited to provide educational activities designated for AMA PRA Category 1 credit ~~be certified to administer influenza virus immunizations pursuant to a certification program approved by the Board of Pharmacy in consultation with the Board of Medicine and the~~



240938

13 ~~Board of Osteopathic Medicine.~~ The certification program must
14 ~~shall, at a minimum, require that the pharmacist attend at least~~
15 ~~20 hours of continuing education classes approved by the board.~~
16 ~~The program shall~~ have a curriculum of instruction concerning



206174

LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
01/26/2012	.	
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The Committee on Health Regulation (Gaetz) recommended the following:

Senate Amendment to Amendment (366132)

Delete lines 50 - 57
and insert:
adults under this section must first complete a 10-hour certification program on the administration of vaccines and epinephrine autoinjection offered by a statewide professional association of physicians in this state which is accredited to provide educational activities designated for AMA PRA Category 1 credit ~~be certified to administer influenza virus immunizations pursuant to a certification program approved by the Board of Pharmacy in consultation with the Board of Medicine and the~~



206174

13 ~~Board of Osteopathic Medicine.~~ The certification program must
14 ~~shall, at a minimum, require that the pharmacist attend at least~~
15 ~~20 hours of continuing education classes approved by the board.~~
16 ~~The program shall~~ have a curriculum of instruction concerning



741504

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/26/2012	.	
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The Committee on Health Regulation (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 465.189, Florida Statutes, is amended to read:

465.189 Administration of vaccines and epinephrine autoinjection ~~influenza virus immunizations~~.—

(1) A pharmacist ~~Pharmacists~~ may administer, pursuant to a written or electronic prescription issued to the patient by a physician licensed under chapter 458 or chapter 459, the following ~~influenza virus immunizations to adults~~ within the



741504

13 framework of an established protocol under a supervising
14 ~~supervisory practitioner who is a~~ physician licensed under
15 chapter 458 or chapter 459:

16 (a) Influenza vaccine to an adult 18 years of age or older.

17 (b) Shingles vaccine to an adult 60 years of age or older.

18 (c) Pneumococcal vaccine to an adult 65 years of age or
19 older.

20 (d) Epinephrine using an autoinjector delivery system to an
21 adult 18 years of age or older who is suffering an anaphylactic
22 reaction.

23
24 ~~The Each~~ protocol must shall contain specific procedures for
25 addressing any unforeseen adverse allergic reaction to the
26 vaccine or epinephrine autoinjection influenza virus
27 immunizations.

28 (2) A pharmacist may not enter into a protocol unless he or
29 she maintains at least \$200,000 of professional liability
30 insurance and has completed training on administration of the
31 vaccines and epinephrine autoinjection in influenza virus
32 immunizations as provided in this section.

33 (3) A pharmacist who administers a vaccine or epinephrine
34 autoinjection must administering influenza virus immunizations
35 ~~shall~~ maintain and make available patient records using the same
36 standards for confidentiality and maintenance of such records as
37 those that are imposed on health care practitioners under s.
38 456.057. These records must shall be maintained for a minimum of
39 5 years.

40 (4) The decision by a supervising physician ~~supervisory~~
41 ~~practitioner~~ to enter into a protocol under this section is a



741504

42 professional decision on the part of the physician practitioner,
43 and a person may not interfere with a supervising physician's
44 supervisory practitioner's decision to enter as to entering into
45 such a protocol. A pharmacist may not enter into a protocol that
46 is to be performed while acting as an employee without the
47 written approval of the owner of the pharmacy. Pharmacists shall
48 forward immunization records to the department for inclusion in
49 the state registry of immunization information.

50 (5) Any pharmacist seeking to administer a vaccine or
51 epinephrine autoinjection ~~influenza virus immunizations to~~
52 ~~adults~~ under this section must first complete a 10-hour
53 certification program on the administration of vaccines and
54 epinephrine autoinjection offered by a statewide professional
55 association of physicians in this state which is accredited to
56 provide educational activities designated for AMA PRA Category 1
57 credit ~~be certified to administer influenza virus immunizations~~
58 ~~pursuant to a certification program approved by the Board of~~
59 ~~Pharmacy in consultation with the Board of Medicine and the~~
60 ~~Board of Osteopathic Medicine. The certification program must~~
61 ~~shall, at a minimum, require that the pharmacist attend at least~~
62 ~~20 hours of continuing education classes approved by the board.~~
63 ~~The program shall~~ have a curriculum of instruction concerning
64 the safe and effective administration of the vaccines and
65 epinephrine autoinjection listed in subsection (1) ~~influenza~~
66 ~~virus immunizations~~, including, but not limited to, potential
67 adverse allergic reactions to the vaccines or epinephrine
68 autoinjection ~~influenza virus immunizations.~~

69 (6) The written protocol between the pharmacist and
70 supervising physician must include particular terms and



741504

71 conditions imposed by the supervising physician upon the
72 pharmacist relating to the administration of a vaccine or
73 epinephrine autoinjection ~~influenza virus immunizations~~ by the
74 pharmacist. The written protocol must ~~shall~~ include, at a
75 minimum, specific categories and conditions among patients for
76 whom the supervising physician authorizes the pharmacist to
77 administer a vaccine or epinephrine autoinjection ~~influenza~~
78 ~~virus immunizations~~. The terms, scope, and conditions set forth
79 in the written protocol between the pharmacist and the
80 supervising physician must be appropriate to the pharmacist's
81 training and certification for the vaccine or epinephrine
82 autoinjection ~~immunization~~. A pharmacist ~~Pharmacists~~ who is ~~have~~
83 ~~been~~ delegated the authority to administer a vaccine or
84 epinephrine autoinjection ~~influenza virus immunizations~~ by the
85 supervising physician must ~~shall~~ provide evidence of current
86 certification by the Board of Pharmacy to the supervising
87 physician. A supervising physician must ~~physicians shall~~ review
88 the administration of the vaccine or epinephrine autoinjection
89 ~~influenza virus immunizations~~ by the pharmacist ~~pharmacists~~
90 under such physician's supervision pursuant to the written
91 protocol, and this review shall take place as outlined in the
92 written protocol. The process and schedule for the review shall
93 be outlined in the written protocol between the pharmacist and
94 the supervising physician.

95 (7) The pharmacist shall submit to the Board of Pharmacy a
96 copy of his or her protocol or written agreement to administer
97 the vaccine or epinephrine autoinjection ~~influenza virus~~
98 ~~immunizations~~.

99 Section 2. Subsection (13) of section 465.003, Florida



741504

100 Statutes, is amended to read:

101 465.003 Definitions.—As used in this chapter, the term:

102 (13) "Practice of the profession of pharmacy" includes
103 compounding, dispensing, and consulting concerning contents,
104 therapeutic values, and uses of any medicinal drug; consulting
105 concerning therapeutic values and interactions of patent or
106 proprietary preparations, whether pursuant to prescriptions or
107 in the absence and entirely independent of such prescriptions or
108 orders; and other pharmaceutical services. For purposes of this
109 subsection, "other pharmaceutical services" means the monitoring
110 of the patient's drug therapy and assisting the patient in the
111 management of his or her drug therapy, and includes review of
112 the patient's drug therapy and communication with the patient's
113 prescribing health care provider as licensed under chapter 458,
114 chapter 459, chapter 461, or chapter 466, or similar statutory
115 provision in another jurisdiction, or such provider's agent or
116 such other persons as specifically authorized by the patient,
117 regarding the drug therapy. However, ~~nothing in~~ this subsection
118 does not ~~may be interpreted to~~ permit an alteration of a
119 prescriber's directions, the diagnosis or treatment of any
120 disease, the initiation of any drug therapy, the practice of
121 medicine, or the practice of osteopathic medicine, unless
122 otherwise permitted by law. The term "practice of the profession
123 of pharmacy" ~~also~~ includes any other act, service, operation,
124 research, or transaction incidental to, or forming a part of,
125 any of the foregoing acts, requiring, involving, or employing
126 the science or art of any branch of the pharmaceutical
127 profession, study, or training, and shall expressly permit a
128 pharmacist to transmit information from persons authorized to



741504

129 prescribe medicinal drugs to their patients. The term practice
130 ~~of the profession of pharmacy~~ also includes the administration
131 of certain vaccines and epinephrine autoinjection influenza
132 ~~virus immunizations~~ to adults pursuant to s. 465.189.

133 Section 3. This act shall take effect July 1, 2012.

134
135 ===== T I T L E A M E N D M E N T =====

136 And the title is amended as follows:

137 Delete everything before the enacting clause
138 and insert:

139 A bill to be entitled
140 An act relating to pharmacy; amending s. 465.189,
141 F.S.; allowing pharmacists to administer certain
142 vaccines or an epinephrine autoinjection pursuant to a
143 prescription from a licensed physician; revising the
144 types of vaccines that pharmacists may administer;
145 authorizing pharmacists to administer an epinephrine
146 autoinjection under certain circumstances; revising
147 protocol requirements for vaccine administration and
148 the duties of supervising physicians under such
149 protocols; revising requirements for training
150 programs, certifications, and patient records related
151 to vaccine administration; amending s. 465.003, F.S.;
152 conforming terminology; providing an effective date.



126666

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/26/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Gaetz) recommended the following:

Senate Amendment

Delete lines 23 - 28
and insert:

(1) A pharmacist, and a pharmacy intern having proper certification and working under the pharmacist's supervision,
~~Pharmacists~~ may, pursuant to a written or electronic prescription issued to the patient by a physician licensed under chapter 458 or chapter 459 and administer influenza virus immunizations to adults within the framework of an established protocol under a supervising supervisory practitioner who is a physician licensed under chapter 458 or chapter 459, administer



126666

13

the following:



253346

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/26/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 64 - 74
and insert:

(5) Any pharmacist seeking to administer a vaccine or epinephrine autoinjection ~~influenza virus immunizations to adults~~ under this section must first complete a 20-hour certification program on the administration of vaccines and epinephrine autoinjection offered by a statewide professional association of physicians in the state which is accredited to provide educational activities designated for AMA PRA Category 1 credit ~~be certified to administer influenza virus immunizations~~



253346

13 ~~pursuant to a certification program approved by the Board of~~
14 ~~Pharmacy in consultation with the Board of Medicine and the~~
15 ~~Board of Osteopathic Medicine. The certification program must~~
16 ~~shall, at a minimum, require that the pharmacist attend at least~~
17 ~~20 hours of continuing education classes approved by the board.~~
18 ~~The program shall~~ have a curriculum of instruction concerning
19 the safe and

20
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete lines 6 - 7

24 and insert:

25 circumstances; authorizing pharmacists to administer
26 an epinephrine autoinjection

By Senator Oelrich

14-00799-12

2012850__

A bill to be entitled

An act relating to pharmacists; amending s. 465.189, F.S.; revising the types of vaccines that pharmacists are authorized to administer; authorizing pharmacy interns to administer the vaccines under certain circumstances; authorizing pharmacists and pharmacy interns to administer an epinephrine autoinjection under certain circumstances; revising protocol requirements for vaccine administration and the duties of supervising physicians under such protocols; revising requirements for training programs, certifications, and patient records related to vaccine administration; amending s. 465.003, F.S.; revising terminology to conform to changes made by the act; providing an effective date.

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

Section 1. Section 465.189, Florida Statutes, is amended to read:

465.189 Administration of vaccines and epinephrine autoinjection ~~influenza virus immunizations.~~

(1) A pharmacist, and a pharmacy intern having proper certification and working under the pharmacist's supervision, ~~Pharmacists may administer, influenza virus immunizations to adults~~ within the framework of an established protocol under a supervising supervisory practitioner who is a physician licensed ~~supervising supervisory practitioner who is a~~ physician licensed under chapter 458 or chapter 459, the following:

(a) Influenza vaccine to an adult 18 years of age or older.

Page 1 of 6

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

14-00799-12

2012850__

(b) Varicella zoster vaccine to an adult 60 years of age or older.

(c) Pneumococcal vaccine to an adult 65 years of age or older.

(d) Epinephrine using an autoinjector delivery system to an adult 18 years of age or older who is suffering an anaphylactic reaction.

~~The Each~~ protocol must shall contain specific procedures for addressing any unforeseen adverse allergic ~~allergic~~ reaction to the vaccine or epinephrine autoinjection ~~influenza virus immunizations.~~

(2) A pharmacist may not enter into a protocol unless he or she maintains at least \$200,000 of professional liability insurance and has completed training on the vaccines and epinephrine autoinjection ~~in influenza virus immunizations~~ as provided in this section.

(3) A pharmacist who administers, or whose pharmacy intern administers, a vaccine or epinephrine autoinjection must ~~administering influenza virus immunizations shall~~ maintain and make available patient records using the same standards for confidentiality and maintenance of such records as those that are imposed on health care practitioners under s. 456.057. These records must shall be maintained for a minimum of 5 years.

(4) The decision by a supervising physician supervisory practitioner ~~supervising physician~~ to enter into a protocol under this section is a professional decision on the part of the physician practitioner, ~~practitioner~~ and a person may not interfere with a supervising physician's ~~supervisory practitioner's~~ decision to enter as to entering into

Page 2 of 6

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

14-00799-12

2012850__

59 such a protocol. A pharmacist may not enter into a protocol that
60 is to be performed while acting as an employee without the
61 written approval of the owner of the pharmacy. Pharmacists shall
62 forward immunization records to the department for inclusion in
63 the state registry of immunization information.

64 (5) Any pharmacist or pharmacy intern seeking to administer
65 a vaccine or epinephrine autoinjection influenza virus
66 ~~immunizations to adults~~ under this section must be certified to
67 administer the vaccine or epinephrine autoinjection influenza
68 ~~virus immunizations~~ pursuant to a certification program approved
69 by the Board of Pharmacy in consultation with the Board of
70 Medicine and the Board of Osteopathic Medicine. The
71 certification program shall, at a minimum, require that the
72 pharmacist or pharmacy intern attend at least 20 hours of
73 continuing education classes approved by the board. The program
74 shall have a curriculum of instruction concerning the safe and
75 effective administration of the vaccines listed in subsection
76 (1) and epinephrine autoinjection influenza virus immunizations,
77 including, but not limited to, potential adverse allergic
78 reactions to the vaccines or epinephrine autoinjection influenza
79 ~~virus immunizations.~~

80 (6) The written protocol between the pharmacist and
81 supervising physician must include particular terms and
82 conditions imposed by the supervising physician upon the
83 pharmacist relating to the administration of a vaccine or
84 epinephrine autoinjection influenza virus immunizations by the
85 pharmacist or pharmacy intern working under the pharmacist's
86 supervision. The written protocol must shall include, at a
87 minimum, specific categories and conditions among patients for

Page 3 of 6

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

14-00799-12

2012850__

88 whom the supervising physician authorizes the pharmacist or
89 pharmacy intern to administer a vaccine or epinephrine
90 autoinjection influenza virus immunizations. The terms, scope,
91 and conditions set forth in the written protocol between the
92 pharmacist and the supervising physician must be appropriate to
93 the pharmacist's or pharmacy intern's training and certification
94 for the vaccine or epinephrine autoinjection immunization. A
95 pharmacist, or pharmacy intern working under the pharmacist's
96 supervision, ~~Pharmacists~~ who ~~is~~ ~~have been~~ delegated the
97 authority to administer a vaccine or epinephrine autoinjection
98 influenza virus immunizations by the supervising physician must
99 ~~shall~~ provide evidence of current certification by the Board of
100 Pharmacy to the supervising physician. A supervising physician
101 ~~must physicians shall~~ review the administration of the vaccine
102 or epinephrine autoinjection influenza virus immunizations by
103 the pharmacist, or a pharmacy intern working under the
104 pharmacist's supervision, ~~pharmacists~~ under such physician's
105 supervision pursuant to the written protocol, and this review
106 shall take place as outlined in the written protocol. The
107 process and schedule for the review shall be outlined in the
108 written protocol between the pharmacist and the supervising
109 physician.

110 (7) The pharmacist shall submit to the Board of Pharmacy a
111 copy of his or her protocol or written agreement to administer
112 the vaccine or epinephrine autoinjection influenza virus
113 immunizations.

114 Section 2. Subsection (13) of section 465.003, Florida
115 Statutes, is amended to read:

116 465.003 Definitions.—As used in this chapter, the term:

Page 4 of 6

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

14-00799-12 2012850__

117 (13) "Practice of the profession of pharmacy" includes
118 compounding, dispensing, and consulting concerning contents,
119 therapeutic values, and uses of any medicinal drug; consulting
120 concerning therapeutic values and interactions of patent or
121 proprietary preparations, whether pursuant to prescriptions or
122 in the absence and entirely independent of such prescriptions or
123 orders; and other pharmaceutical services. For purposes of this
124 subsection, "other pharmaceutical services" means the monitoring
125 of the patient's drug therapy and assisting the patient in the
126 management of his or her drug therapy, and includes review of
127 the patient's drug therapy and communication with the patient's
128 prescribing health care provider as licensed under chapter 458,
129 chapter 459, chapter 461, or chapter 466, or similar statutory
130 provision in another jurisdiction, or such provider's agent or
131 such other persons as specifically authorized by the patient,
132 regarding the drug therapy. However, ~~nothing in~~ this subsection
133 ~~does not may be interpreted to~~ permit an alteration of a
134 prescriber's directions, the diagnosis or treatment of any
135 disease, the initiation of any drug therapy, the practice of
136 medicine, or the practice of osteopathic medicine, unless
137 otherwise permitted by law. The term "practice of the profession
138 of pharmacy" ~~also~~ includes any other act, service, operation,
139 research, or transaction incidental to, or forming a part of,
140 any of the foregoing acts, requiring, involving, or employing
141 the science or art of any branch of the pharmaceutical
142 profession, study, or training, and shall expressly permit a
143 pharmacist to transmit information from persons authorized to
144 prescribe medicinal drugs to their patients. The term practice
145 ~~of the profession of pharmacy~~ also includes the administration

Page 5 of 6

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

14-00799-12 2012850__

146 of certain vaccines and epinephrine autoinjection ~~influenza~~
147 ~~virus immunizations~~ to adults pursuant to s. 465.189.
148 Section 3. This act shall take effect July 1, 2012.

Page 6 of 6

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



The Florida Senate

Committee Agenda Request

To: Senator Rene Garcia, Chair
Committee on Health Regulation

Subject: Committee Agenda Request

Date: December 7, 2011

I respectfully request that **Senate Bill # 850**, relating to Pharmacists, be placed on the:

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

A handwritten signature in cursive script that reads "Steve Oelrich".

Senator Steve Oelrich
Florida Senate, District 14

A circular stamp with the word "RECORDED" in a bold, sans-serif font.

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

spoke

850

1/25/12

Date

Bill Number

Name Sally West

Phone 222-4082

Address Florida Retail Federation

E-mail Sally@frf.org

Street

Job Title Director, Govt Affairs

City

State

Zip

Speaking: For Against Information

Appearing at request of Chair

Subject Amendment - 224732

Representing Florida Retail Federation

Lobbyist registered with Legislature: Yes

No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

Spoke

(Submit to Committee Chair or Administrative Assistant)

1/25/12
Date

850
Bill Number

Name Sally West

Phone 850-222-4083

Address Florida Retail Federation
Street

E-mail sally@frf.org

City State Zip

Job Title Director, Govt Affairs

Speaking: For Against Information

Appearing at request of Chair

Subject Amendment - 206174

Representing Florida Retail Federation

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.
If designated employee: Time: from _____ .m. to _____ .m.

THE FLORIDA SENATE
APPEARANCE RECORD



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

1-25-12

Meeting Date

Topic Pharmacists

Bill Number 850

(if applicable)

Name Mike Fischer

Amendment Barcode _____

(if applicable)

Job Title _____

Address PO BOX 1197

Phone 850-222-6344

Street

FL 32303

E-mail mike.fischer@redfish.com

City

State

Zip

Speaking: For Against Information

Representing FLORIDA INDEPENDENT PHARMACY NETWORK

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

Spoke

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

1/25/12

Meeting Date

Topic Pharmacist Immunization

Bill Number 850
(if applicable)

Name Dr Jonathan Hickman

Amendment Barcode _____
(if applicable)

Job Title Pharmacists

Address 371 Milestone Dr.

Phone 904-655-6385

Tallahassee FL 32312
City State Zip

E-mail _____

Speaking: For Against Information

Representing Walgreens

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

Spoke

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

1/25/2012

Meeting Date

Topic PHARMACIST IMMUNIZATIONS

Bill Number SB 850
(if applicable)

Name MICHAEL JACKSON

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE VICE PRESIDENT & CEO

Address 610 N. ADAMS STREET

Phone (850) 222-2400

TALLAHASSEE FLORIDA 32301
City State Zip

E-mail MJACKSON@PHARMVIEW.COM

Speaking: For Against Information

Representing FLORIDA PHARMACY ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD



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

1/25/2012

Meeting Date

Topic Pharmacist Immunization

Bill Number SB 850
(if applicable)

Name Bob Parrado

Amendment Barcode _____
(if applicable)

Job Title President, Florida Pharmacy Association

Address 7922-Flowerfield Dr

Phone 813-361-0491

Street

Tampa

FL

33615

City

State

Zip

E-mail bobparrado1@hotmail.com

Speaking: For Against Information

Representing Florida Pharmacy Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

spoke

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

JAN 25, 2012

Meeting Date

PNEUMONIA

Topic PHARMACIST IMMUNIZATIONS SHINGLES,

Bill Number SB 850
(if applicable)

Name MIKE MCQUONE

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE VICE PRESIDENT / CEO

Address 2910 KERRY FOREST PARKWAY D-4 SUITE 306 Phone (850) 906-9333

Street

TALLAHASSEE

FLORIDA

32309

City

State

Zip

E-mail mikemcquone@fshp.org

Speaking: For Against Information

Representing FLORIDA SOCIETY OF HEALTH-SYSTEM PHARMACISTS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

spoke

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

Meeting Date _____

Topic _____

Bill Number 850
(if applicable)

Name Randy Milon

Amendment Barcode _____
(if applicable)

Job Title EX UP

Address 227 S. ADAMS ST
Street

Phone _____

TALLAHASSEE, FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA RETAIL FOUNDATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-25-12
~~1-25-12~~
Meeting Date



Topic Pharmacist Vaccines

Bill Number 850

Name Rebecca O'Hara

Amendment Barcode Sen. Gaetz amendments
(if applicable)

Job Title VP Govt Affairs

Address 113 College Ave
Street

Phone 339 6211

Tallahassee FL 32301
City State Zip

E-mail rohara@flmedical.org

Speaking: For Against Information

Representing Fla Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE
APPEARANCE RECORD

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

1-25-12

Meeting Date

Topic _____

Bill Number 850
(if applicable)

Name Marcela Castano

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing NOVA South eastern University

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)

1-25-2012

Meeting Date

Topic PHARMACISTS

Bill Number SB 850
(if applicable)

Name STEPHEN R. WINN

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2007 APALACHE PARKWAY

Phone 878-7364

TALLAHASSEE, FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

left

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

1-25-12
Meeting Date

Topic Pharmacy Vaccines

Bill Number SB 0850
(if applicable)

Name Natalie Ciccone

Amendment Barcode _____
(if applicable)

Job Title Pharmacy Interns

Address 541 SE Woods Edge Tr
Street
Stuart FL 34997
City State Zip

Phone 845-721-5683

E-mail natalie-ciccone@
pba.edu

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

1/25/12
Date

850
Bill Number

Name Sally West

Phone 222-4082

Address _____
Street

E-mail Sally@prf.org

City _____ State _____ Zip _____

Job Title Director, Govt Affairs

Speaking: For Against Information

Appearing at request of Chair

Subject Pharmacist Authority to Vaccinate

Representing Florida Retail Federation

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 606

INTRODUCER: Senators Montford and Gaetz

SUBJECT: Youth Athletes

DATE: January 21, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	Favorable
2.	_____	_____	ED	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires independent sanctioning authorities of youth athletic teams, and the Florida High School Athletic Association, to adopt guidelines and bylaws or policies for:

- Educating athletic coaches, officials, administrators, and youth athletes and their parents or guardians of the nature and risk of exertional heat stroke (EHS) and heat-related injury;
- Requiring the parent or guardian of a youth athlete to sign a consent form that explains the nature and risk of EHS and heat-related injury;
- Requiring a youth athlete who is suspected of suffering from an EHS or heat-related injury during a practice or competition to be removed from the activity; and
- Prohibiting a youth athlete who has been removed from a practice or competition from returning to practice or competition until the youth receives written clearance from an allopathic physician or an osteopathic physician.

At the direction of the physician, specified health care practitioners are authorized to provide medical examinations and treatment for purposes of the clearances.

This bill substantially amends sections 943.0438 and 1006.20 of the Florida Statutes:

II. Present Situation:

Independent Sanctioning Authorities

An independent sanctioning authority is defined in statute as a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in Florida if the team includes one

or more minors and is not affiliated with a private school.¹ An independent sanctioning authority is currently required to screen each current and prospective athletic coach against state and federal registries of sexual predators and sexual offenders. The independent sanctioning authority must disqualify any person from acting as an athletic coach if he or she is identified on one of these registries.

The Florida High School Athletic Association

The Florida High School Athletic Association (FHSAA), established in s. 1006.20, F.S., is the governing body of Florida public school athletics. Currently, the FHSAA is required to adopt bylaws to

- Establish eligibility requirements for all students;
- Prohibit recruiting students for athletic purposes; and
- Require students participating in athletics to satisfactorily pass an annual medical evaluation.

Unless otherwise specifically provided by statute, the bylaws are the rules by which high school athletic programs in its member schools, and the students who participate in them, are governed. The bylaws are published in a handbook that is available online.² Currently, the FHSAA governs almost 800 public and private member schools.³

On November 21, 2011, the Board of Directors of the FHSAA reviewed and discussed draft legislation for heat stroke and heat-related injuries. The draft legislation was very similar to this bill. The FHSAA will be adopting policies to be included in the FHSAA Handbook regarding safety issues relating to heat stroke and heat-related injuries.⁴ The FHSAA has already created a Health and Wellness webpage that includes information on heat stress and heat illness prevention.⁵

Exertional Heat Stroke

Heat illness is a continuum of illnesses relating to the body's inability to cope with heat. It progresses from minor illnesses, such as heat edema (swelling due to accumulation of fluid) and heat rash (ie, prickly heat), to heat cramps (usually in the stomach, arms or legs), to heat exhaustion (heavy sweating, nausea, headache, lightheadedness and feeling faint) to heat stroke. Heat stroke is the most severe form of the heat-related illnesses.

Heat stroke is defined as a body temperature higher than 40°C (104°F).⁶ Heat stroke symptoms include: high body temperature, a lack of sweating, nausea and vomiting, flushed skin, rapid breathing, racing heart rate, headache, confusion, unconsciousness, and muscle cramps or

¹ See s. 943.0438, F.S.

² Florida High School Athletic Association Handbook, 2011-2012 Edition. Found at: <http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/complete_handbook_276pgs.pdf> (Last visited on January 21, 2012).

³ FHSAA, *About the FHSAA*. Found at: <<http://www.fhsaa.org/about>> (Last visited on January 21, 2012).

⁴ FHSAA, *Press Release*, November 21, 2011. Found at: <<http://www.fhsaa.org/news/2011/1121>> (Last visited on January 21, 2012).

⁵ FHSAA, *Health & Wellness*. Found at: <<http://www.fhsaa.org/departments/health>> (Last visited on January 21, 2012).

⁶ Mayo Clinic, *Heatstroke, Definition*. Found at: <<http://www.mayoclinic.com/health/heat-stroke/DS01025>> (Last visited on January 21, 2012).

weakness. In a period of hours, untreated heat stroke can cause damage to the brain, heart, kidneys and muscles. These injuries get worse the longer treatment is delayed, increasing the risk of serious complications or death.

Two forms of heatstroke exist. Exertional heatstroke (EHS) generally occurs in young individuals who engage in strenuous physical activity for a prolonged period of time in a hot environment. Classic nonexertional heatstroke (NEHS) more commonly affects sedentary elderly individuals, persons who are chronically ill, and very young persons.

All heat illnesses in student athletes are preventable with the proper precautions. Football is the sport associated with the most heat related illnesses and August is the most common month for them to occur.⁷ Since 1995, there have been 42 football players in the United States who have died from heat stroke (31 high school, 8 college, 2 professional, and one sandlot).⁸ The 2009 data indicate that there were three cases of heat stroke death at the high school level and one at the college level.⁹

Health Care Practitioners

Health care practitioners are regulated under the general provisions of ch. 456, F.S., and specific licensing statutes for each type of practitioner.

- Medical practice is governed by ch. 458, F.S., under the Board of Medicine within the Department of Health.
- The practice of osteopathic medicine is governed by ch. 459, F.S., under the Board of Osteopathic Medicine within the Department of Health
- Nursing practice is governed by ch. 464, F.S., under the Board of Nursing within the Department of Health. Section 464.012, F.S., provides for the certification of registered nurses as advanced registered nurse practitioners. A nurse practitioner may perform certain acts within the framework of an established protocol with a physician.
- Physician assistants are governed by sections 458.347 and 459.022, F.S., under the Board of Medicine and the Board of Osteopathic Medicine within the Department of Health. Physician assistants perform certain medical services delegated by a supervising physician.
- Athletic trainers are governed by part XIII, ch. 468, F.S., under the Board of Athletic Trainers within the Department of Health. Athletic trainers are licensed under s. 468.707, F.S., and practice within a written protocol established between the athletic trainer and a supervising physician licensed under ch. 458, ch. 459, or ch. 460 (chiropractic medicine), F.S.

Each of these health care practitioners must be licensed in order to practice in this state. They must practice only within their specific scope of practice as established in the applicable licensing law and rules adopted by the applicable board. A health care practitioner may seek a declaratory statement from the applicable board if the practitioner is unclear about whether a specific act is within his or her scope of practice.

⁷ Centers for Disease Control and Prevention, *Press Release*, August 19, 2010. Found at: http://www.cdc.gov/media/pressrel/2010/r100819a.htm?s_cid=mediarel_r100819a (Last visited on January 21, 2012).

⁸ Mueller, Frederick O. and Colgate, Bob; *Annual Survey of Football Injury Research – 1931-2009*, Submitted February 2010. Found at: <http://www.unc.edu/depts/nccsi/2009AnnualFootball.pdf> (Last visited on January 21, 2012).

⁹ *Id.*

III. Effect of Proposed Changes:

The bill requires independent sanctioning authorities for youth athletic teams and the FHSAA to adopt guidelines to educate athletic coaches, officials, administrators, and youth athletes and their parents or guardians of the nature and risk of EHS and heat-related injury.

In addition, the bill requires independent sanctioning authorities and the FHSAA to adopt bylaws or policies requiring:

- The parent or guardian of a youth who participates in an athletic competition or who is a candidate for an athletic team to sign and return an informed-consent form each year before the youth athlete participates in an athletic competition or engages in any practice, tryout, workout, or other physical activity associated with the youth's candidacy for an athletic team. The form must explain the nature and risk of EHS and heat-related injury, including the risk of continuing to play after suffering from an EHS or heat-related injury; and
- A youth athlete who is suspected of suffering an EHS or heat-related injury in a practice or competition to be removed from the activity and prohibiting the youth athlete from returning to practice or competition until the youth receives written clearance to return from an allopathic physician or an osteopathic physician.

The bill authorizes an allopathic physician or osteopathic physician to delegate the performance of medical care of a youth athlete who has suffered an EHS or heat-related injury to a nurse practitioner, physician assistant or athletic trainer with whom the physician maintains a formal supervisory relationship or established written protocol that:

- Identifies the medical acts or evaluations to be performed,
- Identifies the conditions for performing medical acts or evaluations, and
- Attests to proficiency in the evaluation and management of an EHS or heat-related injury.

The effective date of the bill is July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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

None.

B. Private Sector Impact:

Independent sanctioning authorities and the FHSAA may have to expend resources developing guidelines and bylaws or policies, if they have not already adopted such guidelines, bylaws or policies.

Independent sanctioning authorities that fail to implement the law could be vulnerable to liability issues related to EHS and heat-related injury. Conversely, the provisions relating to informed consent and a prohibition on athletes returning to play until they are medically cleared, if implemented, may reduce liability for sports-related injuries.

Adoption of this legislation would hopefully lessen the severity of sports-related injuries to youth athletes, with a possible reduction of personal medical and other costs in the long term.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 943, F.S., relates to the organization and duties of the Florida Department of Law Enforcement (FDLE). The logical nexus for the placement in ch. 943, F.S., of provisions relevant to an athletic coach of a youth athletic team is that those provisions involve a search of the coach's name and other identifying information against the Florida and federal registries of sexual predators and sexual offenders. The FDLE operates the Florida registry. In comparison, the provisions of this bill do not require the FDLE to do anything or require an independent sanctioning authority to do something which requires FDLE's assistance or access to a service the FDLE provides. Since the bill is concerned with the health of youth athletes, it may be appropriate to transfer s. 943.0438, F.S., to ch. 381, F.S., the general public health provisions.

The bill does not contain any provision for sanctions or penalties if the independent sanctioning authority fails to comply with the requirements of the bill. However, current provisions of the statute do not include sanctions or penalties for failure of an independent sanctioning authority to comply with requirements of the statute.

The FHSAA requires member schools to maintain a record of the consent to participate forms for student athletes. It is not clear from the bill what the independent athletic sanctioning authorities will do with the informed consent forms for the athletes that participate in their programs.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Montford

6-00521-12

2012606__

A bill to be entitled

An act relating to youth athletes; amending ss. 943.0438 and 1006.20, F.S.; requiring that an independent sanctioning authority for youth athletic teams and the Florida High School Athletic Association adopt guidelines, bylaws, and policies relating to the nature and risk of exertional heat stroke and heat-related injury in youth athletes; requiring that a parent or guardian of a youth who participates in an athletic competition or who is a candidate for an athletic team sign and return an informed-consent form before the youth athlete participates in an athletic competition or engages in any practice, tryout, workout, or other physical activity; requiring that any youth athlete who is suspected of suffering from an exertional heat stroke or heat-related injury during a practice or competition be removed from the practice or competition; prohibiting a youth athlete who has suffered from an exertional heat stroke or heat-related injury from returning to the practice or competition until the youth athlete receives written medical clearance from a physician; authorizing the physician to delegate the performance of medical acts to certain licensed or certified health care providers under certain circumstances; providing an effective date.

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

Page 1 of 4

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

6-00521-12

2012606__

Section 1. Paragraphs (e) and (f) are added to subsection (2) of section 943.0438, Florida Statutes, to read: 943.0438 Athletic coaches for independent sanctioning authorities.—

(2) An independent sanctioning authority shall:

(e) Adopt guidelines informing athletic coaches, officials, administrators, and youth athletes and their parents or guardians of the nature and risk of exertional heat stroke (EHS) and heat-related injury.

(f) Adopt bylaws or policies requiring:

1. The parent or guardian of a youth who participates in an athletic competition or who is a candidate for an athletic team to sign and return an informed-consent form each year before the youth athlete participates in an athletic competition or engages in any practice, tryout, workout, or other physical activity associated with the youth's candidacy for an athletic team. The form must explain the nature and risk of EHS and heat-related injury, including the risk of continuing to play after suffering from an EHS or heat-related injury.

2. The removal of any youth athlete who is suspected of suffering from an EHS or heat-related injury during a practice or competition.

a. A youth athlete who has been removed from a practice or competition may not return to the practice or competition until the youth receives written medical clearance from a physician licensed under chapter 458 or chapter 459 which states that the youth athlete no longer exhibits signs, symptoms, or behaviors consistent with an EHS or heat-related injury.

b. Before issuing a written medical clearance to return to

Page 2 of 4

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

6-00521-12 2012606
 59 the practice or competition, a physician may delegate the
 60 performance of medical acts to a health care provider licensed
 61 or certified under s. 458.347, s. 459.022, s. 464.012, or s.
 62 468.707 with whom the physician maintains a formal supervisory
 63 relationship or an established written protocol that identifies
 64 the medical acts or evaluations to be performed and the
 65 conditions for their performance and that attests to proficiency
 66 in the evaluation and management of an EHS or heat-related
 67 injury.

68 Section 2. Paragraphs (e) and (f) are added to subsection
 69 (2) of section 1006.20, Florida Statutes, to read:

70 1006.20 Athletics in public K-12 schools.—

71 (2) ADOPTION OF BYLAWS.—

72 (e) The organization shall adopt guidelines informing
 73 athletic coaches, officials, administrators, and youth athletes
 74 and their parents or guardians of the nature and risk of
 75 exertional heat stroke (EHS) and heat-related injury.

76 (f) The organization shall adopt bylaws or policies
 77 requiring:

78 1. The parent or guardian of a youth who participates in an
 79 athletic competition or who is a candidate for an athletic team
 80 to sign and return an informed-consent form each year before the
 81 youth athlete participates in an athletic competition or engages
 82 in any practice, tryout, workout, or other physical activity
 83 associated with the youth's candidacy for an athletic team. The
 84 form must explain the nature and risk of EHS and heat-related
 85 injury, including the risk of continuing to play after suffering
 86 from an EHS or heat-related injury.

87 2. The removal of any youth athlete who is suspected of

6-00521-12 2012606
 88 suffering from an EHS or heat-related injury during a practice
 89 or competition.
 90 a. A youth athlete who has been removed from a practice or
 91 competition may not return to the practice or competition until
 92 the youth receives written medical clearance from a physician
 93 licensed under chapter 458 or chapter 459 which states that the
 94 youth athlete no longer exhibits signs, symptoms, or behaviors
 95 consistent with an EHS or heat-related injury.
 96 b. Before issuing a written medical clearance to return to
 97 the practice or competition, a physician may delegate the
 98 performance of medical acts to a health care provider licensed
 99 or certified under s. 458.347, s. 459.022, s. 464.012, or s.
 100 468.707 with whom the physician maintains a formal supervisory
 101 relationship or an established written protocol that identifies
 102 the medical acts or evaluations to be performed and the
 103 conditions for their performance and that attests to proficiency
 104 in the evaluation and management of an EHS or heat-related
 105 injury.

106 Section 3. This act shall take effect July 1, 2012.



The Florida Senate

Committee Agenda Request

To: Senator Rene Garcia, Chair
Committee on Health Regulation

Subject: Committee Agenda Request

Date: January 19, 2012

I respectfully request that **Senate Bill #606**, relating to Youth Athletes, be placed on the:

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

A handwritten signature in cursive script that reads "Bill Montford".

Senator Bill Montford
Florida Senate, District 6

 **ENTERED**

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/25/2012
Meeting Date

Topic _____

Bill Number 606
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH
Street

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

1/25
Meeting Date



Topic Heat related illness Bill Number 606
Name Angela Sehgal Amendment Barcode _____ (if applicable)
Job Title Chair, Board of Athletic Training (if applicable)
Address 537 E. Park Ave Phone _____
Street
Tallahassee FL 32301 E-mail asehgal@fsu.edu
City State Zip

Speaking: For Against Information - Waive in support

Representing Athletic Trainers 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 1052

INTRODUCER: Senator Ring

SUBJECT: Newborn Screening for Congenital Heart Disease

DATE: January 24, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	Pre-meeting
2.			BI	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill requires all licensed hospitals that provide maternity and newborn care to screen all newborns, prior to discharge, for Congenital Heart Disease (CHD). Each licensed birth center must provide that all newborns are, prior to discharge, referred to an allopathic or osteopathic physician or a hospital for screening for CHD. For a home birth, the health care provider in attendance is responsible for referral of the newborn to an allopathic or osteopathic physician or a hospital for screening for CHD. A parent or legal guardian may object to the screening with a signed written objection. If the parent or legal guardian objects, the screening must not be completed.

All the screenings must be conducted by an allopathic or osteopathic physician. The bill requires each hospital to designate a lead physician to be responsible for programmatic oversight of the screening. Each birth center must designate a licensed health care provider to provide programmatic oversight and to ensure that appropriate referrals are being completed.

The bill specifies that the initial procedure for screening of a newborn for CHD and any medically necessary follow-up reevaluations leading to diagnosis are a covered benefit under the Medicaid program. Medicaid reimbursement for the screenings is to be supplemental to per diem rates and capitated rates. The bill requires private health insurers and health maintenance organizations to compensate providers for the covered benefit at the contracted rate.

The bill provides specific rulemaking authority to the Department of Health (DOH or department) and defines the powers and duties of the department for administering the screening requirements.

This bill creates section 383.146 of the Florida Statutes.

II. Present Situation:

Congenital Heart Disease

CHD is a term that embraces a variety of defects that are present in the structure of the heart at birth. Defects may involve the interior walls of the heart, valves inside the heart, or the arteries and veins that carry blood to the heart or out to the body. These congenital defects change the normal flow of blood through the heart, leading to a range of conditions and symptoms. CHD affects about 7 to 9 of every 1,000 live births in the United States and Europe and is the most common cause of death in the first year of life, with defects accounting for 3 percent of all infant deaths and more than 40 percent of all deaths due to congenital malformations.¹

Critical CHD is a subset of congenital heart defects that causes severe and life-threatening symptoms and requires intervention within the first days or first year of life. Critical Congenital *Cyanotic* Heart Disease is a group of congenital heart defects characterized by a diminished availability of oxygen to the body tissues.

Current methods for detecting CHD generally include prenatal ultrasound screening and careful and repeated clinical examinations, both in the hospital nursery and as part of routine well-child care. Critical CHD and Critical Congenital Cyanotic Heart Disease are often missed by hospital discharge and post-discharge clinical exams of infants.

Pulse oximetry screening can identify some newborns with Critical Congenital Heart Disease. A pulse oximeter is a medical device that measures the percentage of hemoglobin in the blood that is saturated with oxygen. The device indirectly monitors the oxygen saturation of a patient's blood without the need to take a blood sample. It is estimated that one quarter of congenital heart defects could be detected and potentially treated by measuring blood oxygen saturation.² Neonates with abnormal pulse oximetry screening results need confirmatory testing for the cause of the low oxygen saturation, and immediate intervention, often involving a surgical procedure.

A screen is considered positive if: any oxygen saturation measure is less than 90 percent (in the initial screen or in repeat screens); oxygen saturation is less than 95 percent in the right hand and foot on three measures, each separated by 1 hour; or a greater than 3 percent absolute difference exists in oxygen saturation between the right hand and foot on three measures, each separated by one hour. Any screening that is greater than or equal to 95 percent in the right hand or foot with a

¹ Letter dated October 15, 2010, to The Honorable Kathleen Sebelius, Secretary of Health and Human Services, from R. Rodney Howell, M.D., Chairperson of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children. Found at:

<<http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendations/correspondence/criticalcongenital.pdf>> (Last visited on January 23, 2012).

² Letter dated September 21, 2011, to R. Rodney Howell, M.D., Chairperson of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children, from The Honorable Kathleen Sebelius, Secretary of Health and Human Services. Found at:

<<http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendations/correspondence/cyanoticheartsecre09212011.pdf>> (Last visited on January 23, 2012).

less than or equal to a 3 percent absolute difference in oxygen saturation between the right hand or foot is considered a negative screen and screening would end.³

Any infant with a positive screen should have a diagnostic echocardiogram. The infant's pediatrician should be notified immediately and the infant might need to be seen by a cardiologist for follow-up.⁴

Newborn Screening

All babies born in the United States are checked for certain medical conditions soon after birth. This is called newborn screening. Over 4 million infants are screened each year. Newborn screening identifies conditions that can affect a child's long-term health or survival. Early detection, diagnosis, and intervention can prevent death or disability and enable children to reach their full potential. All babies are screened, even if they look healthy, because some medical conditions cannot be seen by just looking at the baby. Each state runs its own newborn screening program.

Newborn screening usually takes place before a newborn leaves the hospital. Most tests use a few drops of blood from pricking the baby's heel. The blood specimen is placed on a special filter paper and, in Florida, the specimen card is sent to the DOH Newborn Screening Laboratory in Jacksonville for testing. The laboratory receives about 250,000 specimens annually from babies born in Florida. The majority of the test results are reported within 24-48 hours. The DOH Children's Medical Services program provides the follow-up for all abnormal screening results.

Section 383.14, F.S., requires the Florida DOH to promote the screening of all newborns born in Florida for metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect, *as screening programs accepted by current medical practice become available and practical in the judgment of the department.*

Section 383.145, F.S., establishes the state's newborn and infant hearing screening program. Hospitals perform the hearing screening on all babies prior to discharge. Licensed birth centers are required to provide referrals for the hearing screening. A hearing test involves placing a tiny earphone in the baby's ear and measuring his or her response to sound. If a screening test suggests a problem, the baby's doctor will follow up with further testing.

Most states screen for a standard number of conditions, but some states may screen for more conditions. Florida currently screens for 35 disorders, including hearing impairment, but does not screen for congenital heart disease.⁵ The National Newborn Screening and Genetics Resource Center provides a current list of conditions included in each state's newborn screening program.

³ *Pulse Oximetry Screening for Critical Congenital Heart Defects*, Centers for Disease Control and Prevention. Found at: <<http://www.cdc.gov/ncbddd/pediatricgenetics/pulse.html>> (Last visited on January 23, 2012).

⁴ *Id.*

⁵ See Department of Health Bill Analysis, Economic Statement and Fiscal Note for SB 1052 – on file with the Senate Health Regulation Committee.

As of December 19, 2011, only one state (New Jersey) requires screening of all newborns for congenital heart disease, but the requirement has not yet been implemented.⁶

Adding Conditions to Required Screening

The DOH is required, after consultation with the Genetics and Newborn Screening Advisory Council, to adopt rules requiring every newborn in this state, prior to becoming 1 week of age, to be subjected to a test for phenylketonuria and, at the appropriate age, to be tested for other metabolic diseases and hereditary or congenital disorders *as the department deems necessary*.⁷ The purpose of the Genetics and Newborn Screening Advisory Council⁸ is to advise the department about:

- Conditions for which testing should be included under the screening program and the genetics program.
- Procedures for collection and transmission of specimens and recording of results.
- Methods whereby screening programs and genetics services for children now provided or proposed to be offered in the state may be more effectively evaluated, coordinated, and consolidated.

At the national level, the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children advises the Secretary, U.S. Department of Health and Human Services on the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and standards. The advisory committee recommends conditions that should be added to the Recommended Uniform Screening Panel.

On September 17, 2010, the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children recommended that Critical Congenital *Cyanotic* Heart Disease be added to the Recommended Uniform Screening Panel.⁹ Secretary Sebelius accepted the committee's recommendation on September 21, 2011, and Critical Congenital Heart Disease screening was added to the Recommended Uniform Screening Panel as a core condition.¹⁰ The Secretary included a broader group of congenital heart defects (Critical CHD) than what the Advisory Committee had originally recommended (Critical Congenital Cyanotic Heart Disease).

On January 20, 2012, the Florida Genetics and Newborn Screening Advisory Council recommended that CHD be added to the panel of disorders screened in the Florida Newborn Screening Program.

⁶ National Newborn Screening Status Report, updated 11/21/11. Found at: <<http://genes-r-us.uthscsa.edu/nbsdisorders.pdf>> (Last visited on January 23, 2012).

⁷ s. 383.14(2), F.S.

⁸ s. 383.14(5), F.S.

⁹ Supra, fn 1.

¹⁰ Supra, fn 2.

Hospital, Birth Center, and Home Deliveries

In 2010 there were 214,519 resident live births in Florida.¹¹ Of these births, 211,485 (98.6 percent) occurred in hospitals and physicians attended 88.5 percent of the hospital births.¹² Midwives attended 10.9 percent of live births in hospitals. Birth centers accounted for 1,377 births (0.64 percent of live births) and midwives attended 96.9 percent of birth center births. Physicians attended 2.8 percent of birth center births. In 2010, there were 1508 births in an identified place other than a hospital or birth center and 149 births where the place of delivery was unknown.¹³

Hospitals are licensed and regulated under ch. 395, F.S., and part II of ch. 408, F.S. Birth centers are licensed and regulated under ss. 383.30-383.335, F.S., and part II of ch. 408, F.S. There are 23 licensed birth centers in Florida.

Health Insurance

Section 627.6416, F.S., requires individual health insurance policies that provide coverage on an expense-incurred basis, which provide coverage for a member of a family of the insured or subscriber, to include, for children, coverage for child health supervision services. These services are covered from the moment of birth to age 16 years. The term “child health supervision services” means physician-delivered or physician-supervised services that include, at a minimum, periodic visits including a history, a physical examination, a developmental assessment and anticipatory guidance, and appropriate immunizations and laboratory tests. These services must be provided in accordance with prevailing medical standards consistent with the Recommendations for Preventive Pediatric Health Care of the American Academy of Pediatrics. The recommendations include newborn metabolic and hemoglobin screening.

The same child health supervision requirements applicable to individual health insurance policies are also applied to group, blanket, and franchise health insurance policies under s. 627.6579, F.S., and to health maintenance organization contracts under s. 641.31(30), F.S. Sections 627.6416 and 627.6579, F.S., exclude disability income, specified disease, Medicare supplement, or hospital indemnity policies from the child health supervision requirements.

Insurance Mandates

Pursuant to s. 624.215, F.S., every person or organization seeking consideration of a legislative proposal which would mandate a health coverage or the offering of a health coverage by an insurance carrier, health care service contractor, or health maintenance organization as a component of individual or group policies, must submit to the Agency for Health Care Administration (Agency) and the legislative committee having jurisdiction a report which assesses the social and financial impacts of the proposed coverage.

¹¹ Department of Health, *2010 Florida Vital Statistics Annual Report – Live Births*. Found at: <<http://www.flpublichealth.com/VSBOOK/pdf/2010/Births.pdf>> (Last visited on January 23, 2012).

¹² *Id.*

¹³ *Id.*

Medicaid

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. The Agency is responsible for Medicaid. Medicaid serves approximately 3.19 million people in Florida, with over half of those being children and adolescents 20 years of age or younger. Estimated Medicaid expenditures for FY 2011-2012 are approximately \$20.3 billion.

The total number of live births paid for by Medicaid through fee for service and health maintenance organizations during FY 2010-2011 was 130,989.¹⁴

Under s. 383.145(3)(j), F.S., which establishes the requirements for newborn and infant hearing screening, the Medicaid program must cover the initial procedure for screening the hearing of newborns or infants and any medically necessary follow-up reevaluations leading to diagnosis. These services are reimbursable under Medicaid as an expense compensated supplemental to the per diem rate for Medicaid patients enrolled in MediPass or Medicaid patients covered by a fee for service program. For Medicaid patients who are enrolled in a health maintenance organization, Medicaid must reimburse providers directly at the Medicaid rate. These services may not be considered a covered service for the purposes of establishing the payment rate for Medicaid health maintenance organizations. Nonhospital-based providers are eligible to bill Medicaid for the professional and technical component of each procedure code. This bill adopts the same approach for Medicaid reimbursement for screening for congenital heart disease.

Medicaid pays hospitals a per diem rate for hospital inpatient services based on hospital cost reports. Cost reports are submitted annually and rates are adjusted as appropriate. Standard testing of a patient's vital signs is included in the per diem rate regardless of the Medicaid recipient's age. Measuring blood oxygen saturation using pulse oximetry is considered a standard part of testing a patient's vital signs. A separate screening for newborns for congenital heart disease is not currently reimbursed by Medicaid other than as a part of the hospital per diem rate. Medicaid currently does not reimburse separately for the screening of newborns for congenital heart disease in any other setting either.

III. Effect of Proposed Changes:

The bill requires each licensed hospital or other state-licensed birthing facility that provides maternity and newborn care services to screen all newborns, prior to discharge, for CHD. This requirement must be implemented by October 1, 2012.

Each licensed birth center must refer all newborns, prior to discharge, to an allopathic or osteopathic physician or a hospital for screening to detect CHD. This requirement would take effect on July 1, 2012. The referral for appointment is to be made within 10 days after discharge from the birth center and documentation of the referral must be placed in the newborn's medical chart. The parents must be instructed on the importance of having the screening performed and

¹⁴ See Agency for Health Care Administration 2012 Bill Analysis and Economic Impact Statement for SB 1052 – on file with the Senate Health Regulation Committee.

must be given information to assist them in having the screening performed within 10 days after the child's birth.

For home births, the health care provider in attendance is responsible for the coordination and referral to an allopathic or osteopathic physician or a hospital. This requirement would take effect on July 1, 2012. The referral for appointment is to be made within 10 days after the child's birth.

A parent or legal guardian may object to the screening by providing a signed written objection, in which case the screening must not be completed. The physician, midwife, or other person who is attending the newborn is required to maintain a record that the screening has not been performed and attach the written objection.

All newborn and infant screenings must be conducted by an allopathic or osteopathic physician. Appropriate documentation of the screening completion, results, interpretation, and recommendations must be placed in the medical record within 24 hours after completion of the screening procedure.

The bill requires each hospital to formally designate a lead physician to be responsible for programmatic oversight of the newborn CHD screening. The bill requires each birth center to designate a licensed health care provider to be responsible for programmatic oversight and to ensure that the appropriate referrals are being completed.

The bill specifies that the initial procedure for screening of a newborn for CHD and any medically necessary follow-up reevaluations leading to diagnosis is a covered benefit under the Medicaid program. Reimbursement under Medicaid is to be an expense compensated supplemental to the per diem rate for Medicaid patients enrolled in MediPass or Medicaid patients covered by a fee for service program. For Medicaid patients enrolled in health maintenance organizations, providers will be reimbursed directly at the Medicaid rate and the service may not be considered a covered service for the purposes of establishing the payment rate for Medicaid health maintenance organizations. Nonhospital-based providers will be eligible to bill Medicaid for the professional and technical component of each procedure code. (These Medicaid reimbursement provisions mirror the language in s. 383.145(3)(j), F.S., relating to newborn and infant hearing screening.)

The bill requires all insurers and health maintenance organizations that are currently required to provide coverage for child health supervision services to compensate providers for the covered hearing screening benefit at the contracted rate.

The DOH is provided with specific rulemaking authority. The bill requires the department to administer and provide services pursuant to this newly created section of law and specifically to:

- Ensure the availability and quality of the necessary laboratory tests and materials.
- Furnish all physicians, county health departments, perinatal centers, birthing centers, and hospitals forms on which the results of tests for CHD are to be reported to the department.
- Charge and collect fees sufficient to administer the newborn screening program for CHD.

The effective date of the bill is July 1, 2012.

Other Potential Implications:

Section 383.14, F.S., gives the DOH, in consultation with the Genetics and Newborn Screening Advisory Council, the authority to, *by rule*, add to the list of disorders or diseases for which newborns must be screened. This provides a mechanism for newborn screening to be expanded as tests become available that are accepted by current medical practice and that are practical in the judgment of the department. If the department decides that infants should be tested for an additional condition, the department would need budget authority to cover the costs of conducting additional tests, however.

In regard to CHD, both the federal and state advisory groups have recommended adding Critical CHD to the list of mandatory newborn screening. If the Legislature provides budget authority to the department, there is no need to specifically include CHD in the Florida Statutes. If the Legislature does not provide this budget authority, the bill cannot be implemented.

Does the Legislature want to include all thirty-four current mandatory tests in statute and amend the statute in the future to add tests as they become available? Is the need for approval of budget authority a sufficient check to keep the list of mandatory tests from growing out of control? Is the need for approval of budget authority a sufficient check to keep impractical tests from being added to the list of mandatory tests?

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

The bill may impair existing contracts since the requirement for health insurers and health maintenance organizations to cover screening for CHD takes effect on July 1, 2012, and does not provide an exemption for existing contracts.

The requirement in the bill that the objection to screening must contain the parent's or guardian's signature may violate the right of privacy under the Florida Constitution, Article I, Section 23.

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

None.

B. Private Sector Impact:

Hospitals, birth centers, and health care practitioners attending home births will have additional reporting requirements.

Private insurers are required to compensate providers for conducting the tests.

Early detection with prompt early treatment may lead to a better outcome for babies born with severe heart disease. Detection prior to hospital discharge may also prevent unexpected events such as death or an emergency health crisis in the home setting.

C. Government Sector Impact:**Medicaid**

The Agency estimates the fiscal impact on Medicaid to be between \$361,530 and \$1,084,589 for FY 2012-2013, depending on the number of tests that are conducted. This estimate is based on 130,989 newborns covered by Medicaid and the Medicare rate reimbursed to physicians for the administration of the measurement of blood oxygen levels, which is \$2.76.

If 130,989 newborns are tested and measure 95 percent or higher, the providers will bill \$2.76 for each newborn (1 test) for a total of \$361,530 per state fiscal year. If 130,989 newborns are tested and measure between 95 percent and 90 percent and therefore require three tests, the providers will bill as much as \$1,084,589 per state fiscal year.

Assuming the maximum total expenditure, the State's share of costs in General Revenue is estimated at 42.27 percent to be \$458,456 in FY 2012-2013 and at 41.28 percent to be \$447,718 in FY 2013-2014. The federal share would be \$626,133 in FY 2012-2013 and \$636,871 in FY 2013-2014.

Department of Health

The DOH will need to create and implement a system to track congenital heart disease test results within the existing program structure. The CHD screening is similar to newborn hearing screening in that the birthing facility conducts the actual testing and the DOH tracks the results and provides surveillance activities for infants who fail the screening test.

The main cost of adding CHD to the Florida Newborn Screening Program are related to the necessary modifications of the current data system to add the screening results and staff time to track infants who fail the screening test. Follow-up actions would include

communicating with physicians and parents regarding the outcome of the confirmatory testing and obtaining the final diagnosis and outcome. The department estimates its expenditures to be \$166,191 in FY 2012-2013 and \$154,922 in FY 2013-2014.

The DOH currently collects a maximum hospital fee of \$15 per live birth, as authorized in s. 383.14(3)(g), F.S., to cover the cost of newborn screening. Adding CHD to the list of newborn screenings could require an increase in the hospital fee from \$15 to \$15.78 per live birth.

Funding for the program could come from surplus revenue generated from billing for other disorders tested in the Newborn Screening program. The department must be provided budget authority to spend the surplus funding for this purpose. As of November 22, 2011, the Newborn Screening program had a surplus of revenue in FY 2010-2011 totaling \$2,110,778.¹⁵

VI. Technical Deficiencies:

On lines 36 through 38, the bill defines screening to be screening for CHD, yet throughout the bill the word “screening” is modified by terms such as “for congenital heart disease” and “for the detection of congenital heart disease. The definition of screening could be changed by replacing “has congenital heart disease” with the words “needs additional diagnostic evaluation.”

On lines 45 through 50, there appears to be inconsistent language regarding when the referral for screening must be made. On lines 46 and 47, the referral must be made prior to discharge. On lines 49 and 50, the referral must be made within 10 days after discharge. However, the proper interpretation may be that the “referral for appointment” must be made prior to discharge and such appointment must be within 10 days after discharge.

On line 68, the words “and infant” should be removed since the bill deals with newborn screening only.

Lines 74 through 76 appear to be redundant since hospitals are required to conduct screening of newborns prior to discharge of the newborn from the hospital under (2)(a).

On line 102, the word “organizations” should be changed to “organization contracts.”

The language on lines 103 through 105 relating to supplemental policies is unnecessary and confusing. Sections 627.6416 and 627.6579, F.S., exclude disability income, specified disease, Medicare supplement, or hospital indemnity policies from the child health supervision requirements and the provisions of the bill only apply to insurers that are subject to the child health supervision requirements.

On line 105, the word “polices” should be changed to “policies.” The identical incorrect language is included in s. 383.145(3)(j), F.S., relating to newborn and infant hearing screening.

¹⁵ See Department of Health Bill Analysis, Economic Statement and Fiscal Note for SB 1052 – on file with the Senate Health Regulation Committee.

On line 113, the bill gives the department authority to adopt and enforce rules requiring every newborn to be subjected to *a test* for congenital heart disease. Screening is defined as *a test or battery of tests* on line 36.

VII. Related Issues:

The bill requires all screenings to be conducted by an allopathic or osteopathic physician. Some tests that might be used to screen for CHD, such as pulse oximetry, do not require a physician to conduct the test. Pulse oximeters are routinely used by nurses and technicians in health care facilities today.

The requirement for a written signature for objecting to screening by a parent or guardian at lines 57 and 58 is more prescriptive than a similar requirement under s. 383.14(4), F.S., which does not require a signature.

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal mandating health coverage to submit to the Agency and the appropriate legislative committees having jurisdiction a report assessing the social and financial impacts of the proposed coverage. The Senate Committee on Health Regulation has not received a report analyzing the mandated coverage for newborn screening for CHD as created by the bill.

VIII. Additional Information:

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2012	.	
	.	
	.	
	.	

The Committee on Health Regulation (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 383.146, Florida Statutes, is created to read:

383.146 Newborn screening for critical congenital heart disease.—

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

(a) "Department" means the Department of Health.

(b) "Newborn" means an age range from birth through 29 days.



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13 (c) "Screening" means measuring blood oxygen saturation
14 using pulse oximetry to determine whether a newborn needs
15 additional diagnostic evaluation for critical congenital heart
16 disease.

17 (2) REQUIREMENTS FOR SCREENING OF NEWBORNS; INSURANCE
18 COVERAGE; REFERRAL FOR ONGOING SERVICES.-

19 (a) Each licensed hospital that provides maternity and
20 newborn care services shall ensure that, prior to discharge, all
21 newborns are screened for the detection of critical congenital
22 heart disease.

23 (b) Each licensed birth center that provides maternity and
24 newborn care services shall ensure that, prior to discharge, all
25 newborns are screened for the detection of critical congenital
26 heart disease.

27 (c) If the parent or legal guardian of the newborn objects
28 to the screening, the screening must not be completed,
29 notwithstanding any other provision of this section. In such
30 case, the physician, midwife, or other person who is attending
31 the newborn shall maintain a record that the screening has not
32 been performed and attach a written objection that must be
33 signed by the parent or guardian.

34 (d) For home births, the health care provider in attendance
35 is responsible for the screening.

36 (e) Appropriate documentation of the screening completion,
37 results, interpretation, and recommendations must be placed in
38 the medical record within 24 hours after completion of the
39 screening procedure.

40 (f) Each hospital shall formally designate a lead physician
41 who is responsible for programmatic oversight of newborn



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42 congenital heart disease screening. Each licensed birth center
43 shall designate a licensed health care provider to provide such
44 programmatic oversight. Such physician or health care provider
45 shall ensure that the appropriate referrals are completed
46 following a positive screening test result.

47 (g) By October 1, 2012, screening for critical congenital
48 heart disease must be conducted on all newborns in hospitals and
49 birth centers in this state following birth admission.

50 (3) RULES.—After consultation with the Genetics and Newborn
51 Screening Advisory Council, the department shall adopt and
52 enforce rules requiring that every newborn in this state be
53 screened for critical congenital heart disease. The department
54 shall adopt such additional rules as are necessary for the
55 administration of this section, including rules providing
56 definitions of terms, rules relating to the methods used and
57 time or times for testing as accepted medical practice
58 indicates, rules relating to charging and collecting fees for
59 the administration of the newborn screening program required by
60 this section, rules for processing requests and releasing test
61 and screening results, and rules requiring mandatory reporting
62 of the results of tests and screenings for this condition to the
63 department.

64 (4) POWERS AND DUTIES OF THE DEPARTMENT.—The department
65 shall administer and provide services required pursuant to this
66 section and shall:

67 (a) Furnish to all physicians, county health departments,
68 perinatal centers, birth centers, and hospitals forms on which
69 the results of tests for critical congenital heart disease shall
70 be reported to the department.



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71 (b) Have the authority to charge and collect fees
72 sufficient to administer the newborn screening program required
73 under this section.

74 Section 2. This act shall take effect July 1, 2012.

75

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

77 And the title is amended as follows:

78 Delete everything before the enacting clause
79 and insert:

80

 A bill to be entitled

81

 An act relating to newborn screening for critical

82

 congenital heart disease; creating s. 383.146, F.S.;

83

 providing definitions; providing requirements for

84

 screening newborns for critical congenital heart

85

 disease; providing an exception; requiring that the

86

 physician, midwife, or other person attending the

87

 newborn maintain a record if the screening has not

88

 been performed and attach a written objection signed

89

 by the parent or guardian; requiring appropriate

90

 documentation of the screening completion in the

91

 medical record; requiring that each hospital and each

92

 licensed birth center designate a lead physician and a

93

 licensed health care provider, respectively, to

94

 provide programmatic oversight for the screening;

95

 requiring that the screening for critical congenital

96

 heart disease be conducted on all newborns in

97

 hospitals and birth centers in this state; authorizing

98

 the Department of Health to adopt rules to administer

99

 the screening program; providing powers and duties of



515100

100 the department; providing an effective date.

101

102 WHEREAS, congenital heart disease is the most common birth
103 defect in infants, affecting 8 out of every 1,000 newborn
104 babies, and

105 WHEREAS, early detection of congenital heart disease is
106 crucial to the health of a newborn baby because, if the
107 condition goes undiagnosed, it can cause major problems later in
108 the child's life, and

109 WHEREAS, pulse oximetry is a noninvasive method of
110 monitoring the oxygen level in the blood and is recommended as a
111 method of screening a patient for critical congenital heart
112 disease, and

113 WHEREAS, physical exertion and participation in sports can
114 cause excess stress on the heart and, if the disease is not
115 detected and is severe enough, participation in strenuous
116 activity can result in death, NOW, THEREFORE,

By Senator Ring

32-00926-12

20121052__

A bill to be entitled

An act relating to newborn screening for congenital heart disease; creating s. 383.146, F.S.; providing definitions; providing requirements for screening newborns for congenital heart disease; providing for certain insurance and managed care coverage; providing for referral for ongoing services; authorizing the Department of Health to adopt rules to implement the screening; providing powers and duties of the department; providing an effective date.

WHEREAS, congenital heart disease is the most common birth defect in infants, affecting 8 out of every 1,000 newborn babies, and

WHEREAS, early detection of congenital heart disease is crucial to the health of a newborn baby because, if the condition goes undiagnosed, it can cause major problems later in the child's life, and

WHEREAS, pulse oximetry is a noninvasive method of monitoring the oxygen level in the blood and is recommended as a method of screening a patient for congenital heart disease, and

WHEREAS, physical exertion and participation in sports can cause excess stress on the heart and, if the disease is not detected and is severe enough, participation in strenuous activity can result in death, NOW, THEREFORE,

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

Section 1. Section 383.146, Florida Statutes, is created to

32-00926-12

20121052__

read:

383.146 Newborn screening for congenital heart disease.-

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

(a) "Department" means the Department of Health.

(b) "Newborn" means an age range from birth through 29 days.

(c) "Screening" means a test or battery of tests administered to determine whether a newborn has congenital heart disease.

(2) REQUIREMENTS FOR SCREENING OF NEWBORNS; INSURANCE COVERAGE; REFERRAL FOR ONGOING SERVICES.-

(a) Each licensed hospital or other state-licensed birthing facility that provides maternity and newborn care services shall provide that all newborns are, prior to discharge, screened for congenital heart disease.

(b) Each licensed birth center that provides maternity and newborn care services shall provide that all newborns are, prior to discharge, referred to a physician licensed under chapter 458 or chapter 459 or a hospital for screening for the detection of congenital heart disease. The referral for appointment shall be made within 10 days after discharge. Written documentation of the referral must be placed in the newborn's medical chart.

(c) If the parent or legal guardian of the newborn objects to the screening, the screening must not be completed notwithstanding any other provision of this section. In such case, the physician, midwife, or other person who is attending the newborn shall maintain a record that the screening has not been performed and attach a written objection that must be signed by the parent or guardian.

32-00926-12

20121052__

59 (d) For home births, the health care provider in attendance
 60 is responsible for the coordination and referral to a physician
 61 licensed under chapter 458 or chapter 459 or a hospital. The
 62 referral for appointment shall be made within 10 days after the
 63 birth. In cases in which the home birth is not attended by a
 64 primary health care provider, a referral to a physician licensed
 65 pursuant to chapter 458 or chapter 459 or a hospital must be
 66 made by the health care provider within 10 days after the
 67 child's birth.

68 (e) All newborn and infant screenings shall be conducted by
 69 a physician licensed under chapter 458 or chapter 459.
 70 Appropriate documentation of the screening completion, results,
 71 interpretation, and recommendations must be placed in the
 72 medical record within 24 hours after completion of the screening
 73 procedure.

74 (f) The screening of a newborn for congenital heart disease
 75 must be completed before the newborn is discharged from the
 76 hospital.

77 (g) Each hospital shall formally designate a lead physician
 78 responsible for programmatic oversight for newborn congenital
 79 heart disease screening. Each licensed birth center shall
 80 designate a licensed health care provider to provide such
 81 programmatic oversight and to ensure that the appropriate
 82 referrals are being completed.

83 (h) By October 1, 2012, congenital heart disease screening
 84 must be conducted on all newborns in hospitals in this state on
 85 birth admission. When a newborn is delivered in a facility other
 86 than a hospital, the parents must be instructed on the
 87 importance of having the screening performed and must be given

32-00926-12

20121052__

88 information to assist them in having the screening performed
 89 within 10 days after the child's birth.

90 (i) The initial procedure for screening of the newborn for
 91 congenital heart disease and any medically necessary followup
 92 reevaluations leading to diagnosis shall be a covered benefit,
 93 reimbursable under Medicaid as an expense compensated
 94 supplemental to the per diem rate for Medicaid patients enrolled
 95 in MediPass or Medicaid patients covered by a fee for service
 96 program. For Medicaid patients enrolled in health maintenance
 97 organizations, providers shall be reimbursed directly by the
 98 Medicaid Program Office at the Medicaid rate. This service may
 99 not be considered a covered service for the purposes of
 100 establishing the payment rate for Medicaid health maintenance
 101 organizations. All health insurance policies and health
 102 maintenance organizations as provided under ss. 627.6416,
 103 627.6579, and 641.31(30), except for supplemental policies that
 104 only provide coverage for specific diseases, hospital indemnity,
 105 or Medicare supplement, or to the supplemental policies, shall
 106 compensate providers for the covered benefit at the contracted
 107 rate. Nonhospital-based providers shall be eligible to bill
 108 Medicaid for the professional and technical component of each
 109 procedure code.

110 (3) RULES.—After consultation with the Genetics and Newborn
 111 Screening Advisory Council, the department shall adopt and
 112 enforce rules requiring that every newborn in this state be
 113 subjected to a test for congenital heart disease. The department
 114 shall adopt such additional rules as are necessary for the
 115 administration of this section, including rules providing
 116 definitions of terms, rules relating to the methods used and

32-00926-12

20121052__

117 time or times for testing as accepted medical practice
118 indicates, rules relating to charging and collecting fees for
119 the administration of the newborn screening program authorized
120 by this section, rules for processing requests and releasing
121 test and screening results, and rules requiring mandatory
122 reporting of the results of tests and screenings for this
123 condition to the department.

124 (4) POWERS AND DUTIES OF THE DEPARTMENT.—The department
125 shall administer and provide services authorized pursuant to
126 this section and shall:

127 (a) Ensure the availability and quality of the necessary
128 laboratory tests and materials.

129 (b) Furnish all physicians, county health departments,
130 perinatal centers, birthing centers, and hospitals forms on
131 which the results of tests for congenital heart disease shall be
132 reported to the department.

133 (c) Have the authority to charge and collect fees
134 sufficient to administer the newborn screening program
135 authorized under this section.

136 Section 2. This act shall take effect July 1, 2012.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Budget - Subcommittee on Education Pre-K - 12
Appropriations
Commerce and Tourism
Community Affairs
Higher Education

SENATOR JEREMY RING
32nd District

December 8, 2011

Honorable Senator Rene Garcia
310 Senate Office Building
404 South Monroe Street
Tallahassee, Fl 32399

Dear Chairman Garcia,

I am writing to respectfully request your cooperation in placing Senate Bill 1052, relating to Newborn Screening for Congenital Heart Disease on the Health Regulation Committee agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 32

cc: Sandra Stovall

A handwritten mark resembling a stylized letter, possibly 'S' or 'R', followed by the word "ENTERED" in bold, uppercase letters, and the date "12-8-11" below it.

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392
- 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5094

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD



25 Jan 12
Meeting Date

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

Topic Newborn Screening

Bill Number 1052
(if applicable)

Name James Mosfeller

Amendment Barcode _____
(if applicable)

Job Title Government Relations Dir.

Address 2851 Remington Green Crde^{NE}
Tallahassee FL 32308
Street City State Zip

Phone 850/727-3712

E-mail James.Mosfeller@heart.org

Speaking: For Against Information

Representing American Heart Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD



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

1-25-11

Meeting Date

Topic SB 1052

Bill Number 1052
(if applicable)

Name Alyssa Brawn

Amendment Barcode _____
(if applicable)

Job Title Communication Coordinator

Address 3605 Cagney Pr.
Street

Phone 339-5550

Jale FL 32309
City State Zip

E-mail alyssadbrown@gmail.com

Speaking: For Against Information

Representing Broken Hearts of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD



1/25/12
Meeting Date

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

Topic SB 1052 / Newborn Screening Bill Number 1052
(if applicable)

Name Karen Chavez Amendment Barcode _____
(if applicable)

Job Title Co-Founder / Exec Dir Broken Hearts of FL
(if applicable)

Address 2912 Edenderry Dr Phone 850-443-2984
Street

Tit FL 32309
City State Zip

E-mail ktchavez@brokenheartsofflorida.org

Speaking: For Against Information

Representing Broken Hearts of Florida Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

spoke

THE FLORIDA SENATE

APPEARANCE RECORD

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

01/25/12

Meeting Date

Topic Infant Screening

Bill Number SB 1052
(if applicable)

Name Michael Garner

Amendment Barcode _____
(if applicable)

Job Title Pres & CEO

Address 200 W. College Ave., Suite 104
Street

Phone (850) 386-2904

Tallahassee FL 32301
City State Zip

E-mail michael@fshp.net

Speaking: For Against Information

Representing FL Assoc 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.

CourtSmart Tag Report

Room: KN 412
Caption: Senate Health Regulation

Case:
Judge:

Type:

Started: 1/25/2012 3:36:06 PM
Ends: 1/25/2012 5:32:21 PM Length: 01:56:16

3:36:07 PM Opening Remarks
3:36:22 PM Roll Call
3:37:06 PM Senator Garcia
3:37:13 PM Tab 10 - Senator Ring SB 1052
3:37:42 PM Speaking to strike-all
3:39:39 PM Senator Garcia
3:39:47 PM Karen Chavez, Broken Hearts of Florida, Inc.
3:41:05 PM James Mosteller, American Heart Association
3:41:18 PM Alyssa Brach, Broken Hearts of Florida
3:41:37 PM Michael Garner, Florida Association of Health Plans
3:43:09 PM Senator Sobel w/question
3:43:40 PM Michael Garner to answer
3:44:43 PM Senator Garcia w/question
3:44:53 PM Michael Garner to answer
3:45:24 PM Senator Ring to close
3:46:32 PM Roll Call - CS/SB 1052
3:47:01 PM Tab 9 - Senator Montford SB 606
3:49:25 PM Senator Jones w/question
3:49:36 PM Senator Montford to answer
3:50:47 PM Senator Jones for follow-up
3:51:01 PM Senator Montford to answer
3:51:09 PM Angela Sehgal, Athletic Trainers Association
3:51:29 PM Brian Pitts, Justice-2-Jesus
3:52:34 PM Senator Garcia
3:52:41 PM Roll Call on SB 606
3:53:02 PM Senator Diaz de la Portilla reporting favorably on SB 1052
3:53:12 PM Senator Fasano reporting favorably on SB 1052
3:53:21 PM Tab 5 - Senator Sachs SB 278
3:55:05 PM Paul Adee, Florida Sheriff's Association
3:55:18 PM Jill Gran, Florida Alcohol & Drug Abuse Association
3:55:24 PM Robert Trammell, Public Defender's Association
3:55:50 PM Brian Pitts, Justice-2-Jesus
3:55:59 PM Roll Call on SB 278
3:56:39 PM Tab 7 Senator Hays - SB 1358
3:57:28 PM Senator Garcia w/question
3:57:54 PM Senator Hays to answer
3:58:33 PM Senator Sobel w/question
3:58:47 PM Senator Hays to answer
3:59:30 PM Senator Sobel w/question
3:59:49 PM Senator Hays to answer
4:00:35 PM Senator Sobel w/follow-up
4:00:48 PM Senator Hays to answer
4:01:14 PM Senator Norman w/question
4:02:06 PM Senator Hays to answer
4:02:16 PM Senator Jones w/question
4:02:24 PM Senator Hays to answer
4:02:43 PM amendment withdrawn
4:03:13 PM amendment by Garcia
4:03:24 PM Senator Sobel
4:03:46 PM Senator Garcia to explain amendment
4:04:28 PM Senator Jones w/question
4:04:54 PM Senator Garcia to answer

4:05:44 PM Senator Jones w/follow-up question
4:06:01 PM Senator Garcia to answer
4:06:57 PM Senator Sobel
4:07:05 PM Senator Garcia
4:07:50 PM Senator Norman w/question
4:08:14 PM Senator Garcia to answer
4:09:02 PM Senator Norman w/follow-up question
4:09:23 PM Senator Garcia to answer
4:09:31 PM Senator Hays
4:10:48 PM Senator Gaetz w/comments
4:14:19 PM Senator Sobel
4:14:29 PM Senator Garcia withdraws amendment
4:15:23 PM Senator Gaetz
4:15:45 PM Senator Hays
4:15:54 PM Senator Sobel
4:16:01 PM Senator Hays
4:16:07 PM Bill TPed
4:16:22 PM Senator Garcia
4:16:36 PM Tab 1 SPB 7186 John Wilson to explain
4:19:21 PM Senator Garcia w/hand-written amendment to SB 1358
4:19:40 PM Senator Sobel
4:19:50 PM Senator Garcia reads amendment
4:20:02 PM Senator Sobel
4:20:23 PM Amendment adopted
4:20:31 PM Senator Garcia
4:20:38 PM amendments withdrawn
4:20:53 PM Gail Marie Perry, Communications Workers of America
4:23:09 PM Pamela Burch Fort, ACLU of Florida
4:23:26 PM Brian Pitts, Justice-2-Jesus
4:25:34 PM Senator Diaz de la Portilla w/comments
4:27:12 PM Senator Hays to comment
4:28:25 PM Senator Diaz de la Portilla to follow-up
4:29:20 PM Senator Hays
4:29:25 PM Senator Sobel
4:30:44 PM Senator Garcia to comment
4:31:15 PM Senator Hays to close on bill
4:31:23 PM amendment withdrawn
4:32:42 PM Roll Call
4:33:15 PM Senator Storms
4:36:16 PM Senator Garcia
4:36:28 PM Senator Gaetz w/question
4:37:13 PM Mandy to answer
4:37:35 PM Senator Gaetz
4:37:42 PM Senator Storms
4:38:25 PM Senator Gaetz w/question
4:38:32 PM Senator Storms to answer
4:39:52 PM Senator Norman w/question
4:40:16 PM Senator Storms to answer
4:41:03 PM Senator Norman
4:41:20 PM Senator Storms
4:41:39 PM Senator Sobel w/question
4:42:08 PM Senator Storms to answer
4:43:28 PM Senator Sobel w/follow-up question
4:43:38 PM Senator Storms
4:44:02 PM Ron Watson, Florida Dental Association
4:44:42 PM Dr. Neal Dunn, Florida Medical Association
4:47:13 PM Senator Fasano w/comments
4:48:07 PM Dr. Dunn
4:48:46 PM Senator Fasano
4:49:28 PM Eric Westfall, Florida Sheriff's Association
4:49:41 PM Renee Alsbrook, Department of Health, Deputy General Counsel
4:53:26 PM Senator Gaetz

4:54:55 PM Renee Alsobrook
4:57:59 PM Senator Storms to close on bill
4:58:10 PM Roll Call on CS/SB 594
4:58:36 PM Tab 8 SB 850 Senator Oelrich
4:58:50 PM explains strike-all
5:00:44 PM Senator Gaetz explains amendment
5:01:58 PM Senator Jones w/question
5:02:08 PM Sally West, Florida Retail Association on amendment
5:03:19 PM Senator Jones w/follow-up question
5:05:05 PM Senator Oelrich
5:05:46 PM Senator Gaetz closes on amendment
5:07:01 PM Senator Gaetz
5:07:52 PM Senator Fasano
5:08:13 PM Senator Gaetz to answer
5:08:41 PM Senator Fasano
5:08:48 PM Senator Oelrich
5:09:07 PM Senator Garcia
5:09:15 PM Sally West, Florida Retail Association on amendment
5:09:33 PM Senator Gaetz closes on amendment
5:10:32 PM Senator Garcia
5:11:05 PM Senator Oelrich to comment
5:11:33 PM Mike Fischer, Florida Independent Pharmacy Network
5:12:07 PM Dr. Jonathan Hickman, Walgreens
5:15:54 PM Senator Sobel w/question
5:16:04 PM Dr. Hickman to answer
5:16:49 PM Senator Sobel w/follow-up
5:17:32 PM Michael Jackson, Florida Phartmacy Association
5:18:54 PM Bob Parrado, Florida Pharmacy Association
5:19:07 PM Mike McQuone, Florida Society of Health System Pharmacists
5:20:07 PM Senator Gaetz w/question
5:20:15 PM Mike McQuone to answer
5:21:16 PM Randy Miller, Florida Retail Federation
5:22:02 PM Rebecca O'Hara, Florida Medical Association
5:22:18 PM Marcela Castano, Nova Southeastern University
5:22:27 PM Stephen R. Winn, Florida Osteopathic Medical Association
5:22:39 PM Senator Jones w/comment
5:23:15 PM Senator Oelrich to close
5:23:36 PM Roll Call on SB 850
5:24:00 PM Tab 2 Senator Fasano SB 694
5:24:27 PM amendments withdrawn
5:24:37 PM Senator Fasano explains strike-all
5:24:47 PM Senator Garcia
5:25:33 PM Laura Cantwell, AARP
5:25:41 PM Dr. Fely Curva, Alzheimer's Foundation of America
5:25:52 PM Carole Duncanson, Alzheimer's Community Care
5:26:03 PM Brian Pitts, Justice-2-Jesus
5:26:11 PM Roll Call on CS/SB 694
5:26:30 PM Back on SPB 7186
5:26:55 PM Senator Garcia to explain
5:27:10 PM Roll call on SPB 7186
5:27:17 PM Senator Diaz de la Portilla w/comments
5:27:27 PM Tab 6 Senator Benacquisto SB 1258 (explained by Matthew Hunter)
5:29:24 PM Senator Jones w/comment
5:29:41 PM Roll Call on SB 1258
5:29:47 PM Meeting adjourned