

Tab 1	SB 1144 by Gaetz; Certificates of Need for Health Care-related Projects					
223842	D	S	FAV	AHS, Richter	Delete everything after	02/17 04:36 PM
492782	AA	S	FAV	AHS, Richter	Delete L.15 - 16:	02/17 04:36 PM
Tab 2	SB 26 by Negron; (Identical to H 3531) Relief of L.T. by the Department of Children and Families					
Tab 3	SB 38 by Soto; (Identical to H 3521) Relief of J.D.S. by the Agency for Persons with Disabilities					
Tab 4	CS/SB 48 by JU, Flores; (Similar to H 3529) Relief of “Survivor” and the Estate of “Victim” by the Department of Children and Families					
Tab 5	CS/SB 30 by JU, Garcia; (Identical to H 3503) Relief of C.M.H. by the Department of Children and Families					
Tab 6	SB 1082 by Latvala; (Similar to H 0973) Evaluation of Students with Impairing Conditions Who are Preparing for Licensure as Health Care Practitioners or Veterinarians					
Tab 7	SB 858 by Legg; (Similar to CS/H 0373) Clinical Social Worker, Marriage and Family Therapist, and Mental Health Counselor Interns					
Tab 8	CS/SB 604 by JU, Diaz de la Portilla (CO-INTRODUCERS) Hutson, Gaetz; (Compare to CS/CS/CS/H 0439) Mental Health Services in the Criminal Justice System					
525910	D	S	RCS	AHS, Sobel	Delete everything after	02/18 02:23 PM
350560	AA	S L	RCS	AHS, Grimsley	Delete L.729 - 730:	02/18 02:23 PM
Tab 9	SB 1722 by Stargel; (Similar to CS/CS/H 1411) Termination of Pregnancies					
466546	A	S	RCS	AHS, Bean	Delete L.181 - 183:	02/18 02:22 PM
Tab 10	CS/SB 946 by HP, Grimsley; (Compare to H 1241) Authorized Practices of Advanced Registered Nurse Practitioners and Licensed Physician Assistants					
Tab 11	SB 1316 by Grimsley; (Similar to H 1061) Nurse Licensure Compact					
454610	A	S	RCS	AHS, Grimsley	Delete L.565:	02/18 02:23 PM
714384	A	S	RCS	AHS, Grimsley	btw L.1177 - 1178:	02/18 02:23 PM
Tab 12	CS/SB 1370 by HP, Grimsley; (Identical to CS/H 1245) Medicaid Provider Overpayments					
Tab 13	CS/SB 1518 by HP, Grimsley; (Compare to H 0617) Cardiovascular Services					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND
HUMAN SERVICES
Senator Garcia, Chair
Senator Smith, Vice Chair

MEETING DATE: Wednesday, February 17, 2016

TIME: 10:00 a.m.—12:00 noon

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Garcia, Chair; Senator Smith, Vice Chair; Senators Abruzzo, Bean, Benacquisto, Grimsley, Richter, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1144 Gaetz	Certificates of Need for Health Care-related Projects; Providing an exemption from certificate of need review for certain health care-related projects; specifying conditions and requirements for the exemption; requiring a certain agreement between the project applicant and the Agency for Health Care Administration; providing penalties for failure to comply with certain requirements for an exemption to a certificate of need review, etc. HP 02/01/2016 Favorable AHS 02/11/2016 Temporarily Postponed AHS 02/17/2016 Unfavorable AP	Unfavorable Yeas 2 Nays 6
2	SB 26 Negrón (Identical H 3531)	Relief of L.T. by the Department of Children and Families; Providing for the relief of L.T.; providing an appropriation to compensate L.T. for injuries and damages sustained as a result of the negligence of employees of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing for a waiver of specified lien interests held by the state; providing a limitation on the payment of fees and costs, etc. SM JU 01/26/2016 Favorable AHS 02/17/2016 Favorable AP	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Health and Human Services
Wednesday, February 17, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 38 Soto (Identical H 3521)	Relief of J.D.S. by the Agency for Persons with Disabilities; Providing for the relief of J.D.S.; providing an appropriation from the General Revenue Fund to compensate J.D.S. for injuries and damages sustained as a result of negligence by the Agency for Persons with Disabilities, as successor agency of the Department of Children and Family Services; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act; providing a limitation on the payment of fees and costs, etc. SM JU 02/09/2016 Favorable AHS 02/17/2016 Favorable AP	Favorable Yeas 8 Nays 0
4	CS/SB 48 Judiciary / Flores (Similar H 3529)	Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families; Providing for the relief of "Survivor" and the Estate of "Victim"; providing an appropriation to compensate Survivor and the Estate of Victim for injuries and damages sustained as result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing a limitation on the payment of compensation, fees, and costs, etc. SM JU 02/09/2016 Fav/CS AHS 02/17/2016 Favorable AP	Favorable Yeas 8 Nays 0
5	CS/SB 30 Judiciary / Garcia (Identical H 3503)	Relief of C.M.H. by the Department of Children and Families; Providing for the relief of C.M.H.; providing an appropriation to compensate C.M.H. for injuries and damages sustained as a result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing a limitation on the payment of fees and costs, etc. SM JU 02/09/2016 Fav/CS AHS 02/17/2016 Favorable AP	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Health and Human Services
Wednesday, February 17, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 1082 Latvala (Similar H 973)	Evaluation of Students with Impairing Conditions Who are Preparing for Licensure as Health Care Practitioners or Veterinarians; Creating the hardship evaluation program for students with financial hardships who are preparing for licensure as health care practitioners or veterinarians and who are referred to an impaired practitioners program; providing for the submission of invoices to the Department of Health by consultants and for the payment of evaluators directly by the department, etc. HP 02/01/2016 Favorable AHS 02/17/2016 Favorable AP	Favorable Yeas 8 Nays 0
7	SB 858 Legg (Similar CS/H 373, Compare CS/H 7097)	Clinical Social Worker, Marriage and Family Therapist, and Mental Health Counselor Interns; Revising clinical social worker, marriage and family therapist, and mental health counselor intern registration requirements; revising requirements for supervision of registered interns; deleting specified education and experience requirements; establishing validity periods and providing for expiration of intern registrations; establishing requirements for a subsequent intern registration and for an applicant who has held a provisional license; requiring a licensed mental health professional to be on the premises when a registered intern provides services in clinical social work, marriage and family therapy, or mental health counseling, etc. HP 02/09/2016 Favorable AHS 02/17/2016 Favorable FP	Favorable Yeas 8 Nays 0
8	CS/SB 604 Judiciary / Diaz de la Portilla (Compare CS/CS/CS/H 439)	Mental Health Services in the Criminal Justice System; Expanding eligibility for military veterans and servicemembers court programs; authorizing the funding for mental health court programs; creating the Forensic Hospital Diversion Pilot Program; expanding eligibility requirements for certain pretrial intervention programs; authorizing pretrial mental health court programs for certain juvenile offenders, etc. JU 11/17/2015 Fav/CS AHS 02/17/2016 Fav/CS AP	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Health and Human Services
Wednesday, February 17, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 1722 Stargel (Similar CS/CS/H 1411)	Termination of Pregnancies; Defining the term "gestation" and revising the term "third trimester"; revising the requirements for disposal of fetal remains; prohibiting state agencies, local governmental entities, and Medicaid managed care plans from expending or paying funds to or initiating or renewing contracts under certain circumstances with certain organizations that perform abortions, etc. HP 01/26/2016 Favorable AHS 02/17/2016 Fav/CS FP	Fav/CS Yeas 5 Nays 3
10	CS/SB 946 Health Policy / Grimsley (Compare H 1241, S 152)	Authorized Practices of Advanced Registered Nurse Practitioners and Licensed Physician Assistants; Authorizing an advanced registered nurse practitioner to order medication for administration to patients in specified facilities; authorizing a licensed practitioner to authorize a licensed physician assistant or advanced registered nurse practitioner to order controlled substances for administration to patients in specified facilities under certain circumstances, etc. HP 02/09/2016 Fav/CS AHS 02/17/2016 Favorable AP	Favorable Yeas 8 Nays 0
11	SB 1316 Grimsley (Similar H 1061, Compare H 1063, Linked CS/S 1306)	Nurse Licensure Compact; Creating the Nurse Licensure Compact; providing for the recognition of nursing licenses in party states; providing requirements for obtaining and retaining a multistate license; providing the effect of the act on a current licensee; requiring all party states to participate in a coordinated licensure information system; providing for the development of the system, reporting procedures, and the exchange of certain information between party states; establishing the Interstate Commission of Nurse Licensure Compact Administrators; requiring the Florida Center for Nursing to analyze and make future projections of the supply and demand for nurses, etc. HP 02/09/2016 Favorable AHS 02/17/2016 Fav/CS AP	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Health and Human Services
Wednesday, February 17, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	CS/SB 1370 Health Policy / Grimsley (Identical CS/H 1245)	Medicaid Provider Overpayments; Authorizing the Agency for Health Care Administration to certify that a Medicaid provider is out of business and that overpayments made to a provider cannot be collected under state law; revising the manner in which the Medicaid program verifies a vendor's visits for the delivery of home health services, etc. HP 02/09/2016 Fav/CS AHS 02/17/2016 Favorable AP	Favorable Yeas 8 Nays 0
13	CS/SB 1518 Health Policy / Grimsley (Compare H 617, CS/CS/H 1269, CS/CS/S 378)	Cardiovascular Services; Creating the Pediatric Cardiac Advisory Council; setting the minimum qualifications for the designation of a facility as a Pediatric and Congenital Cardiovascular Center of Excellence; expanding rulemaking criteria for the Agency for Health Care Administration for licensure of hospitals performing percutaneous cardiac intervention procedures, etc. HP 02/09/2016 Fav/CS AHS 02/17/2016 Favorable AP	Favorable Yeas 8 Nays 0
Other Related Meeting Documents			

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/2016

Meeting Date

SB 1144

Bill Number (if applicable)

223842

Amendment Barcode (if applicable)

Topic Nursing Home CON

Name ERWIN BODO

Job Title REIMBURSEMENT SPECIALIST

Address 1812 RIGGINS RD

Street

TALLAHASSEE

City

FL

State

32308

Zip

Phone 850-671-3700

Email ERBODO@COMCAST.NET

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing LEADING AGE FLORIDA (FORMERLY FAHSA)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.17.2016

Meeting Date

1144

Bill Number (if applicable)

Topic CON Exemptions

Amendment Barcode (if applicable)

Name Paul A. Ledford

Job Title President + CEO

Address 2000 Apalachee Parkway

Street

Phone 850.878.2632

Tallahassee FL 32301

City

State

Zip

Email paul@floridahospice.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Florida Hospice + Palliative Care Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-16

Meeting Date

SB 1144

Bill Number (if applicable)

Topic CON EXEMPTION

Amendment Barcode (if applicable)

Name CHARLES LEE

Job Title PRESIDENT & CEO

Address 2445 LANE PARK ROAD

Phone 352-742-6816

Street TAVARES

FL

32778

Email clee@cshospice.org

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing CORNERSTONE HOSPICE / FHPCA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-19-2016
Meeting Date

1144
Bill Number (if applicable)

Topic CON

Amendment Barcode (if applicable)

Name Susan Ponder-Stansel

Job Title President + CEO

Address 4266 Sunbeam Rd
Street

Phone 904-407-6363

Jacksonville FL 32257
City State Zip

Email ceo@communityhospice.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Community Hospice of N.E. Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

SB 1144

Bill Number (if applicable)

Topic Certificate of Need

Amendment Barcode (if applicable)

Name Mike ANWAY

Job Title Safety Net Hospital Alliance

Address Street

Phone

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Safety Net Hospital Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-16
Meeting Date

1144
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Todd Truax

Job Title Executive Director

Address 2116 Santa Barbara Blvd
Street
Cape Coral FL 33991
City State Zip

Phone 239-772-4600

Email todd.j.truax@consulatehealthcare.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Consulate Health Care, Coral Trace Health Care

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1144

Bill Number (if applicable)

Topic CON

Amendment Barcode (if applicable)

Name Brent Montgomery

Job Title Administrator

Address 2061 Hyde Park Rd

Street

Phone 904 786 7331

Jacksonville FL 32210

City

State

Zip

Email admin.jacksonville@signaturehealthcarellc.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against

(The Chair will read this information into the record.)

Representing Signature Health Care of Jacksonville

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/12/16
Meeting Date

SB 1144
Bill Number (if applicable)

Topic Personnel Exemption for Nursing Centers Amendment Barcode (if applicable)

Name ANDREW A MCBILLOP

Job Title Amnistratoe

Address 16th Hwy 4th No
Street

Phone 863 263 2226

Okkechobee FL 34913
City State Zip

Email Andrew.McBillop@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing ~~FHC - OTCF~~ OKEECHOBEE Healthcare Facility

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16
Meeting Date

1144
Bill Number (if applicable)

Topic CON

Amendment Barcode (if applicable)

Name Kathy Gallin

Job Title Vice Chair of Legislative Committee

Address 307 W. Park Ave
Street

Phone 850-224-3907

Tallahassee FL 32301
City State Zip

Email kgallinesignature@healthcare1k.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Health Care Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-16
Meeting Date

SB 1144
Bill Number (if applicable)

Topic C.O.N

Amendment Barcode (if applicable)

Name J. Keith Arnold

Job Title Gov. Rep.

Address 14101 River Rd.
Street
Ft. Myers, FL 33905
City State Zip

Phone 239-560-4731

Email Keith.Arnold@bipr.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Lee Mem. Hospital, Hope Hospice, Covenant Hospice, Cornerstone Hospice

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-16
Meeting Date

1144
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JEFFREY MARKULIK

Job Title EXECUTIVE DIRECTOR

Address 4101 SOUTH POINT DR. EAST
Street
JACKSONVILLE FL 32216
City State Zip

Phone 904-296-6800

Email jeffrey.markulik@CONSULATEHC.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing CONSULATE HEALTHCARE OF JACKSONVILLE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1144

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Dr. Nathalie de Fabrique

Job Title Director of Clinical Services

Address 901 South 62nd Ave

Phone 954-893-0109
561-790-1191

Street

Hollywood, FL 33023

City

State

Zip

Email Clinicaldirector@cotler
healthcare.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Cotler Healthcare and Development, Hollywood, FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16
Meeting Date

1144
Bill Number (if applicable)

Topic CON

Amendment Barcode (if applicable)

Name Tom Parker

Job Title Director of Reimbursement

Address 307 West Park Ave

Phone (850) 224-3907

Street

Tallahassee

City

State

FL

Zip

Email tparker@fhca.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Health Care Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16
Meeting Date

SB 1144
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name Debbie Montenegro

Job Title Executive Director

Address 500 Hospital Dr.

Street

Crestview

City

FL

State

32539

Zip

Phone 850-689-3146

Email deborah.montenegro@consulate-hc.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Consulate Health Care/Shoal Creek Rehab/Crestview

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-16

Meeting Date

1/44

Bill Number (if applicable)

Topic CCN

Amendment Barcode (if applicable)

Name SAL NUZZO

Job Title VP POLICY

Address 100 N DUVAL

Phone 850-322-9941

Street

TALL.

City

FL

State

32301

Zip

Email SNUZZO@JAMESMADISON.ORG

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing THE JAMES MADISON INST.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1144

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name HEIDI L. SMITH

Job Title EXECUTIVE DIRECTOR

Address 195 MATTIE M. KELLY
Street
DESTIN, FL,
City State Zip

Phone 850 654 4586
Email HEIDI.L.SMITH@GDSULTATEX/FL.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing DESTIN HEALTH CARE & REHAB

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: SB 1144

INTRODUCER: Senator Gaetz

SUBJECT: Certificates of Need for Health Care-related Projects

DATE: February 16, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Favorable
2.	Brown	Pigott	AHS	Recommend: Unfavorable
3.			AP	

I. Summary:

SB 1144 creates a new exemption from the Certificate of Need (CON) review process for any project subject to CON, on the condition that the licensee commits to improve access to care for uninsured, low-income residents in its service district. If a licensee chooses to use the exemption, the bill requires that the licensee sign an agreement with the Agency for Health Care Administration (AHCA) stating that the licensee will provide charity care to low-income patients within its service district as specified in the bill. The bill also establishes penalties for licensees that fail to provide the required charity care.

The bill's fiscal impact is indeterminate.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Florida's CON Program

Overview

In Florida, a CON is a written statement issued by the AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service, including hospices. The Florida CON program has three levels of review: full, expedited and exempt.¹ Unless a project is exempt from the CON program, it must undergo a full comparative review. Expedited review is primarily targeted towards nursing home projects.

¹ Section 408.036, F.S.

Full CON Review Process

Full CON review is a lengthy process that starts with the AHCA determining need for a specific facility type or service. Upon determining that a need exists, AHCA accepts applications for CON based on batching cycles. At least 30 days prior to the application deadline for a batch cycle, an applicant must file a letter of intent with AHCA.² A letter of intent must describe the proposal, specify the number of beds sought, and identify the services to be provided and the location of the project.³ Applications for CON review must be submitted by the specified deadline for the particular batch cycle.⁴ The AHCA must review the application within 15 days of the filing deadline and, if necessary, request additional information for an incomplete application.⁵ The applicant then has 21 days to complete the application or it is deemed withdrawn from consideration.⁶

Within 60 days of receipt of the completed applications for that batch, the AHCA must issue a State Agency Action Report and Notice of Intent to grant a CON for a project in its entirety, to grant a CON for identifiable portions of a project, or to deny a CON for a project.⁷ The AHCA must then publish the decision, within 14 days, in the Florida Administrative Register.⁸ If no administrative hearing is requested within 21 days of the publication, the State Agency Action Report and the Notice of Intent become a final order of the AHCA.⁹

An applicant for CON review must submit a fee to the AHCA at the time of application submission. The minimum CON application filing fee is \$10,000.¹⁰ In addition to the base fee, an applicant must pay a fee of 1.5 percent of each dollar of the proposed expenditure; however the total fee may not exceed \$50,000.¹¹

Projects Subject to Full CON Review

Section 408.036(1), F.S., lists projects that are required to undergo a full comparative CON review, including:

- The addition of beds by new construction or alteration in a community nursing home or intermediate care facility for the developmentally disabled;
- The new construction or establishment of additional health care facilities,¹² including the replacement of a health care facility that is not located within one mile of an existing health care facility, if the number of beds in each licensed bed category will not increase;
- The conversion from one type of health care facility to another, including from a general hospital to a specialty hospital;

² Section 408.039(2)(a), F.S.

³ Section 408.039(2)(c), F.S.

⁴ Rule 59C-1.008(1)(g), F.A.C.

⁵ Section 408.039(3)(a), F.S.

⁶ Id.

⁷ Section 408.039(4)(b), F.S.

⁸ Section 408.039(4)(c), F.S.

⁹ Section 408.039(4)(d), F.S.

¹⁰ Section 408.038, F.S.

¹¹ Id.

¹² Section 408.032, F.S., defines “health care facility” as a hospital, long-term care hospital, skilled nursing facility, hospice, or intermediate care facility for the developmentally disabled.

- The establishment of a hospice or hospice inpatient facility;
- An increase in the number of beds for comprehensive rehabilitation; and
- The establishment of tertiary health services,¹³ including inpatient comprehensive rehabilitation.

Projects Subject to Expedited CON Review

Section 408.036(2), F.S., permits certain projects to undergo expedited CON review. Applicants for expedited review are not subject to the application deadlines associated with full comparative review and may submit an application at any time. Projects subject to an expedited review include the transfer of a CON and certain replacements, relocations, and new construction of nursing homes.¹⁴

Exemptions from CON Review

Section 408.036(3), F.S., provides many exemptions to CON review. Exempted projects must only submit an application for exemption to the AHCA and pay a \$250 fee. Exempted projects include:

Hospital Exemptions

- Adding hospice services or swing beds¹⁵ in a rural hospital, the total of which does not exceed one-half of its licensed beds;
- Converting licensed acute care hospital beds to Medicare and Medicaid certified skilled nursing beds in a rural hospital, as defined in s. 395.602, F.S., so long as the conversion of the beds does not involve the construction of new facilities;
- Adding hospital beds licensed under ch. 395, F.S., for comprehensive rehabilitation, the total of which may not exceed 10 total beds or 10 percent of the licensed capacity, whichever is greater;
- Establishing a Level II neonatal intensive care unit (NICU) if the unit has at least 10 beds, and if the hospital had a minimum of 1,500 births during the previous 12 months;
- Establishing a Level III NICU if the unit has at least 15 beds, and if the hospital had a Level II NICU and a minimum of at least 3,500 births during the previous 12 months;
- Establishing a Level III NICU if the unit has at least five beds, is a verified trauma center,¹⁶ and has a Level II NICU;

¹³ Tertiary health services include: pediatric cardiac catheterization, pediatric open-heart surgery, organ transplantation, neonatal intensive care units, comprehensive rehabilitation, medical or surgical services which are experimental or developmental in nature to the extent that the provision of such services is not yet contemplated within the commonly accepted course of diagnosis or treatment for the condition addressed by a given service, heart transplantation, kidney transplantation, liver transplantation, bone marrow transplantation, lung transplantation, pancreas and islet cells transplantation, heart/lung transplantation, adult open heart surgery, neonatal and pediatric cardiac and vascular surgery, and pediatric oncology and hematology. See s. 408.032(17), F.S., and rule 59C-1.002(41), F.A.C.

¹⁴ See s. 408.036(2), F.S.

¹⁵ Section 395.602(2)(g), F.S., defines “swing bed” as a bed which can be used interchangeably as either a hospital, skilled nursing facility (SNF), or intermediate care facility (ICF) bed pursuant to 42 C.F.R. parts 405, 435, 440, 442, and 447.

¹⁶ Section 395.4001(14), F.S., defines “trauma center” as a hospital that has been verified by the Department of Health to be in substantial compliance with the requirements in s. 395.4025, F.S., and has been approved to operate as a Level I trauma center, Level II trauma center, or pediatric trauma center, or is designated as a Level II trauma center pursuant to s. 395.4025(14), F.S.

- Providing percutaneous coronary intervention for patients presenting with emergency myocardial infarctions in a hospital that does not have an approved adult open-heart-surgery program;¹⁷
- Adding mental health services or beds if the applicant commits to providing services to Medicaid or charity care patients as a level equal to or greater than the district average; and
- Establishing an adult open-heart surgery program in a hospital located within the boundaries of a health service planning district, which:¹⁸
 - Has experienced an annual net out-migration of at least 600 open heart surgery cases for three consecutive years; and
 - Has a population that exceeds the state average of population per licensed and operational open-heart programs by at least 25 percent.

Nursing Home Exemptions

- Adding nursing home beds at a skilled nursing facility that is part of a retirement community that provides a variety of residential settings and supportive services and that has been incorporated and operated in Florida for at least 65 years on or before July 1, 1994, if the nursing home beds are for the exclusive use of the community residents;
- Adding nursing home beds up to the lesser of 30 total beds or 25 percent of the current facility's beds when a nursing home is being replaced;
- Combining or dividing facilities with nursing home beds;
- Adding nursing home beds up to the greater of 10 beds (20 beds for a designated Gold Seal nursing home) or 10 percent of the number of beds at the licensed facility;
- Replacing a licensed nursing home on the same site or within five miles in the same sub-district if the new nursing home only has the lesser of 30 total beds or 25 percent of the current facility's beds; and
- Consolidating or combining of licensed nursing homes or transferring beds between licensed nursing homes with shared controlling interests within 30 miles and within the AHCA district where both nursing homes are located.

State-run Facility Exemptions

- Building an inmate health care facility that is for the exclusive use of the Department of Corrections (DOC);
- Adding mobile surgical facilities and related health care services under contract with the DOC or a private correctional facility;
- Constructing state veterans' nursing homes operated by or on behalf of the Florida Department of Veterans' Affairs or adding beds to such a facility;
- Adding beds in a state mental health facility or state mental health forensic facility; and
- Adding beds in state developmental disabilities centers.

¹⁷ Id.

¹⁸ This exemption is obsolete and is replaced by a licensure process under s. 408.0361, F.S.

Florida Health Choices Corporation, Inc.

In 2008, the Legislature created the Florida Health Choices Program to address the issue of Florida's uninsured.¹⁹ The Legislature created the Florida Health Choices Corporation (corporation) to administer the program as a private, non-profit, corporation under s. 408.910, F.S. The corporation must operate in compliance with part III of chapter 112 (Public Officers and Employees) and chapters 119 (Public Records), 286 (Public Business), and 617 (Corporations Not for Profit), F.S.²⁰

The corporation is led by a 15-member board of directors, three of whom are ex-officio, non-voting board members. Board members may not include insurers, health insurance agents or brokers, health care providers, health maintenance organizations (HMOs), prepaid service providers, or any other entity or affiliate or subsidiary of eligible vendors. Conflict of interest provisions govern board member participation.

The program is designed as a single, centralized marketplace for the purchase of health products, including, but not limited to, health insurance plans, HMO plans, prepaid services, and flexible spending accounts. Policies sold as part of the program are exempt from regulation under the Insurance Code and laws governing HMOs. The following entities are authorized to be eligible vendors:

- Insurers authorized under ch. 624, F.S., of the Insurance Code, such as self-insurers, indemnity plans, life and health insurers, church benefit plans, disability, and multi-employer welfare arrangements, and the Florida Healthy Kids Corporation;
- HMOs authorized under part I of ch. 641, F.S., relating to Health Service Programs, including health maintenance organization contracts, limited benefit policies, and other risk-bearing coverage, benefits, and products;
- Prepaid limited health service organizations and discount medical plans under ch. 636, F.S.;
- Prepaid health clinics licensed under part II, of ch. 641, F.S.;
- Health care providers, including hospitals and other licensed health facilities, health care clinics, pharmacies, licensed health care professionals, and other licensed health care providers;
- Provider organizations, including service networks, group practices, and professional associations; and
- Corporate entities providing specific health services.

The corporation's Florida Health Insurance Marketplace (marketplace) currently includes individual health plans, discount plans, and limited benefit plans.

The corporation is authorized to collect premiums and other payments from employers. The law further specifies who may participate as either an employer or an individual. Employers eligible to enroll include those that meet criteria established by the corporation along with their individual employees and other individuals meeting criteria established by the corporation.²¹

¹⁹ See Chapter 2008-32, Laws of Fla.

²⁰ Section 408.910(11), F.S.

²¹ Section 408.910(4)(a), F.S.

III. Effect of Proposed Changes:

The bill amends s. 408.036, F.S., to create a new exemption to the CON process for any project subject to CON on the condition that the licensee commits to improve access to care for uninsured, low-income residents in its service district. In order to demonstrate such commitment, the facility must sign an agreement with the AHCA to:

- Provide, once the project is operational and at the end of the first four calendar quarters after the project becomes operational, an amount equal to 1.5 percent of gross revenues earned by the project to the AHCA to be deposited in the Public Medical Assistance Trust Fund;
- Provide, beginning in the fifth calendar quarter after the project becomes operational, charity care in an amount equal to or greater than the average for facilities in the same district that provide similar services; and
- Submit reports and data to the AHCA to monitor compliance with the charity care threshold.

The bill defines “charity care” as uncompensated care delivered to uninsured patients with incomes at or below 200 percent of federal poverty level²² when preauthorized by the licensee and not subject to collection procedures. The bill specifies that the valuation of charity care must be based on Medicaid reimbursement rates.

If the licensee provides less charity care than required, the licensee must donate:

- Payments for charity care provided to residents of the service district pursuant to a written agreement with a charity care provider and equal to or greater than the difference between the value of the charity care provided by the licensee and the average among similar providers; or
- Payments to Florida Health Choices for health care coverage financial assistance that are equal to or greater than the difference between the value of the charity care provided and the district average among similar providers.

Such payments to Florida Health Choices must be made in increments sufficient to purchase silver-level health care coverage for an individual for at least one year. An individual receiving the assistance must have been uninsured during the previous 12 months. The licensee and Florida Health Choices must cooperate to identify individuals from the service district who are qualified to receive the available assistance.

The bill also establishes penalties for licensees that are noncompliant with the charity care requirements, as follows:

- For the first quarter of noncompliance, the fine is equal to twice the amount of the shortfall and is double for each subsequent quarter up to a maximum of four quarters.
- Following the fifth quarter of noncompliance, the AHCA is required to suspend the licensee’s license until the licensee implements a corrective action plan approved by the AHCA.
- If the licensee fails to comply with the corrective action plan, the AHCA is required to revoke the licensee’s license.

²² At 200 percent the required annual income equals between \$23,540 for individuals and \$81,780 for a family of eight, see <https://www.healthcare.gov/glossary/federal-poverty-level-FPL/> (last visited on Jan. 27, 2016).

The bill has an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1144 may have a positive fiscal impact on Florida residents that would qualify for any new charity care services generated by the provisions in the bill.

The bill may have an indeterminate impact on facilities that are subject to CON review. Such facilities will be able to avoid costs related to the CON process but may incur additional costs related to providing the required charity care or due to penalties assessed by the AHCA for not providing such care as required.

C. Government Sector Impact:

The AHCA has new duties under the bill which include entering into written agreements with licensees, monitoring compliance with the bill's charity care requirements, enforcing corrective action plans, and revoking licenses, if necessary. However, the number of licensees that may seek a CON exemption under the bill is indeterminate, which makes the fiscal impact indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 408.036 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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



223842

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/17/2016	.	
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	.	

Appropriations Subcommittee on Health and Human Services
(Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present paragraphs (a) through (t) of subsection
(3) of section 408.036, Florida Statutes, are redesignated as
paragraphs (c) through (v), respectively, new paragraphs (a) and
(b) are added to that subsection, present subsections (4) and
(5) of that section are redesignated as subsections (5) and (6),
respectively, and a new subsection (4) is added to that section,



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to read:

408.036 Projects subject to review; exemptions.—

(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(a) Except for projects described in paragraphs (b) and (c), any project conditioned upon a significant, active, and continuing commitment to improved access to care for uninsured and low-income residents of the applicable service district. Such commitment is demonstrated by compliance with the following conditions and requirements which the project applicant must accept in a signed agreement with the agency:

1. The project licensee must contribute, once the project is operational and at the end of each of the first four calendar quarters of the project's operations, an amount equal to 1.5 percent of the gross revenues earned by the exempt project. Contributions shall be made to the agency and deposited in the Public Medical Assistance Trust Fund.

2.a. Beginning in the fifth calendar quarter of the exempt project's operations, the licensee must provide charity care in an amount equal to twice the applicable district average among licensed providers of similar services. For purposes of this section, the term "charity care" means uncompensated care delivered to uninsured patients having incomes at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures. The valuation of charity care must be based on Medicaid reimbursement rates.

b. Alternatively, if the licensee provides less charity care than is required by sub-subparagraph a., the licensee must



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donate:

(I) Pursuant to a written agreement with a charity care provider in the service district, payments for charity care provided to residents of the service district in total amounts equal to or greater than the difference between the value of the charity care provided in sub-subparagraph a. and the applicable district average among licensed providers of similar services;

or

(II) Payments to Florida Health Choices for health care coverage financial assistance in total amounts equal to or greater than the difference between the value of the charity care provided in sub-subparagraph a. and the applicable district average among licensed providers of similar services. The payments for financial assistance must be made in increments sufficient to purchase silver-level health care coverage for an individual for at least 1 year. The individual receiving this assistance must have been uninsured during the previous 12 months. The licensee and Florida Health Choices shall cooperate to identify individuals from the service district who are qualified to receive the available assistance.

c. The agreement between the agency and the applicant for an exemption must require the licensee to submit reports and data necessary to monitor compliance with the charity care threshold.

(b) Any project to construct or establish a new skilled nursing facility or increase the licensed bed capacity of an existing skilled nursing facility conditioned on a significant, active, and continuing commitment by the facility to improved access to Medicaid long-term care services. Such commitment is



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demonstrated by an applicant by compliance with a signed agreement between the applicant and the agency which, upon the project becoming operational, requires the project licensee to contribute an amount equal to the state share of one-fourth of the cost of enrolling a person in the long-term care waiver program established pursuant to Part IV of Chapter 409 times twice the number of new beds included in the project. The contribution shall be paid by the project licensee to the agency at the end of each calendar quarter that the project is operational and deposited in the Public Medical Assistance Trust Fund. The agreement between the agency and the applicant must require the licensee to submit reports and data necessary to monitor compliance with the charity care threshold.

(4) PENALTIES.—A facility licensed based on the exemption established in subsection (3)(a)-(b) is subject to the following penalties for noncompliance with its specific commitment to improve access to care for uninsured and low-income persons in the service district:

(a) For the first quarter in which the value of services, donations, and financial assistance falls below the specified threshold, the fine is equal to twice the amount of the shortfall. The fine is doubled in each subsequent quarter of noncompliance up to a maximum of four quarters.

(b) Following a fifth quarter of noncompliance, the exempt license shall be suspended until the licensee implements a corrective action plan that the agency has approved.

(c) Failure by the facility to maintain compliance following the implementation of a corrective action plan shall result in revocation of the exempt license.



223842

Section 2. This act shall take effect July 1, 2016.

===== 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 certificates of need for health
care-related projects; amending s. 408.036, F.S.;
providing an exemption from certificate of need review
for certain health care-related projects; specifying
conditions and requirements for the exemption;
requiring that project applicants enter into an
agreement with the Agency for Health Care
Administration as a condition of eligibility for the
exemption; requiring specified monetary contributions;
providing penalties for failure to comply with the
terms of the agreement; providing an effective date.



492782

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/17/2016	.	
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	.	
	.	

Appropriations Subcommittee on Health and Human Services
(Richter) recommended the following:

Senate Amendment to Amendment (223842)

Delete lines 15 - 16

and insert:

(a) Except for projects described in paragraph (b), any
project conditioned upon a significant, active, and

By Senator Gaetz

1-00103B-16

20161144__

A bill to be entitled

An act relating to certificates of need for health care-related projects; amending s. 408.036, F.S.; providing an exemption from certificate of need review for certain health care-related projects; specifying conditions and requirements for the exemption; requiring a certain agreement between the project applicant and the Agency for Health Care Administration; providing penalties for failure to comply with certain requirements for an exemption to a certificate of need review; providing an effective date.

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

Section 1. Present paragraphs (a) through (t) of subsection (3) of section 408.036, Florida Statutes, are redesignated as paragraphs (b) through (u), respectively, a new paragraph (a) is added to that subsection, present subsections (4) and (5) of that section are redesignated as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

408.036 Projects subject to review; exemptions.—

(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(a) Any project conditioned upon a significant, active, and continuing commitment to improved access to care for uninsured and low-income residents of the applicable service district. Such commitment is demonstrated by compliance with the following conditions and requirements which the project applicant must accept in a signed agreement with the agency:

1. The project licensee must contribute, once the project

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is operational and at the end of each of the first four calendar quarters of the project's operations, an amount equal to 1.5 percent of the gross revenues earned by the exempt project. Contributions shall be made to the agency and deposited in the Public Medical Assistance Trust Fund.

2.a. Beginning in the fifth calendar quarter of the exempt project's operations, the licensee must provide charity care in an amount equal to or greater than the applicable district average among licensed providers of similar services. For purposes of this section, the term "charity care" means uncompensated care delivered to uninsured patients having incomes at or below 200 percent of the federal poverty level when such services are preauthorized by the licensee and not subject to collection procedures. The valuation of charity care must be based on Medicaid reimbursement rates.

b. Alternatively, if the licensee provides less charity care than is required by sub-subparagraph a., the licensee must donate:

(I) Pursuant to a written agreement with a charity care provider in the service district, payments for charity care provided to residents of the service district in total amounts equal to or greater than the difference between the value of the charity care provided in sub-subparagraph a. and the applicable district average among licensed providers of similar services; or

(II) Payments to Florida Health Choices for health care coverage financial assistance in total amounts equal to or greater than the difference between the value of the charity care provided in sub-subparagraph a. and the applicable district

1-00103B-16

20161144__

62 average among licensed providers of similar services. The
63 payments for financial assistance must be made in increments
64 sufficient to purchase silver-level health care coverage for an
65 individual for at least 1 year. The individual receiving this
66 assistance must have been uninsured during the previous 12
67 months. The licensee and Florida Health Choices shall cooperate
68 to identify individuals from the service district who are
69 qualified to receive the available assistance.

70 c. The agreement between the agency and the applicant for
71 an exemption must require the licensee to submit reports and
72 data necessary to monitor compliance with the charity care
73 threshold.

74 (4) PENALTIES.—A facility licensed based on the exemption
75 established in subsection (3)(a) is subject to the following
76 penalties for noncompliance with its specific commitment to
77 improve access to care for uninsured and low-income persons in
78 the service district:

79 (a) For the first quarter in which the value of services,
80 donations, and financial assistance falls below the specified
81 threshold, the fine is equal to twice the amount of the
82 shortfall. The fine is doubled in each subsequent quarter of
83 noncompliance up to a maximum of four quarters.

84 (b) Following a fifth quarter of noncompliance, the exempt
85 license shall be suspended until the licensee implements a
86 corrective action plan that the agency has approved.

87 (c) Failure by the facility to maintain compliance
88 following the implementation of a corrective action plan shall
89 result in revocation of the exempt license.

90 Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Chair*
Appropriations
Banking and Insurance
Ethics and Elections
Higher Education
Regulated Industries
Rules

SENATOR JOE NEGRON
32nd District

January 26, 2016

Rene Garcia, Chair
Appropriations Subcommittee on Health and Human Services
201 The Capitol
404 S Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 26

Dear Chairman Garcia:

I would like to request Senate Bill 26 relating an act of relief of L.T. be placed on the agenda for the next scheduled committee meeting.

Thank you for your consideration of this request.

Sincerely yours,

Joe Negron
State Senator
District 32

JN/hd

c: Scarlet Pigott, Staff Director

REPLY TO:

- ☐ 3500 SW Corporate Parkway, Suite 204, Palm City, Florida 34990 (772) 219-1665 FAX: (772) 219-1666
- ☐ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

STATE APPROPRIATIONS
RECEIVED
16 JAN 27 AM 8:15
STAFF



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
10/26/15	SM	Favorable
01/22/16	JU	Favorable
02/16/16	AHS	Recommend: Favorable
	AP	

November 17, 2015

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26** – Senator Negron
HB 3531 – Representative Mike Miller
Relief of L.T., a minor, by the Department of Children and Families

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR \$800,000 FROM GENERAL REVENUE BASED ON A SETTLEMENT AGREEMENT BETWEEN THE LEGAL GUARDIAN OF L.T. AND THE DEPARTMENT OF CHILDREN AND FAMILIES FOR THE SEXUAL ABUSE SUFFERED BY L.T. WHEN SHE WAS LEFT BY THE DEPARTMENT IN THE FOSTER CARE OF A REGISTERED SEX OFFENDER

CURRENT STATUS:

On December 14, 2010, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 18 (2012). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment to correct an erroneous claim amount. (The 2012 bill failed to account for the \$200,000 that DCF had already paid; therefore, the proper claim amount was \$800,000 rather than \$1,000,000.) The 2012 report is attached as an addendum to this report. The amount claimed in SB 26 (2016) on the date of this report is \$800,000.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Mary K. Kraemer. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

The provisions of SB 26 (2016) address and update the circumstances (with additional detail) upon which the claim for relief is based. It should be noted that the prior claim bill, SB 18 (2012), evaluated by the then-Senate special master, sought relief of the claimant **as a minor**. The record reflects that the claimant is now over the age of eighteen. SB 26 now references payment to a special needs trust for the exclusive use and benefit of the claimant. (Section 3, lines 127-138). Further, administration of the trust will be handled by an institutional trustee selected by the claimant, until the trust is terminated upon the claimant's 30th birthday. In case of the claimant's death prior to termination of the trust, any remaining trust funds will belong to her heirs, beneficiaries, or estate.)

The position of the Department of Children and Families (DCF) on the settlement of the case by payment as described in the bill is unchanged. Counsel for DCF stated in a letter dated September 30, 2015 that "DCF needs to continue to have claim bills funded from General Revenue. DCF is operating at minimal trust fund reserves that are essential to meeting cash flow and Department program needs. Any appropriation from a trust fund could have an effect on DCF operations and its ability to meet future related obligations."

In an update letter dated October 14, 2015, claimant's counsel stated that the claimant:

1. Is now married and lives with her husband and daughter in Jacksonville, where her husband, a hospital corpsman, is stationed at the Naval Air Station.
2. Is in her third year of studies, majoring in Applied Psychology at Florida State College at Jacksonville. Her career goal is to become a child psychologist, specializing in the treatment of children who have suffered trauma; and

3. Continues to undergo therapy, as she still suffers from the effects of her trauma.

SB 26 (2016) includes language similar to the above (lines 97-102), and further indicates that the claimant is employed part-time.

ATTORNEYS FEES:

The bill provides that the total amount paid for attorney fees, lobbying fees, costs, and other similar expenses related to the claim may not exceed 25 percent of the award (i.e., not exceeding \$200,000 of the proposed \$800,000 payment to the special needs trust).

RECOMMENDATIONS:

That SB 26 be reported FAVORABLY, based on the conclusions on page 3 of the 2012 report (attached hereto) reached by the administrative law judge from the Division of Administrative Hearings, that:

DCF has a duty to exercise reasonable care when it places foster children and to protect them from known dangers, and that DCF knew or should have known [of the] serious risk of harm to L.T. These breaches of duty were the proximate cause of the injuries that L.T. suffered.

Respectfully submitted,

Mary K. Kraemer
Senate Special Master

cc: Secretary of the Senate



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

402 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

	COMM	ACTION
12/1/11	SM	Fav/1 amendment

December 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate Suite
409, The Capitol Tallahassee, Florida
32399-110

Re: **SB 18 (2012)** Senator Jeremy Ring
Relief of L.T., a Minor

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR \$800,000 FROM GENERAL REVENUE BASED ON A SETTLEMENT AGREEMENT BETWEEN THE LEGAL GUARDIAN OF L.T. AND THE DEPARTMENT OF CHILDREN AND FAMILIES FOR THE SEXUAL ABUSE SUFFERED BY L.T. WHEN SHE WAS LEFT BY THE DEPARTMENT IN THE FOSTER CARE OF A REGISTERED SEX OFFENDER.

FINDINGS OF FACT:

In August 1995, when LT. was less than two years old, the Department of Children and Families (DCF) removed LT. and her brother from their mother and placed them in the foster care of their great uncle, Eddie Thomas, and his wife, who lived in Gadsden County. Less than a year after the placement, Thomas was charged with sexually molesting a 13-year-old girl. He plead no contest to lewd, lascivious, or indecent assault upon a child and was sentenced to five years' probation and required to receive sex abuse counseling. He was also registered as a sex offender.

Despite the fact that DCF was aware of Thomas' conviction and his registration as a sex offender, it decided

that the risk of harm to L.T. was low and did not remove L.T. from Thomas' care and custody. DCF also terminated protective supervision of L.T., meaning that a social worker no longer visited the Thomas home from time to time to see how L.T. was doing. Protective supervision is often terminated by DCF when a child is placed with a relative and DCF is satisfied that supervision is unnecessary.

In 2004, when L.T. was 10 years old, DCF placed an adolescent girl in the foster care of the Thomases. A few months after the placement, this minor girl ran away from the house in the middle of the night, claiming that Thomas had attempted to sexually molest her. DCF removed this girl from the Thomas home, but DCF did not re-evaluate the placement of L.T. with Thomas.

In March 2005, when L.T. was 11 years old (and Thomas was 44), she ran away from home and told authorities that she had been repeatedly sexually abused by Thomas. She also said that Thomas and his wife used drugs. DCF then removed L.T. from the Thomas home.

It was later revealed by L.T. that she was roughly disciplined by the Thomases and that they were verbally abusive to her, frequently calling her derogatory names and telling her that she was worthless.

L.T. is now 17 years old and in a good foster home. However, as a result of the sexual abuse she endured while living with Thomas, L.T. suffers from post traumatic stress disorder, depression, and low self esteem. She has occasionally attempted suicide and for 10 months was a resident of Tampa Bay Academy, a mental health facility. She is receiving psychological counseling and will likely need counseling for many years. A trial consultant projected her future lost earnings as \$540,000. Her projected future medical expenses are \$760,000 to \$11,580,000, depending on the degree of psychological therapy and supervision she might need, the higher figure reflecting the costs of institutionalization. A conservative estimate of her total future economic losses is around \$2 million.

LITIGATION HISTORY:

In 2009, a lawsuit against DCF was filed in the Second Judicial Circuit by L.T.'s aunt and legal guardian. The case was successfully mediated and the parties entered into a

settlement agreement pursuant to which L.T. would receive \$1,000,000. The sovereign immunity limit of \$200,000 was paid and the balance of \$800,000 is sought through this claim bill. The court order approving the settlement agreement requires that the net proceeds to L.T. be placed in a special needs trust. After deducting legal fees and costs from the \$200,000, and accounting for a Medicaid lien, \$11,084 remained to be placed in a special needs trust for L.T.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether DCF is liable in negligence for the injuries suffered by L.T., and, if so, whether the amount of the claim is reasonable.

DCF has a duty to exercise reasonable care when it places foster children and to protect them from known dangers. DCF breached that duty when it learned that Thomas had been convicted of a sexual offense on a child, but did not remove L.T. from the Thomas home. DCF acted negligently again when it did not remove L.T. following the charge of sexual abuse against Thomas made by another foster child in 2004. DCF knew or should have known that Thomas posed a serious risk of harm to L.T. These breaches of duty were the proximate cause of the injuries that L.T. suffered.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES:

In compliance with s. 768.28(8), Florida Statutes, LT.'s attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature.

OTHER ISSUES:

The bill erroneously states that the claim is for \$1 million, failing to account for the \$200,000 that DCF has already paid. The bill should be amended to state that the claim is for \$800,000.

SPECIAL MASTER'S FINAL REPORT – SB 18 (2012)

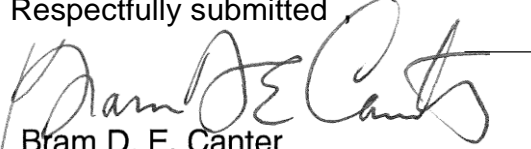
December 1, 2011

Page 4

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 18 (2012) be reported FAVORABLY, as amended.

Respectfully submitted



Bram D. E. Canter
Senate Special Master

cc: Senator Ring
Debbie Brown, Secretary of the Senate
Counsel of Record



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Environmental Preservation and Conservation
Finance and Tax
Judiciary

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DARREN SOTO

Minority Caucus Rules Chair

14th District

February 11, 2016

The Honorable Rene Garcia
Appropriations Subcommittee on Health and Human Services
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Garcia,

I respectfully request that Senate Bill 38, Relief of J.D.S, be placed on the agenda as soon as possible. Senate Bill 38 requests to provide for the relief of J.D.S. and providing an appropriation from the General Revenue Fund to compensate J.D.S. for injuries and damages sustained as a result of negligence by the Agency for Persons with Disabilities, as successor agency of the Department of Children and Family Services.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto
State Senator, District 14

Cc: Scarlet Pigott, Staff Director
Robin Jackson, Committee Administrative Assistant

REPLY TO:

- ☐ Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- ☐ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
01/13/16	SM	Favorable
02/08/16	JU	Favorable
02/16/16	AHS	Recommend: Favorable
	AP	

January 27, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 38** – Senator Darren Soto
HB 3521 – Representative Bruce Antone
Relief of J.D.S., by the Agency for Persons with Disabilities

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$950,000 PAYABLE TO THE AGED POOLED SPECIAL NEEDS TRUST ON BEHALF OF J.D.S., BASED ON A SETTLEMENT AGREEMENT BETWEEN PATTI R. JARRELL, AS PLENARY GUARDIAN OF J.D.S., AND THE STATE OF FLORIDA, AGENCY FOR PERSONS WITH DISABILITIES. THE CLAIM AROSE FROM THE NEGLIGENT SUPERVISION OF A GROUP HOME BY THE AGENCY.

CURRENT STATUS:

On November 12, 2014, Barbara M. Crosier, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill, SB 24. After the hearing, the Senate Special Master issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably.

PRIOR LEGISLATIVE HISTORY: Senate Bill 24, by Senator Soto and HB 3503, by Rep. Plakon, were filed during the 2015 legislative session. The Senate Bill passed the Judiciary Committee and the Appropriations Subcommittee on Health and Human Services; however, the bill died in the Senate Appropriations Committee.

RECOMMENDATIONS:

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report.

For the reasons set forth above the undersigned recommends that Senate Bill 38 (2016) be reported favorably.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Debbie Brown, Secretary of the Senate



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
2/9/15	SM	Favorable

February 9, 2015

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 24 (2015)** – Senator Darren Soto
Relief of J.D.S., by the Agency for Persons with Disabilities

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$950,000 PAYABLE TO THE AGED POOLED SPECIAL NEEDS TRUST ON BEHALF OF J.D.S., BASED ON A SETTLEMENT AGREEMENT BETWEEN PATTI R. JARRELL, AS PLENARY GUARDIAN OF J.D.S. AND THE STATE OF FLORIDA, AGENCY FOR PERSONS WITH DISABILITIES. THE CLAIM AROSE FROM THE NEGLIGENT SUPERVISION OF A GROUP HOME BY THE AGENCY.

FINDINGS OF FACT:

In 1980, J.D.S. was born with severe disabilities, including cerebral palsy, autism, and mental retardation. J.D.S. has a 31 IQ and has been nonverbal her entire life. J.D.S. was placed in the custody of the State of Florida, Department of Children and Families (DCF) and considered to be a "ward" of DCF. Due to her condition, J.D.S. was dependent upon DCF for the provision of her care, treatment, and daily needs.

At the age of 4, J.D.S., as a developmentally-disabled dependent ward of the State of Florida, was placed in the

Strong Group Home. J.D.S. was totally dependent on the Strong Group Home to provide the care for her needs. She was incapable of performing even the most basic functions of life. The Strong Group Home was licensed by DCF to operate the group home, and the home was monitored through face to face visits on a monthly basis with the exception of a short interval when, due to budget cuts, visits occurred either every other month or quarterly. The Strong Group Home was also visited monthly by the Medicaid Waiver Support Coordinator who had the responsibility of ensuring J.D.S. was receiving her care plan services. Hester Strong was the administrator/owner of the Strong Group Home and was assisted by her husband, Phillip Strong. In addition to caring for 4 - 6 developmentally disabled persons, Ms. Strong cared for her elderly parents who also resided in the home.

Beginning in late 2001 and into 2002, J.D.S.'s behavior became more aggressive. She began to resist getting into a car which had not been an exhibited behavior in the past. And, although she was previously toilet trained, she began exhibiting regular incontinence. Ms. Strong did not report these changes in J.D.S.'s behaviors, and the DCF monitoring reports of the Strong Group Home did not contain any reference to them.

In December 2002, J.D.S. became pregnant while a resident in the Strong Group Home. J.D.S. was 5 months pregnant when her doctor discovered her pregnancy.

Upon the discovery of J.D.S.'s pregnancy, DCF revoked the Strong Group Home's license and J.D.S. was moved to another group home. J.D.S. gave birth to a baby girl on August 30, 2003. The newborn was immediately removed from J.D.S. and placed for adoption. Following the birth, the Florida Department of Law Enforcement took DNA samples from Phillip Strong and the newborn. The results of the DNA testing confirmed that Phillip Strong was the biological father of the infant.

DCF was responsible for the oversight of the Strong Group Home and providing care to J.D.S. when the events related to the claim bill occurred. However, in 2004, the responsibility to oversee group homes for the disabled was transferred to the Agency for Persons with Disabilities along with DCF's related liabilities.

Based on the foregoing, the State of Florida, Agency for Persons with Disabilities, stipulated to the entry of a judgment in the amount of \$1,150,000. The Agency for Persons' with Disabilities paid \$200,000 to the AGED Pooled Special Needs Trust on behalf of J.D.S., leaving \$950,000, which is the amount sought through this claim bill.

CLAIMANT'S POSITION:

The Agency for Persons with Disabilities is directly and vicariously liable for the rape and subsequent pregnancy of J.D.S. The claimant also alleges that the rape of J.D.S. was foreseeable by the agency. It should be noted that Mr. Strong was determined incompetent and never charged with the rape of J.D.S.

RESPONDENT'S POSITION:

The Agency for Persons with Disabilities settled this claim before a jury trial and is neutral in this proceeding and will take no action adverse to the passage of a claim bill.

CONCLUSIONS OF LAW:

As provided in s. 768.28, F.S. (2002), sovereign immunity shields the State of Florida and its agencies against tort liability in excess of \$200,000 per occurrence. The parties settled the case for \$1.15 million, and the Agency for Persons with Disabilities paid \$200,000 to the AGED Pooled Special Needs Trust on behalf of J.D.S. The claimant alleged APD is liable for the sexual molestation of J.D.S. under two separate legal precepts: vicarious liability and direct liability. The claimant alleged APD had a "non-delegable" duty to protect J.D.S. from harm and sexual assault. At all times material to this matter J.D.S. was a resident of the Strong Group Home.

APD is a governmental agency that licenses, monitors, and places clients in residential living facilities. APD does not undertake to provide direct services to any particular client. Instead, the Florida Legislature, in s. 393.066, F.S. (2002), has mandated that the day-to-day operational level duties of care and maintenance of a client are to be delegated by APD.

Duty

Whether there is a jury verdict or a settlement agreement, as there is in this case, every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. DCF had a duty to protect and care for J.D.S. while she was in the care of the Strong Group Home. This duty included ensuring the administrator and staff of the Strong Group

Home were properly trained to detect and prevent sexual abuse of the developmentally-disabled individuals placed in their care; adequate staffing was in place at all times and the staff met training requirements; the number of placements in the home did not exceed the limit established by DCF; and the home complied with the Bill of Rights of Persons with Developmental Disabilities as set forth under s. 393.13, F.S. (2002). Such Bill of Rights guarantees that developmentally disabled individuals have the right to be free from sexual abuse in a residential facility, the right to be free from harm, and the right to receive prompt and appropriate medical care and treatment.

The Strong Group Home administrator and staff did not meet the educational and training requirements set forth in Rule 65G-2.012, F.A.C., and s. 393.067, F.S. (2002). There was no evidence presented that the administrator met the educational requirements for licensing or that she or any staff member had received any training on how to detect, report, or prevent sexual abuse of the group home's residents and clients.

The Strong Group Home was licensed for and housed 4 - 6 developmentally disabled clients. Nevertheless, at one point while J.D.S. was in the home, DCF placed two foster children in the home. As a result of the placement of additional clients, not enough bedrooms were available and the dining room was converted into J.D.S.'s bedroom. The placement of her bed in the dining room area did not provide J.D.S. the privacy she was entitled to under the Bill of Rights of Persons with Developmental Disabilities set out in s. 393.13, F.S.

Additionally, the Strong Group Home had a duty to exercise reasonable care to protect J.D.S. from abuse and neglect, including sexual abuse; to exercise reasonable care to discover abuse and neglect, to provide J.D.S. with a reasonable, safe living environment that afforded her with privacy, and to exercise reasonable care to ensure she received prompt and appropriate medical care and treatment.

Breach

A preponderance of the evidence establishes that The Strong Group Home did not meet the educational and training requirements to be licensed as a group home initially by DCF and subsequently by APD. APD and the Strong Group Home as licensed by APD, breached their duty to properly care for

and protect J.D.S. Further, APD and the Strong Group Home breached their duty to J.D.S. with respect to compliance with the rights and privileges afforded the developmentally disabled pursuant to the Bill of Rights of the Developmentally Disabled.

Causation

The failure of the Department of Children and Families and subsequently the Agency for Persons with Disabilities to ensure the staff of the Strong Group Home was properly trained, possessed the required levels of education and credentials likely led to the rape of J.D.S.

Damages

The claim bill awards \$950,000 for the benefit of J.D.S. No evidence was presented or available indicating that the damages authorized by the settlement are excessive or inappropriate.

ATTORNEYS FEES:

Section 768.28(8), F.S., provides that “[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement.” The claimant’s attorneys have agreed to limit their fees to 25 percent of any amount awarded in compliance with the statutes. Lobbyists’ fees are included with the attorneys’ fees.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 24 be reported FAVORABLY.

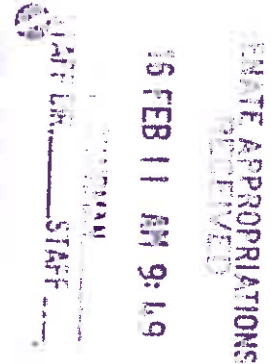
Respectfully submitted,

Barbara M. Crosier
Senate Special Master



The Florida Senate

Committee Agenda Request



To: Senator Rene Garcia, Chair
Appropriations Subcommittee on Health and Human Services

Subject: Committee Agenda Request

Date: February 10, 2016

I respectfully request that **Senate Bill # 48**, relating to Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

402 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
1/25/16	SM	Favorable
02/11/16	JU	Fav/CS
02/16/16	AHS	Recommend: Favorable
	AP	

January 25, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 48** – Judiciary Committee and Senator Anitere Flores
Relief of Survivor and Estate of Victim

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM FOR \$3.75 MILLION AGAINST THE DEPARTMENT OF CHILDREN AND FAMILIES, WHICH AROSE FROM TWO LAWSUITS AGAINST THE DEPARTMENT, ITS EMPLOYEES, AND OTHER DEFENDANTS. THESE LAWSUITS ALLEGED THAT THE NEGLIGENCE OF AND CIVIL RIGHTS VIOLATIONS BY THE DEPARTMENT, ITS EMPLOYEES, AND OTHER DEFENDANTS RESULTED IN THE SEVERE ABUSE AND NEGLECT OF SURVIVOR AND VICTIM AND THE DEATH OF VICTIM.

INTRODUCTION:

On February 14, 2011, Survivor and Victim were found in a pest control truck owned by their adoptive father, Jorge Barahona, along the side of I-95 in Palm Beach County. Victim was dead, and Survivor was severely injured and covered in chemicals. The adoptive parents, Jorge and Carmen Barahona, tortured the children in numerous ways, likely since gaining custody of them in 2004.

For their conduct, the Barahonas are facing charges for first degree murder and aggravated child abuse. The purpose of this special master report is to determine whether the

Department of Children and Families is also a legal cause of the abuse and neglect of the children.

The evidence on which the recommendation in this report is based was controlled by the claimants and consisted primarily of large volume of documents or records created by the department and its contractors and subcontractors and provided by the claimants. However, in some respects, the evidence available for the special master proceeding was limited because the underlying lawsuits settled before trial and discovery.¹ Had a trial or discovery occurred, transcripts of testimony made under oath by parties and eyewitnesses would have been available during the special master proceeding.² Additionally, because of the settlement, the department did not present any mitigating evidence during the special master proceeding or object to evidence presented by the claimants.

As a result of the limited evidence, the extent to which or the specific point in time the actions or omissions of the department and its employees became a legal cause of the abuse and neglect of Survivor and Victim cannot be determined. Similarly, the claimants made no effort and felt no obligation to present evidence showing the relative fault of the department and other defendants. Nevertheless, there is sufficient evidence to show that a jury likely would have found that failures by the department to uncover abuse were a legal cause of prolonging the suffering of Survivor and Victim and of Victim's death.

FINDINGS OF FACT:

The Findings of Fact are organized into three main components. The first component provides a chronological description of the department's interaction with Survivor and Victim. The second component describes other specific types

¹ The lack of traditional evidence complicates a special master's responsibility to independently determine liability.

Because governmental agencies occasionally settle cases against them for reasons not directly related to the merits of the claim, consent-based judgments are scrutinized carefully by the special master, by the legislative committees, and by both houses of the legislature, to ensure that independently developed facts exist to support the judgment and to justify the award.

D. Stephen Kahn, former General Counsel for the Florida Senate, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, FLA. B.J., Apr. 1988, at 27.

² Despite the settlement with the department, the claimants could have taken depositions of the relevant department employees under Senate Rule 4.81, which allows discovery consistent with the Florida Rules of Civil Procedure.

of evidence or descriptions of specific events which was made available during the special master proceeding. The last component is a summation of the evidence including reasonable inferences from the evidence.

I. Chronological Events

A. Initial Involvement with the Department, 2000

In May 2000, Survivor and Victim, a brother and sister who were twins, were born. From a few days after their birth until Victim was found dead in February 2000, the department was very involved in their lives. The department's first contact with the newborn children occurred because of their biological mother's substance abuse and Victim's medical condition.³ In March 2002, before Survivor and Victim turned 2 years old, their biological mother was arrested for domestic violence.⁴

In August 2003, when the children were 3 years old, the biological mother's rights were terminated.⁵ A few months later in March 2004, the children were removed from their father by the department after he was charged with sexual battery against a minor not related to him.⁶

B. Placement with the Barahonas, 2004

The department then placed Survivor and Victim in the foster home of Jorge and Carmen Barahona. Two other children that the Barahonas fostered and adopted also resided in the Barahona home at the time.⁷ There was no evidence presented during the special master proceeding that the Barahonas had mistreated their other children or were not qualified to foster additional children.

Within days after Survivor and Victim were placed with the Barahonas, the children's uncle in Texas sent a letter to the judge assigned to the case and department staff which expressed his and his wife's desire to obtain custody of Survivor and Victim. The letter stated in part:

We are eager to get the legal custody of those kids, and will like to know what we need to do to be able to do so. We are planning to fly to Miami next Tuesday or

³ Department of Children and Families, *The Barahona Case: Findings and Recommendations 2* (Mar. 14, 2011).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ These two other children have filed separate lawsuits against the department and its employees.

Wednesday to follow the necessary legal steps to gain custody of those kids.

The letter further expressed the willingness of the aunt and uncle to take full responsibility for the financial needs of the children during the adoption process.

As a prerequisite to placing the children with their relatives in Texas, a home study for the suitability of the placement was necessary. Notes from the children's guardian ad litem show that the department expected the home study would take 3 months.⁸ However, the home study was not completed for about 15 months.⁹ No explanation for the lengthier time period for the Texas home study was provided during the special master proceeding.¹⁰ Accordingly, what the department or others did or did not do with respect to the home study is unknown.

Evidence, however, showed that the lengthy time period for the completion of the Texas home study, at least in part, caused Survivor and Victim to remain with the Barahonas. After a year and a half with the Barahonas, for example, a psychological evaluation of the children by Dr. Vanessa Archer, concluded that Survivor and Victim had bonded with the Barahonas and that sending them to Texas would be "devastatingly detrimental."^{11, 12} The evidence presented by the claimants during the special master proceeding did not disclose whether the department or someone else selected Dr. Archer for the multiple psychological evaluations assigned to her.

C. Medical Neglect, 2004

⁸ Notes of Paul Neumann, guardian ad litem (May 18, 2004) (Bates 4764).

⁹ The Department of Children and Families, *The Barahona Case: Findings and Recommendations*, 2 (Mar. 14, 2011).

¹⁰ The third amended complaint in the underlying federal lawsuit alleged that the delay in the completion of the home study was caused by inexcusable delays in processing the relevant paperwork by the department and other defendants including Our Kids and the Center for Family and Child Enrichment. See Third Amended Complaint, paragraphs 69-70, 140-142, 162-164, and 166, *Survivor and Estate of Victim v. Our Kids of Miami/Dade/Monroe, Inc. et al.*, Case No.: 1:11-cv-24611-PAS (S.D. Fla.).

¹¹ Psychological Evaluation by Dr. Archer, Archer Psychological Services, Inc., Sept. 13, 2005 (Bates 4564-4567).

¹² The third amended complaint in the underlying federal lawsuit named Dr. Archer and Archer Psychological Services, Inc., as a defendant. The general allegations forming the basis of Dr. Archer's liability were that she made her placement recommendation without full information which would have included medical records, school records, and abuse reports. See *Id.* at paragraphs 171-189. The complaint further alleged that the Center for Family and Child Enrichment and one of its employees failed in its duties to provide the relevant information to Dr. Archer. See *Id.*

During the hearing, the claimants presented evidence that in December 2004, the department became aware of allegations that the Barahonas were neglecting Victim's medical needs. The evidence was in the form of notes recorded by the Center for Family and Child Enrichment, Inc., (CFCE) a defendant in the underlying federal lawsuit.¹³ Victim would have been 4 years old at the time.

The notes show that the nurse for Victim's endocrinologist did not believe that Victim was in a good placement for two reasons.¹⁴ First, Victim had not been to an appointment in nearly a year when Victim needed to see the doctor three times a year. Second, Victim is sent to the doctor by herself, which shows that the foster mother does not care for Victim's well-being. Apparently, the department or one of its contractors transported Victim to medical appointments.

As part of the department's 2011 review of the circumstances leading to the claim bill, the department reviewed the response to the allegations of medical neglect. The department's review found that there was "no documentation of case management follow-up with the foster mother as to the nurse's concerns raised with [Victim's] medical care."¹⁵

D. Evidence of Sexual Abuse, 2005

During the hearing, the claimants presented evidence that the department became aware that Victim had been sexually molested though a phone call to the Central Abuse Hotline about 10 p.m., January 27, 2005. Victim was 4 years old at the time. A narrative of the call written by DCF staff describes the caller's concerns as follows: "In the past, the foster father (unknown) tickled [Victim's] private area (vagina) with his fingers. This happened more than once, and the incidents occurred in the presence of other adults in the home."¹⁶

¹³ The Center for Family and Child Enrichment (CFCE) is described in the underlying federal lawsuit as a contractor for Our Kids of Miami-Dade/Monroe, Inc. CFCE's contract with Our Kids, according to the lawsuit, required it to provide case management services to children in foster care and under protective supervision in Miami-Dade County. Our Kids, which was under a contract with the department, was described in the lawsuit as the lead agency for the coordination and delivery of community-based foster care and related services. See Third Amended Complaint, paragraphs 40-42, *Survivor and Estate of Victim v. Our Kids of Miami-Dade/Monroe, Inc. et al.*, Case No.: 1:11-cv-24611-PAS (S.D. Fla.).

¹⁴ Notes recorded by the Center for Family and Child Enrichment, Dec. 15, 2004 (Bates 4856).

¹⁵ The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 6 (Mar. 14, 2011).

¹⁶ Intake Report to Central Abuse Hotline, 10:04 p.m., Jan. 27, 2005 (Bates 4500).

Within 2 hours after the call, a department child protective investigator consulted a psychologist who had seen Victim the day before. The investigator's notes indicate that Victim had made allegations to the psychologist that were similar to those made to the Hotline. The notes further indicate that the psychologist found victim's story questionable and unfounded because of how Victim disclosed the story and because of circumstances around the narration of the story.¹⁷ Finally, the psychologist opined that it would be detrimental to wake the children up and confront them as it was then after midnight.¹⁸

The morning after the Hotline call, there was a face-to-face meeting by a department child protective investigator with all members of the Barahona household. The Barahonas denied any abuse and suggested that the perpetrator was the biological father. The investigator's notes from the meeting further state in part that Victim and Survivor:

were interviewed initially separately then together. [Victim] denied fo[ster] father touched her. Both children did make statements as to their biological father. They appeared to call both Daddy when speaking in English but called Papa and Papi when addressing them in Spanish clearly differentiating them.¹⁹

Apparently, department staff concluded that Victim was confusing her foster father with her biological father.²⁰ On February 9, 2005, department records state that the court was made aware of the abuse concerns as to the biological father and that there were no further concerns about the Barahonas.²¹

As part of the department's 2011 review of the circumstances leading to the claim bill, the department reviewed the sexual assault allegations against Mr. Barahona. The department's review found that the "Documentation suggests that the interview with [Victim] was not adequate."²² The review further

¹⁷ Notes by David Palachi (Jan. 28, 2005) (Bates 4509).

¹⁸ *Id.*

¹⁹ Notes by David Palachi (Jan. 28, 2005) (Bates 4505-4506).

²⁰ The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 7 (Mar. 14, 2011).

²¹ Notes by David Palachi (Feb. 9, 2005) (Bates 4503).

²² The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 7 (Mar. 14, 2011).

found that Victim and Survivor should have been interviewed away from the Barahonas to get a more candid understanding of how they viewed their caretakers. This interviewing technique was a “fundamental responsibility” according to the department, which might not have been well understood due to inadequate training and professional insight.²³

E. Report of Abuse from School, 2006

During the special master hearing, the claimants presented evidence of several incidents, not described in the claim bill, through which the claimants allege the department and others might have become aware of the abuse perpetrated by the Barahonas. For the sake of brevity, only some of the incidents, not identified in the claim bill, will be described in this report. One of these incidents, however, was based on a call to the Central Abuse Hotline at 2:07 p.m. on February 23, 2006, which described Victim as having a “huge bruise on her chin and neck area.”²⁴ According to the narrative of the call written by department staff, Victim made inconsistent statements about whether the bruises occurred at home or at school. The narrative also noted that Victim had missed several days of school.

The department's records show that by 3:30 p.m. a child protective investigator began investigating the call by obtaining Victim's and Survivor's attendance records and grades.²⁵ Among the first investigative notes, department staff recorded that between November and February 23, 2006, Victim had 17 absences from school.

Later that day, when the children were interviewed at school, Victim said she had slipped and fallen in class.²⁶ Both Survivor and Victim denied that anyone had hit Victim. However, the children's teacher said that Victim claimed the injury occurred at home and that Victim sometimes comes to school unclean.

The department's investigator had a face-to-face meeting with the Barahonas on the evening of the call to the Hotline. The Barahonas denied knowing about Victim's bruise. Mr. Barahona further explained that “the child usually gives him a

²³ *Id.*

²⁴ Intake Report to Central Abuse Hotline, 2:07 p.m., Feb. 23, 2006 (Bates 4512-4514).

²⁵ Chronological Notes Reports, Feb. 23, 2006 (Bates 4527-4528).

²⁶ Chronological Notes Reports, Feb. 23, 2006 (Bates 4524-4526).

hug before going to school and if the child had a mark, he would have seen it.”²⁷

While department staff were speaking with Ms. Barahona, Victim “jumped in the middle and said she slipped and fell in class.”²⁸ The department’s notes further indicate that the Barahona home was clean at the time and well-stocked with food and that the other children in the house were free of bruises.

As part of the department’s continued investigation of Victim’s bruise, records indicate that a child protection team conducted a specialized interview of Victim about 2 weeks after the call to the Hotline. Child protection teams are a team of professionals who provide specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services.²⁹ The child protection team in this case concluded that the bruise was not the result of child abuse and that Victim needed testing for hyperactivity.³⁰

During the department’s 2011 review of the events leading to the claim bill, the department reviewed its response to the February 2006 call to the Hotline. The department’s report expressed concerns that what department staff did to investigate the abuse allegation was not fully documented.³¹

F. Report of Abuse from School, 2007

On March 20, 2007, the principal of Survivor and Victim’s elementary school reported potential abuse and neglect to Central Abuse Hotline.³² The narrative recorded by department staff states:

For the past five months, [Victim] has been smelling and appearing unkempt. At least 2 or 3 times a week, [Victim] smells. She smells rotten. Her uniform is not clean and her shoes are dirty. On one occasion, [Victim] got apple sauce in her hair, the next day she had apple sauce still in her hair. [Survivor] also appears unkempt. On 2/20/07, [Victim] had food in her backpack from breakfast and lunch. There

²⁷ Chronological Notes Reports, Feb. 23, 2006 (Bates 4521).

²⁸ Chronological Notes Reports, Feb. 23, 2006 (Bates 4520-4521).

²⁹ Section 39.303(1), F.S., (2005).

³⁰ Chronological Notes Reports, Mar. 13, 2006 (Bates 4515-4516).

³¹ The Department of Children and Families, *The Barahona Case: Findings and Recommendations*, 7-8 (Mar. 14, 2011).

³² Intake Report to the Central Abuse Hotline, 3:46 p.m., Mar. 20, 2007 (Bates 4594-4596).

is a concern that maybe she is not eating at home. [Victim] is always hungry and she eats a lot at school. [Victim] is afraid to talk.³³

The department's investigative summary, dated April 12, 2007, of its actions in response to the call to the Hotline concluded: "At this time the risk level is low. No evidence was found to support the allegation of environmental hazards toward the children."³⁴

In contrast to the department's conclusion, the children's guardian ad litem felt differently. In an email dated the same date as the department's investigative summary, the guardian ad litem informed his supervisor and a department attorney of the concerns of school staff.³⁵ The email explained that the reports from school, including the children's approximately 20 absences and failing grades, were causing him to rethink his prior conclusion that the children's placement with the Barahonas was best. In closing his email, the guardian ad litem wrote, "I believe some investigation needs to be done, to determine the very best place for these deserving kids to grow up and lead a healthy, happy life."³⁶ Whether the guardian ad litem reported his concerns to the dependency court is unknown.³⁷

In the department's 2011 review of the events leading to the claim bill, it reviewed its response to the March 2007 Hotline call. The department's review determined that there were "compelling facts" gathered by department staff that should have resulted in "'some indicators' or 'verified' findings for abuse."³⁸

G. Survivor and Victim Adopted, May 2009

The Barahonas finalized the adoption of Survivor and Victim in May 2009.

³³ *Id.*

³⁴ Investigative Summary (Apr. 12, 2007) (Bates 4616-4618).

³⁵ Email from Paul Neumann, guardian ad litem, to Cynthia Kline, guardian ad litem supervisor and a copy to Christine Lopez-Acevedo, a department attorney (Apr. 12, 2007) (Bates 4619-4620).

³⁶ *Id.*

³⁷ At all times relevant to the events described in the claim bill, s. 39.822(4), F.S., required the guardian ad litem for Survivor and Victim to submit written reports of recommendations to the court. These reports were not made available to the special masters.

³⁸ The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 8 (Mar. 14, 2011).

H. Final Call to Central Abuse Hotline, 2011

The final call to the Central Abuse Hotline when both Survivor and Victim may have been alive, occurred at 2:22 p.m. on February 10, 2011.³⁹ The call was made by a therapist for the Barahona's niece. According to excerpts of department records, which the claimants transcribed onto a PowerPoint slide for the special master hearing, the call and the department's response were as follows:

2/10/11 2:22 PM Survivor and Victim are tied by their hands and feet with tape and made to stay in bathtub all day and night as a form of punishment tape is taken off toRESPONSE TIME 24 HOURS BATES 4684-86--- Transcript of Hotline call:-grandmother cares for her and she has foster children who are being abused.... They are being taped up w/their arms and legs and kept in a bathtub-all day and all night and she undoes their arms to eat... and she has been threatened not to say anything.....BATES 4672-73

2/10/11 6:42 PM CPI to home NO CALL TO POLICE when kids not home. Accepts mother's story that kids are with Foster Dad as they have separated. Bates 4634

According to a recording of a hearing before the Barahona Investigative Team, department staff explained that the Hotline operator and her supervisor misclassified the call as one requiring a response within 24 hours. The call, according, to the department should have resulted in an immediate response.

Similarly, in the department's 2011 review of the events leading to the claim bill, it reviewed its response to the final Hotline call. The department's review concluded that the allegations in the call "suggested criminal child abuse incidents requiring immediate response and outreach to law enforcement."⁴⁰

³⁹ This information is based on excerpts of documents provided by the claimants on a PowerPoint presentation. Copies of complete records relating to the final call to the Hotline and the department's response to the call were not provided to the special master by the claimants.

⁴⁰ The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 10 (Mar. 14, 2011).

II. Specific Types of Evidence or Categories of Events

This component of the Findings of Fact focuses on the interaction of individuals, other than department staff, with Survivor and Victim and events occurring after Victim's death.

A. Judicial Review Proceedings

While Survivor and Victim were placed with the Barahonas, many individuals or entities were overseeing their care. One of these entities was the dependency court. Florida law required the dependency court to review the placement of Survivor and Victim on a regular basis. The information made available during the special master proceeding indicates that the dependency court knew information about the Barahonas' care of the children that, at least in hindsight, is troubling.

For example, during a hearing in December 2004, the guardian ad litem expressed concerns to the dependency court that "'play therapy' that had been originally suggested, and that the judge ordered several months ago had not begun."⁴¹ The guardian ad litem, according to his notes, believed that therapy was needed because Victim "had begun to touch her sexual areas again" since she started visitation with her biological father.⁴² In response to these concerns, "the judge told DCF to have another evaluation, and to begin therapy ASAP."⁴³

Later in the dependency process, the department reported to the court that Mr. Barahona prevented the guardian ad litem from visiting Survivor and Victim at home from May to August 2007.⁴⁴

Similarly, in October 2007, a Citizen Review Panel, appointed by the dependency court, issued a report of its findings and recommendations relating to Survivor and Victim.⁴⁵ Although the panel found that Survivor and Victim's placement with the

⁴¹ Guardian Ad Litem Case Log, Dec. 14, 2004 (BATES 4914).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Recording of hearing of the Barahona Investigative Team. On this issue, the claimants' PowerPoint presentation to the special masters cited to BATES 4635-36.

⁴⁵ Recommendations and Findings of the Citizen Review Panel, In and For the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida based on a hearing on Oct. 3, 2007 (BATES 4621—27).

Barahonas was “APPROPRIATE and SAFE,” the report listed several recent legal events and several other concerns.⁴⁶

The first legal event described by the panel was that the guardian ad litem had not seen the children in 3 months. The second legal event was an abuse report that had been filed with the dependency court. The panel described the events surrounding the abuse report as follows:

[The principal] reported that [Victim's] teacher called the foster mother with concerns that there has been an increase in absences and there has not been follow through. Both children doing poorly in school and falling asleep in class. They are scared to go home and is hoarding food. They are petrified of getting in trouble. The kindergarten teacher for [Survivor] and [Victim] was also present. She reported that she was their teacher for 2 1/2 months. The children were fearful of the mom and was petrified to have the mother called. The court ordered reevaluation of both children. Court order psycho-educational and psychological on the children.⁴⁷

The concerns relevant to the claim bill, which were in the panel's October 2007 report, included a concern that the children's dental exams had not been submitted to the panel for review.⁴⁸ The panel also stated that it was concerned that the judicial review social study report was not pre-filed by the Center for Family and Child Enrichment, as required by statute. Finally, the panel expressed a concern that the guardian ad litem had not been able to visit the children at the foster home. Despite the concern, the panel noted the statement of an unidentified foster parent that the guardian ad litem did not show up for visits at the scheduled times and called them at an inconvenient time.

After the Citizen Review Panel issued its October 2007 report and after a hearing in the dependency court, the guardian ad litem supervisor sent an email to the guardian ad litem describing the hearing. The supervisor explained, “the judge was not ‘buying’ what the foster parents were saying” about

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* “On three different occasions, the Citizen's Review Panel held a hearing and found that there was no documentation of the current physical, dental or vision check-ups available for the children, nor were they receiving any required therapy.” The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 8 (Mar. 14, 2011).

the guardian ad litem's access to the Barahona home.⁴⁹ The supervisor further explained, "it appears everyone (although the Judge did not say so) is under the impression that the foster parents are trying to hide something."⁵⁰ It was made very clear, wrote the supervisor, that the guardian ad litem was to be given access to the children in the home.

Nonetheless, the Barahona's complaints about the guardian ad litem were considered. Eventually, the guardian ad litem was "discharged from the case to smooth over relationships with the Barahonas."⁵¹

B. Psychological Evaluations

During the special master proceeding, the claimants provided the special master with a psychological evaluation written by Dr. Vanessa Archer in September 2005 along with portions of other evaluations written by her.⁵² The report from September 2005 concluded that "it would be extremely traumatic, if not devastatingly detrimental to the emotional and psychological well-being of these children if they were removed from their current home to be placed with relatives with whom they have no prior relationship. The effects of such a removal, regardless of what transition phase occurs, would have life-long consequences for these children."⁵³

The children were evaluated again by Dr. Archer in 2007 when they were 7 years old. Her report stated that both Survivor and Victim had symptoms of depression and that they had thought of killing themselves.⁵⁴ The report further stated that Victim "is sure that terrible things are going to happen to her."⁵⁵ Survivor expressed to Dr. Archer that he thought "the purpose of the evaluation was to talk about what his father did to him noting that his father 'tickled' him."⁵⁶ Similarly, "[Victim] expressed

⁴⁹ Email from Cynthia Kline, guardian ad litem supervisor, to Paul Neumann, guardian ad litem, Oct. 23, 2007 (BATES 4658).

⁵⁰ *Id.*

⁵¹ The Department of Children and Families, *The Barahona Case: Findings and Recommendations* 9 (Mar. 14, 2011).

⁵² Dr. Archer was a defendant in the underlying lawsuits. She was released, according to one of the claimants' attorneys, because she had no insurance.

⁵³ Dr. Vanessa Archer, Archer Psychological Solutions, Inc., Psychological Evaluation (Sept. 7, 2005).

⁵⁴ Dr. Vanessa Archer, Archer Psychological Services, Inc., Psychological Evaluation (June 11, 2007) (BATES 4631, 4633).

⁵⁵ *Id.*

⁵⁶ *Id.*

the belief that the purpose of the evaluation was to talk about what her father said to her and that 'people are lying.'"⁵⁷

Despite the findings in her previous evaluations, in an excerpt of an evaluation from February 2008, Dr. Archer wrote, "it is astounding how these children have thrived. They clearly have a strong bond with their current care givers." As a result, Dr. Archer concluded that adoption was clearly in the children's best interest and "should be allowed to proceed without further delay."⁵⁸

With respect to the February 2008 evaluation, the Barahona independent investigative panel appointed by the department concluded that Dr. Archer:

failed to consider critical information presented by the children's principal and school professionals about potential signs of abuse and neglect by the Barahonas. That omission made Dr. Archer's report, at best, incomplete, and should have brought into serious question the reliability of her recommendation of adoption. Several professionals, including the Our Kid's case manager, the GAL, and the Children's Legal Services attorney as well as the judge, were, or should have been, aware of that significant omission, and yet apparently failed to take any steps to rectify that critical flaw in her report.⁵⁹

No evidence was produced for the special master proceeding showing whether the department or someone else selected Dr. Archer to perform the psychological evaluations.

C. Abuse Suffered by Survivor and Victim

During the special master hearing, Dr. Eli Newberger testified about the specific types of abuse and neglect suffered by Survivor and Victim. Dr. Newberger is a pediatrician and an expert in matters relating to child abuse and neglect. His testimony was based on his physical examinations of and interviews with Survivor in February 2013 and September 2015. His testimony is also based on interviews of Survivor's aunt and uncle in Texas, who were finally able to adopt Survivor in May 2012.

⁵⁷ *Id.*

⁵⁸ Excerpt of a psychological evaluation reproduced on the claimants' PowerPoint presentation, labeled Vanessa L. Archer Phd Report: 2/12/08 (BATES 4991-95).

⁵⁹ *The Nubia Report: The Investigative Panel's Findings and Recommendations*, 5

Dr. Newberger testified that the Barahonas abused and neglected Survivor and Victim in numerous ways. As explained to Dr. Newberger by Survivor:

- Mr. Barahona put hot sauce in Survivor's and Victim's eyes, nose, ears, and private parts, both front and back.
- Mr. Barahona shoved a noisemaker in Survivor's ear.
- Mr. Barahona made Survivor and Victim sleep in the bathtub with ice nearly every day for almost 3 years.
- The Barahonas tied Survivor's and Victim's hands and feet together with tape.
- Mr. Barahona would hit Survivor with a shoe and a mop, hard enough to cause bleeding.
- Mr. Barahona punched Survivor in the mouth which resulted in Survivor having corrective surgery.
- Mr. Barahona would place a plastic bag at random times over Survivor's and Victim's heads for as long as Mr. Barahona would like.
- Mr. Barahona would give electric shocks to Victim for a minute at a time.
- Mr. Barahona had doused Survivor with chemicals.
- Survivor had gone without eating in the Barahona home for as long as 3 days.
- Before Victim had been found, Mr. Barahona gave Survivor pills that caused Survivor to have seizures.

Dr. Newberger's physical examinations of Survivor found numerous scars across his body which were consistent with the abuse described by Survivor above. On Survivor's forearms and ankles, Survivor had linear healing lacerations from cuts through the lowest level of the skin. These scars, according to Survivor, were from having been bound in the bathtub. On his lower abdomen and back, Survivor had scars that are consistent with chemical burns. Survivor also had scarring on his penis, consistent with chemical burns.

Between Dr. Newberger's first examination of Survivor in 2013 and his examination of Survivor in 2015, some of Survivor's scars faded, but others expanded and became more prominent. How long the scars will last is unknown, but they constantly remind Survivor of the abuse he suffered.

When Dr. Newberger asked Survivor whether he was frightened all the time in the Barahona home, Survivor replied,

“At night, in the bathtub, we were scared about what would happen in the morning.” Additionally, Survivor told Dr. Newberger that at some point in time near Victim’s death, she told him that she wanted to die because she couldn’t take the abuse anymore.

The abuse Survivor suffered in the Barahona home continues to affect him in many ways. Survivor’s aunt and uncle explained to Dr. Newberger that soon after Survivor was placed with them, they would find Survivor gasping for air in the middle of the night. He was having nightmares about bags being placed over his head.

Unusual smells tend to trigger memories of abuse. Survivor might suddenly say: “I can’t stay here,” “It reminds me of the chemicals in the truck,” or “it reminds me of what [Victim’s] body smelled like after she died.” Mr. Barahona operated a pest control business, and Mr. Barahona’s truck was carrying pest control chemicals when Survivor and Victim were found.

In school, Dr. Newberger explained, Survivor cannot solve math problems or understand what he is reading without a full-time aide by his side. He cannot take any tests without the presence of an aide. Survivor’s grades are poor or failing. According to Survivor, he cannot concentrate because he is constantly thinking about the abuse.

A recent example of how memories of abuse affect Survivor occurred after Survivor met with a prosecutor for one of the Barahonas. After he met with the prosecutor, Survivor was tremendously distressed. He insisted on being treated as an infant for a few days. He wanted to be cuddled and called by various pet names that one would call an infant. In psychological terms, this event was a serious regression and was very unusual for a 15 year old, according to Dr. Newberger.

Dr. Newberger has diagnosed Survivor as having chronic post-traumatic stress disorder, noting that Survivor’s entire arc of development has been nothing but deprivation, assaults, witnessing assaults, including a murderous assault on his sister. Dr. Newberger further opined that within a reasonable degree of medical probability, Survivor has suffered a permanent injury because of the abuse in the Barahona home.

Dr. Newberger concludes that Survivor will need psychiatric and psychological care for the rest of his life as he comes into contact with things that provoke memories and distress. Moreover, Dr. Newberger opined that if Survivor does not have the capacity to learn, his capacity to have a job and provide for himself, his ability to live independently, and his capacity to have a family and conduct himself as an adult are crippled.

D. The Barahona Case: Findings and Recommendations

On February 21, 2011, days after Victim's body was found, the Secretary of the Department of Children and Families established an independent investigative panel to examine issues relating to the Barahonas.⁶⁰ The department attached the findings and suggestions from the investigative panel in its report titled *The Barahona Case: Findings and Recommendations*. When available, the department's assessments of its actions are included in the chronological description of its interaction with the children.

During the special master hearing, a member of the investigative panel, David Lawrence,⁶¹ described the panel's activities, information it reviewed, and the findings described in its report titled *The Nubia Report: The Investigative Panel's Findings and Recommendations*.⁶² The investigative panel's findings include the following:

- Dr. Archer failed to consider critical information about potential signs of abuse, making her reports incomplete.⁶³
- The case manager from Our Kids, the guardian ad litem, and the Children's Legal Services attorney, as well as the judge, were, or should have been, aware of significant omissions in Dr. Archer's reports but failed to take any serious steps to correct the critical flaws.⁶⁴

⁶⁰ David Lawrence Jr., Roberto Martinez, and Dr. James Sewell, *Barahona Investigative Team Report 4* (Mar. 10, 2011).

⁶¹ Mr. Lawrence was the president of The Early Childhood Initiative Foundation and chair of the Children's Movement of Florida.

⁶² *The Nubia Report: The Investigative Panel's Findings and Recommendations* is available at <https://www.dcf.state.fl.us/initiatives/barahona/docs/meetings/Nubias%20Story.pdf>.

⁶³ David Lawrence, Jr., et al., *supra* note 60.

⁶⁴ *Id.* at 5.

- There was no centralized system to ensure the dissemination of critical information to all parties overseeing the care of Survivor and Victim.⁶⁵
- The guardian ad litem, school personnel, and a nurse practitioner raised serious concerns that should have required “intense and coordinated follow-up.”⁶⁶
- There was no person serving as the “system integrator” who ensured that relevant information, including allegations of abuse, was shared and made accessible to others.⁶⁷
- There is evidence of multiple instances in which the Barahonas did not ensure the health of Survivor and Victim.⁶⁸
- During the hearings before the panel, the actions and testimony of the Chief Executive Officers of Our Kids and the Center for Family and Child Enrichment “created suspicions as to what, if anything, they were trying to hide.”⁶⁹
- Post-adoption services should have been identified by Our Kids after a post-adoption call to the Hotline in June 2010.⁷⁰
- Much of the necessary information raising red flags about the Barahonas was present within the system, but the individuals involved relied on inadequate technology instead of talking to each other.⁷¹

E. Letter of Support

The department has provided a letter of support for a claim bill in an amount not to exceed \$3.75 million, consistent with the settlement agreement in this matter.

III. Inferential Findings of Fact

The evidence presented, including the guardian ad litem’s access to the children, lack of documentation of necessary medical care, the nature of the complaints to the Hotline, and the children’s statements to Dr. Archer, show that the department and other defendants to the underlying lawsuits would have had good reason to be suspicious of how the

⁶⁵ *Id.*

⁶⁶ *Id.* at 6.

⁶⁷ *Id.*

⁶⁸ *Id.* at 7.

⁶⁹ *Id.* at 8.

⁷⁰ *Id.*

⁷¹ *Id.* at 9.

Barahonas were treating Survivor and Victim. Moreover, the shortcomings of the department in its responses to allegations of abuse and neglect, including admissions that its staff failed to follow procedures, are credible along with the findings of the independent review panel.

Because the individuals overseeing the care of Survivor and Victim, which included department staff and others, had reason to be suspicious, it seems appropriate to ask, what possible explanation could there be for failing to discover the abuse and neglect? Because this matter settled before discovery and trial and because the individuals involved were not asked to testify for the special master proceeding, they were never asked this question on the record. However, the evidence available suggests that their conduct might be explained by:

- Evidence and allegations of abuse and neglect by the children's biological mother who was a drug addict and their biological father, a child molester.
- The lack of evidence that Barahonas had improperly cared for their other adoptive children.
- The convincing nature of the Barahona's lies and the Barahona's ability to coerce the children into denying the allegations of abuse.
- Wishful thinking, coupled with a belief that the signs of the type of unimaginable abuse perpetrated by the Barahonas would have been more obvious.

Although one might explain the conduct of the department and others as above, the explanations become less and less of an excuse as the signs and allegations of abuse and neglect increase.

CONCLUSIONS OF LAW:

The lawsuits leading to this claim bill were based on allegations of negligence and civils right violations.

I. Negligence

In a negligence action, "a plaintiff must establish the four elements of duty, breach, proximate causation, and damages."⁷² Whether a duty of care exists is a question of law.⁷³ The Department of Children and Families has a duty to

⁷² *Limones v. School Dist. of Lee County*, 161 So. 3d 384, 389 (Fla. 2015).

⁷³ *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992).

reasonably investigate complaints of child abuse and neglect, which is recognized by case law.⁷⁴ Once a duty is found to exist, whether a defendant was negligent in fulfilling that duty is a question for the finder of fact.⁷⁵ In making that determination, a fact finder must decide whether a defendant exercised the degree of care that an ordinarily prudent person, or caseworker in this instance, would have under the same or similar circumstances.⁷⁶

I find that the claimants provided sufficient evidence in the proceeding to show that, had this case proceeded to trial, a jury would have found that the department and others breached their duties to Survivor and Victim. Juries have done so in somewhat similar lawsuits. However, due to the limited evidence, especially the lack of testimony of any of the various caseworkers, case managers, and child protective investigators, the specific point in time that the department breached its duty cannot be identified with precision.

I also find that the claimants presented sufficient evidence in this matter to show that a jury would have found that actions and inactions by the department proximately caused the suffering of Survivor and Victim to be prolonged and caused Survivor's death. "[T]he issue of proximate cause is generally a question of fact concerned with 'whether and to what extent the defendant's conduct foreseeably and substantially caused the specific injury that actually occurred.'"⁷⁷ In cases against the department having some similarities to this matter, the appellate court determined that "[t]he plaintiffs presented evidence that there is a natural, direct, and continuous sequence between DCF's negligence and [a child's] injuries such that it can be reasonably said that but for DCF's negligence, the abuse to [the child] would not have occurred."⁷⁸

⁷⁴ *Dept. of Health and Rehabilitative Svcs. v. Yamuni*, 498 So. 2d 441, 442-43 (Fla. 3d DCA 1986) (stating that the Dept. of Health and Rehabilitative Services, a precursor to the Dept. of Children and Families, has a statutory duty of care to prevent further harm to children when reports of child abuse are received); *Dept. of Children and Family Svcs. v. Amora*, 944 So. 2d 431 (Fla. 4th DCA 2006).

⁷⁵ *Yamuni*, 529 So. 2d at 262.

⁷⁶ *Russel v. Jacksonville Gas Corp.*, 117 So. 2d 29, 32 (Fla 1st DCA 1960) (defining negligence as, "the doing of something that a reasonable and prudent person would not ordinarily have done under the same or similar circumstances, or the failure to do that which a reasonable and prudent person would have done under the same or similar circumstances").

⁷⁷ *Amora*, 944 So. 2d at 431.

⁷⁸ *Id.*

Finally, I find that the claimants presented sufficient evidence that a jury would have further found that Survivor and Victim suffered damages because of the department's negligence. No amount of money can compensate for the pain and suffering that Survivor and Victim endured. However, the \$5 million settlement by the department in this matter is not excessive compared to jury verdicts in similar cases.

II. Federal Civil Rights Violations

The federal lawsuit underlying this claim bill alleged that the department, its employees, Our Kids and its employees, and the Center for Family and Child Enrichment and its employees violated the federal civil rights of Survivor and Victim.

The specific legal standard governing civil rights claims is set forth in 42 U.S.C. s. 1983, which states in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

In contrast to a negligence action, in a civil rights action, the defense of sovereign immunity or the limits on the collectability of a judgment or the payment of a claim under s. 768.28, F.S., do not apply.⁷⁹ For the time periods applicable to the claim bill, s. 768.28, F.S., limited the collectability of a judgment or claim to \$100,000 per person and \$200,000 for all claims arising out of the same incident.⁸⁰

Case law clearly shows that under 42 U.S.C. s. 1983, state officials and contractors such as Our Kids can be held liable for violations of a foster child's civil rights.⁸¹ The applicable

⁷⁹ *Howlett v. Rose*, 496 U.S. 356 (1990).

⁸⁰ Chapter 2010-26, Laws of Fla., increased the limits on the payment of a claim or judgment to \$200,000 per person and \$300,000 for all claims arising out of the same incident. The increased limits apply to claims arising on or after October 1, 2011.

⁸¹ *Taylor v. Ledbetter*, 818 F.2d 791 (11th Cir. 1987); *Crispell v. Dept. of Children and Families*, 2012 WL 3599349 (M.D. Fla. 2012) (denying Children's Homes Society of Florida's motion to dismiss a civil rights action because the court found that the entity was not an arm of the state entitled to immunity under the 11th Amendment to the United States Constitution); *Woodburn v. Dept. of Children and Family Svcs.*, 854 F.Supp.2d

rights protected by statute include the “constitutional right to be free from unnecessary pain and a fundamental right to physical safety.”⁸²

Proving a civil rights violation is different than proving negligence.⁸³ In a civil rights action, the plaintiff must show that the defendant was deliberately indifferent to the violation of a federal right. The defendant’s knowledge of a risk of harm is key. A state official acts with deliberate indifference only when disregarding a risk of harm of which he or she is actually aware.

Following the guidance above, the Federal 11th Circuit Court of appeals has stated that “in order to establish deliberate indifference, plaintiffs must be able to allege (and prove at trial) that the defendant (1) was objectively aware of a risk of serious harm; (2) recklessly disregarded the risk of harm; and (3) this conduct was more than merely negligent.”⁸⁴

The evidence presented during the special master proceeding showed that the actions of the department were negligent, not civil rights violations.⁸⁵

RELATED ISSUES:

A claim bill is an act of legislative grace, not an entitlement.⁸⁶ These bills are a “voluntary recognition of its moral obligation by the legislature . . . based on its view of justice and fair treatment of one who ha[s] suffered at the hands of the state.”⁸⁷ Consistently, the legislative proceedings relating to claim⁸⁸ bills are “separate and apart from the constraints of an earlier lawsuit.”⁸⁹

1184, 1201 (S.D. Fla. 2011) (finding that the plaintiff “alleged sufficient facts to support a facially plausible claim that her constitutional rights were violated by . . . Our Kids for the purpose of surviving a motion to dismiss”).

⁸² *Ray v. Foltz*, 370 F.3d 1079, 1082 (11th Cir. 2004) (citing *Taylor v. Ledbetter*, 818 F.2d 791, 794-95 (11th Cir. 1987) (en banc)).

⁸³ *Ray v. Foltz*, 370 F.3d 1079, 1083 (11th Cir. 2004).

⁸⁴ *Id.* (citing *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999)).

⁸⁵ Nonetheless, the department made a payment of \$1.25 million, which was in excess of the amounts authorized for negligence actions under s. 768.28, F.S. Perhaps there are facts that are known by the parties that were not presented. When I asked the claimants’ attorneys during the special master hearing what facts took the Barahona lawsuits from negligence to a civil rights action, they declined to directly answer the question.

⁸⁶ *Searcy Denny Scarola Barnhart & Shipley, P.A. v. State*, 2015 WL 4269031, *5 (Fla. 4th DCA), *review granted*, 2015 WL 6127021 (Fla. Oct. 14, 2015).

⁸⁷ *Noel v. Schlesinger*, 984 So. 2d 1265, 1267 Fla. 4th DCA) quoting *Gamble v. Wells*, 450 So. 2d 850, 853 (Fla. 1984).

⁸⁸ *Searcy, et al.*, *supra* note 86.

⁸⁹ *Id.*

For these reasons, special masters inquire into matters that might not be admissible in court but may be relevant to decisions by legislators. These inquiries do not affect the recommendation of this report. However, common inquiries include: What is the claimant's criminal history? Is the claimant lawfully present in the United States? Is there any information about the claimant which would cause embarrassment to the Legislature should it enact the claim bill?

Because of the complexity of the department's system to oversee foster care and investigate allegations of abuse and neglect, different questions arise in this matter. These questions relate to the liability of other parties who were also defendants to the underlying lawsuits and were under contract to care for Survivor and Victim.

I. Fault and Damages Collected from Other Defendants

With respect to this claim bill, the most relevant inquiry asks: Who besides the Department of Children and Families was at fault for the abuse and neglect of Survivor and Victim? Of the others at fault, why were they at fault and what was their relative contribution to the damages suffered by Survivor and Victim? Finally, what amounts have been recovered from others?⁹⁰

The claimants declined my request to explain the responsibility of others for the abuse of Survivor and Victim and Victim's death.⁹¹ Nonetheless, there is information suggesting that others bear substantial responsibility, including Dr. Archer, Our Kids, and the Center for Family and Child Enrichment.

According to the settlement agreement in this matter, the department agreed to work cooperatively to reach a settlement with Dr. Archer "as part of which she will agree to take no more court or agency appointments relating to the

⁹⁰ If the lawsuit had proceeded to trial after the claimants reached a settlement with other defendants, a court may have found that the settlement agreement could not be used as a basis for offsetting damages owed by the department by damages paid by one of the defendants to the underlying lawsuits. See *Wal-Mart Stores v. Strachan*, 82 So. 3d 1052 (Fla. 4th DCA 2011). With the abolition of joint and several liability, an award against a defendant generally may not be offset by amounts recovered by a settlement with another defendant. *Id.*

⁹¹ The State Constitution permits a legislator to consider any information he or she deems to determine whether a claim bill is in the interests of his or her constituents or the state as a whole. Moreover, because claim bills are a type of appropriation bill, a legislator should have access to information necessary to determine how to rank a claim bill among the state's funding priorities.

foster care or dependency system, or children in it.”⁹² Further, according to one of the attorneys for the claimants, Dr. Archer was dismissed from the federal court case; she had no insurance, and she made no payment.⁹³

The claimants disclosed that they reached a settlement agreement with Our Kids and the Center for Family and Child Enrichment. I asked for the claimants’ attorneys for details about the settlement agreement. They refused to make the settlement agreement available or disclose the settlement amount.⁹⁴

Had the claimants fully disclosed information relative to the conduct of the other defendants to the underlying lawsuits and any settlements, the Legislature could independently evaluate whether the department’s settlement agreement is in the best interests of the state. Similarly, the lack of disclosure restricts the Legislature from independently determining whether it has a moral obligation to provide compensation in excess of the settlement agreement with the department.

The Supreme Court’s opinion in *Fabre v. Marin* shows that, had this matter been presented to a jury, the jury would have apportioned the damages among all the responsible persons.⁹⁵ Thus, the department would have been responsible only for that portion of damages equivalent to its percentage of fault.^{96, 97}

⁹² Mem. of Settlement, paragraph 5 (Mar. 6, 2013), *Survivor and Estate of Victim v. Our Kids of Miami/Dade/Monroe, Inc. et al.*, Case No.: 1:11-cv-24611-PAS.

⁹³ Statement of Neal Roth during the special master hearing (Oct. 30, 2015).

⁹⁴ The settlement agreement between the claimants and Our Kids and the Center for Family and Child Enrichment should be readily available as a public record, just as the claim bill, investigative reports by the department, and the settlement agreement between the claimants and the department is a public record. See ss. 409.1671 (2011), 287.058(1)(c), 119.011(2), and 119.07(1), F.S.; see also s. 69.081(8), F.S. The information is also available to the Legislature under s. 11.143, F.S.

⁹⁵ *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993).

⁹⁶ *Id.* at 1185.

⁹⁷ Additionally, the lack of disclosure by the claimants’ attorneys precludes an analysis of whether the department could be legally responsible for the contractors. According to *Del Pilar v. DHL Customer Solutions, Inc.*, 993 So. 2d 142, 145-46 (Fla. 1st DCA 2008):

Generally, a principal is not vicariously liable for the negligence of its independent contractor, but the principal is liable for the negligence of its agent. See generally *Fla. Power & Light Co. v. Price*, 170 So.2d 293 (Fla.1964). Whether one laboring on behalf of another is a mere agent or an independent contractor “is a question of fact ... not controlled by descriptive labels employed by the parties themselves.” *Parker v. Domino's Pizza, Inc.*, 629 So.2d 1026, 1027 (Fla. 4th DCA 1993) (internal citations omitted); see also *Font v. Stanley Steamer Int'l, Inc.*, 849 So.2d 1214, 1216 (Fla. 5th DCA 2003) (noting that question of status “is normally one for the trier of fact to decide”).

II. Distribution of Settlement Proceeds

A second related issue is whether the settlement funds paid by the department have been distributed to Survivor and the Estate of Victim. Pursuant to its settlement agreement with the claimants, the department has made the required payment of \$1.25 million. The Memorandum of Settlement, filed in the federal lawsuit, required the department to pay the settlement funds to the claimants' attorneys by the beginning of April 2013.

In October 2015, the claimants successfully terminated any rights the Barahonas may have had to inherit from Victim's estate. However, as of the date of this report, the claimants' attorneys have not provided any information showing that the settlement funds were distributed to their clients.

III. Related Lawsuits and Beneficiaries of Estate of Victim

The last related issue to this claim bill is the existence of related lawsuits against the department and several of its employees. These lawsuits were filed by the two other children who had been adopted by the Barahonas. These children are not addressed in the claim bill. However, they will recover under the claim bill as beneficiaries of the Estate of Victim. These children were adopted by the Barahonas in 2001 and 2007. The lawsuits appear to be substantially premised on an allegation that department and its employees failed to properly investigate the abuse of Survivor and Victim. The complaints further allege that this failure to investigate caused the two additional children to remain in the Barahona home and suffer abuse and neglect and witness the abuse of Survivor and Victim.⁹⁸ This report should not be read to express any opinion on the merits of those lawsuits.

ATTORNEYS FEES:

Section 768.28(8), F.S., states "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." In compliance with the statute, Neal Roth, one of the claimants' attorneys, submitted an attorney fee affidavit that states in pertinent part:

1. My name is Neal A. Roth and I am a partner of the Law Firm of Grossman Roth . . .

⁹⁸ See Complaints filed in *G.K. v. Department of Children and Families et al.*, Case No.: 14-21291 (Fla. 11th Cir. Ct.) and *J.B. v. Department of Children and Families et al.*, Case No.: 14-23724 (Fla. 11th Cir. Ct.).

2. Grossman Roth, P.A., is counsel for Claimants, Survivor and Richard Milstein, as Personal Representative of the Estate of Victim, deceased.

3. As counsel for the Claimants, we have fully complied with all provisions of Section 768.28 (8).

4. Insofar as lobbying fees are concerned, the bill as filed provides that any lobbying fees related to the claim bill will be included as part of the statutory cap on attorneys' fees in Section 768.28.

Additionally, closing statements provided by the claimants' attorneys indicate that the contract with the claimants provides for an award of attorney fees in the amount of 25 percent of the \$5 million settlement, which is \$1.25 million, plus costs.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 48 be reported FAVORABLY.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute allocates the \$3.75 million awarded by the claim bill between the two claimants. Survivor's share is \$1.125 million, and the Estate of Victim is to receive \$2.65 million.



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
01/13/16	SM	Favorable
02/11/16	JU	Fav/CS
02/16/16	AHS	Recommend: Favorable
	AP	

January 13, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 30** – Judiciary Committee and Senator Rene Garcia
HB 3503 – Representative Jimmie Smith
Relief of C.M.H by the Department of Children and Families

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$5,000,000 PREDICATED ON THE ENTRY OF A JURY AWARD IN FAVOR OF CHRISTOPHER HANN AND THERESA HANN, INDIVIDUALLY, AND AS NAUTRAL GUARDIANS OF C.M.H., A MINOR CHILD, DUE TO THE NEGLIGENCE OF THE DEPARTMENT OF CHILDREN AND FAMILIES.

CURRENT STATUS:

On November 19, 2014, Barbara M. Crosier, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill, SB 58. After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with the amount to be paid amended to \$2.5 million.

The jury awarded \$9.5 million (\$4.75 million assessed against DCF) for past and future pain and suffering. Based on a lack of objective evidence in the record, a 50 percent reduction of DCF's obligation or \$2.375 million may be a more appropriate amount to be paid for the non-economic damages. A corresponding reduction of 50 percent of DCF's share of the economic damages (\$125,000) would be appropriate.

It was further recommended that the fund be paid into a trust established for C.M.H. in equal installments over 10 years to pay for expenses related to education, psycho-therapies and living expenses. Any funds remaining in the trust after 10 years would be distributed in full to C.M.H. A copy of the report is attached as an addendum to this report.

PRIOR LEGISLATIVE HISTORY: Senate Bill 58, by Senator Simpson and HB 3537 by Rep. Smith were filed during the 2015 Legislative Session. The Senate Bill was amended by the Judiciary Committee to require funds paid to C.M.H. be placed in an irrevocable trust fund. The Senate Bill, as amended passed the Appropriations Subcommittee on Health and Human Services; however, the bill died in the Senate Appropriations Committee.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report filed December 18, 2014.

RECOMMENDATIONS: For the reasons set forth above the undersigned recommends that Senate Bill 30 (2016) be reported favorably with the amounts to be paid amended to \$2.375 million for non-economic damages and \$125,000 for economic damages to be paid by the Department of Children and Families.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary:

The committee substitute revises the “whereas clauses” in the bill in a manner that deletes or downgrades the more egregious allegations of misconduct by the Department of Children and Families.

SPECIAL MASTER'S FINAL REPORT – SB 58

December 18, 2014

Page 3



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location

302 Capitol

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/18/14	SM	Fav/1 amendment

December 18, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 58** – Senator Wilton Simpson
HB 3537 – Representative Smith
Relief of C.M.H. by the Department of Children and Families

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$5,000,000 PREDICATED ON THE ENTRY OF A JURY AWARD IN FAVOR OF CHRISTOPHER HANN AND THERESA HANN, INDIVIDUALLY, AND AS NATURAL GUARDIANS OF C.M.H., A MINOR CHILD, DUE TO THE NEGLIGENCE OF THE DEPARTMENT OF CHILDREN AND FAMILIES.

FINDINGS OF FACT:

The Department of Children and Families, placed J.W., a 10 year old foster child with a history of violence and sexual assaults against younger children, in the home of Christopher and Theresa Hann. The Hanns had young children of their own, and because the Hanns were not trained to handle a child with J.W.'s propensity for violence, the department should not have placed J.W. in the Hann's home. Making matters worse, the department concealed J.W.'s violent past from the Hanns when it had a duty to disclose it. Ultimately, the department's placement of J.W. in the Hann's home led to

the emotional, physical, and sexual abuse of C.M.H., the Hann's 8 year old son, by J.W.

The Department of Children and Families knew of J.W.'s propensity for violence toward other children.

J.W. was born January 23, 1992, in Florida, to a teenage mother who had a history of mental illness and homelessness. She did not receive prenatal care and attempted suicide during the third month of her pregnancy by inhaling butane. J.W.'s mother was living in a shelter for homeless and runaway youth at his birth. J.W.'s biological father had a history of drug abuse and played no major role in his life.

J.W. lived with his mother until the age of 4. During this time he was subjected to extreme neglect, cruelty, and physical and sexual abuse by his mother, her boyfriends, and her extended family members. J.W., at age 1, was subjected to sexual abuse for approximately 2-3 years by males visiting his mother. He was severely beaten at age 2 while in the care of his mother's boyfriend.

As a result of his repeated abuse and neglect, J.W. began to exhibit symptoms of post-traumatic stress disorder. Due to aggressive behaviors, he was dismissed from two daycare centers. At age 3, he attempted suicide. He was subsequently diagnosed as having attention deficit hyperactivity disorder with psychotic behavior and suicidal tendencies and treated with anti-psychotic medication.

J.W. was returned to his mother's care at age 5. He was severely psychotic and began setting fires. In June 1997, J.W. was admitted to the Columbia Hospital Inpatient Psychiatric Program for a week due to self-mutilation, violent behavior, homicidal ideation, auditory hallucinations, and multiple suicide attempts. J.W. would continue receiving intensive outpatient psychiatric treatment for 7 months following his initial hospitalization.

After receiving a report that J.W. was again sexually molested by another of his mother's male friends, the department placed J.W. back into foster care where he resided on and off for approximately 5 years. He was involuntarily hospitalized at least two more times by age 9. One hospitalization was due

to aggressive behavior, an attempt to stab his uncle and his babysitter with a knife. Later he was hospitalized for planning to bring a gun and knife to school to kill a teacher and himself. In 2002, J.W. was living with his mother who had married several years earlier and had given birth to a daughter with her new husband. The department and the family entered into a voluntary case plan to address continuing allegations of abuse, neglect, and domestic violence in the home. During this time, J.W. began to exhibit sexually aggressive behavior towards other children. Multiple reports indicated that J.W. performed anal penetration on a neighborhood girl. He also continued to display severe psychotic behavior. On one occasion he attempted to cut his stepfather's throat while he slept.

On June 14, 2002, DCF family services counselor, Suzy Parchment, referred J.W. to Camelot Community Care, a DCF provider of child welfare and behavioral health services, for intensive therapeutic in-home services. Realizing the severity of J.W.'s behavior, in a communication with Camelot on June 24, Ms. Parchment noted that J.W. needed to be in a residential treatment facility as soon as possible.

As an emergency, temporary solution and noting that J.W. was a danger in the home, Camelot accepted the referral to provide mental health services to J.W. in his natural home while the department sought residential placement. Camelot noted on its admission form that J.W. was a sexual predator and engaged in sexually inappropriate behavior. It was also noted that J.W. suffered from non-specified psychosis, major depression with psychotic features, adjustment disorder and attention deficit hyperactivity disorder. The in-home counselor assigned to J.W.'s case did not have experience with sexual trauma, and Camelot's initial treatment plan did not include any specific goals or specialized treatment for sexual abuse.

J.W.'s mother informed Camelot and the department that J.W. was giving his 3 year old sister hickies, bouncing her on his lap in a sexual manner, and having her fondle his genitals. Camelot performed a child safety determination and found that based on J.W.'s history, a sibling was likely to be in immediate danger of moderate to severe harm if J.W. was not supervised. Camelot recommended that J.W.'s parents

separate him from his younger sister at night and closely watch him when he interacts with his sister.

On or about August 2002, the department removed J.W. and his younger sister from their mother's care after she abandoned them at a friend's house. J.W. was sheltered in the home of a family friend, Luz Cruz, a non-relative placement while his younger half-sister was placed with family members.

J.W. underwent a Comprehensive Behavioral Health Assessment on August 30, 2002, at the request of DCF. The assessment concluded that J.W. "should not have unsupervised access to [his younger sister], or to any younger, or smaller children wherever he resides." The Assessment also states: ***"J.W.'s caregiver must be informed about these issues and must be able to demonstrate that they can provide adequate levels of supervision in order to prevent further victimization. These issues should be strongly considered in terms of making decisions about both temporary and long term care and supervision of J.W."***

Based upon the findings and recommendations in the Assessment, J.W. was referred to Father Flanagan's Boys' Home d/b/s Girls and Boys Town, a DCF service provider, for case management services.

The Department of Children and Families knew that J.W., should not have been placed in a home with younger children.

Ms. Parchment removed J.W. from the Cruz home on September 6, 2002, due to allegations of sexual abuse by a member of the Cruz family; however, she did not report the abuse allegation as required by Florida law. It was also on September 6, 2002, that J.W. was placed with the Hanns.

Mr. and Mrs. Hann were former neighbors of J.W. and his natural family. The Hanns lived with their two children, a daughter, age 16, and a son, C.M.H., age 8. They were not licensed or trained foster parents. In the past, J.W. had often sought shelter in the Hann home when left alone by his mother. Theresa Hann had offered to care for J.W. and his

mother lobbied Camelot and the department to have J.W. placed with the Hann family instead of Luz Cruz.

Ms. Parchment recalled her first impressions of the Hann family were of nice people who maintained a very organized and clean home. She believed Theresa Hann's main purpose was to care for J.W. and that she had no ulterior motives. However, despite the willingness of the Hanns to care for J.W., the removal of J.W. from the Cruz home and placement in the Hann home violated DCF rules.

Under the department's rules, it is required to obtain prior court approval for all non-relative placements. This requirement eliminates non-relative placements for use in lieu of emergency shelter care. Ms. Parchment did not obtain the required court approval prior to placing J.W. in the Hann home. She also failed to notify the department's legal team, who is responsible for court filings, of the allegation of sexual abuse of J.W. in the Cruz home or his subsequent placement in the Hann home for two months.

Additionally, the placement directly conflicted with previous recommendations by department providers regarding placement for J.W. due to his sexually aggressive behaviors. J.W. was placed in a home with an 8 year old child even though 2 months earlier Camelot had warned that a sibling would be in danger in a home with J.W. One week prior to the placement, St. Mary's Medical Center had recommended that J.W. not have unsupervised access to younger children. The Hanns were not provided any information about J.W.'s ongoing inappropriate behavior with younger children and the Hanns allowed J.W. to share a bedroom with their son, C.M.H. Department rules expressly prohibit placing a sexually aggressive child in a bedroom with another child. Ms. Parchment knew of the planned sleeping arrangements prior to placing J.W. in the Hann home but did not tell them that the arrangement was prohibited under the department's rules.

The Department of Children and Families failed to inform the Hanns of J.W.'s background.

Christopher Hann specifically requested information about J.W., but the department failed to provide any information regarding J.W.'s troubled history of child-on-child sexual abuse or on his background generally. Florida law requires

DCF to share psychological, psychiatric and behavioral histories, comprehensive behavioral assessments and other social assessments found in the child's resource record with caregivers. The department acknowledged during litigation that no evidence of a child resource record for J.W. was found. Additionally, for the purpose of preventing the reoccurrence of child-on-child sexual abuse, the department must provide caregivers of sexual abuse victims and aggressors with written, complete, and detailed information and strategies related to such children, including the date of the sexual abuse incident(s), type of abuse, type of treatment received, and outcome of the treatment in order to "provide a safe living environment for all the children living in the home."

Not only did the department fail to comply with its own requirements, Ms. Parchment told Mr. Hann that she was not allowed to give him such information about J.W. because the placement was temporary. Nevertheless, J.W. remained in the Hann home for approximately 3 years during which his behavioral problems continued and quickly escalated.

The Department of Children and Families knew it should have removed J.W. from the Hann home as his violent behaviors increased.

Within a few weeks after J.W.'s placement in the Hann home, Mrs. Hann reported to Camelot that J.W. was playing with matches in the presence of C.M.H.; exhibited extreme anger and hostility towards C.M.H., including yelling, screaming "shut up" at the smallest aggravation or noise, and kicking C.M.H. Among J.W.'s behavioral problems, he stabbed himself with a straightened paper clip after being grounded for leaving the neighborhood without permission; threatened to jump out of a window after it was discovered he stole a roll of felt from school; and attacked Ms. Hann, biting and scratching her when she grounded him for cursing.

Camelot recommended to Ms. Parchment that the Hanns place a one way monitor in the bedroom shared by J.W. and C.M.H. While Ms. Parchment agreed to pass the recommendation on to the Hanns, there is no evidence that the information was shared or that the Hanns ever obtained the monitor.

J.W.'s behavior further deteriorated and on October 24, 2002, after a physical altercation with C.M.H., he pulled a knife on the younger child but was stopped from further assaulting him by Mr. Hann. Camelot was immediately informed of the incident by Mr. Hann, and J.W. was again involuntarily committed into Columbia Hospital for a mental health assessment. Camelot's notes indicate Ms. Parchment was informed of J.W.'s escalating behavior in the Hann home. Ms. Parchment later acknowledged that at this point she should have considered removing J.W. from the Hann home due to the danger he posed to himself, the Hanns and their son.

A week after the mental health assessment was performed, J.W. sexually assaulted a 4 year old girl who was visiting the Hann home. The children were watching a movie when J.W. exposed his genitals and began "humping" the young girl. Ms. Hann reported the incident to DCF. During the course of the investigation, the department learned the children were not under the direct supervision of any adult at the time of the incident – a failure that DCF providers warned would lead to harm of other children when left alone with J.W. Again, DCF was required to give immediate consideration to the safety of C.M.H. Despite, the inability of the Hanns, who both worked outside the home, to adequately supervise J.W. and his continuing access to young children, DCF did not remove J.W. from the Hann home.

Camelot began pressuring Ms. Parchment to schedule a psychosexual evaluation of J.W. which she was required to do months earlier pursuant to DCF's operating procedures. The evaluation had in fact been requested by Camelot when J.W. was placed with the Hanns and again just 2 days before he sexually assaulted the 4 year old girl visiting the Hann home. Camelot's notes indicate that it told Ms. Parchment that "[J.W.] needed specific sexual counseling by a specialist in this area." Ms. Parchment took no action so Camelot advised Mr. Hann that a new safety plan would be implemented which prohibited J.W. and C.M.H. from sharing a bedroom and requiring J.W. to be under close adult supervision when other children were present. Such recommendations had already been a complete failure at preventing J.W. from perpetuating sexual abuse on other children. Further, still without knowledge of J.W.'s extensive history of sexual abuse as a

victim and aggressor, Mr. Hann informed Camelot that the family disagreed with and would not follow the safety plan.

The Department of Children and Families ignored repeated warnings from its service providers.

Beginning in November 2002, Girls and Boys Town began providing services to J.W. in conjunction with Camelot. The assessment of J.W.'s case and his current behaviors, which was performed by Girls and Boys Town, found that despite his escalating violence and suicidal and sexually aggressive actions, no additional interventions or therapies had been put in place.

Camelot again requested a psychosexual evaluation of J.W. on November 6, 2002.

Additionally, in November 2002, C.M.H. began to exhibit behavioral problems which Camelot directly attributed to J.W. being in the home. C.M.H.'s grade dropped. In one school year he went from being an "A", "B", or "C" student to failing grades and was ultimately retained in the fourth grade.

In December 2002, the Hanns, overwhelmed with the number of providers involved in J.W.'s care and the disruption to their family, canceled the services of Camelot. Camelot recommended in its discharge form, signed by Ms. Parchment, that J.W. be placed in a residential treatment facility; however, DCF did not initiate a change in placement.

In June 2003, J.W. began expressing sexually inappropriate behavior towards C.M.H., asking him if he wanted to "see what sperm looks like" before masturbating to completion in front of him and attempting to hand him the semen. Due to this new escalation of J.W.'s behavior now directed at C.M.H., the department finally secured the psychosexual evaluation of J.W. but still did not remove him from the Hann home.

The department received the results of the psychosexual evaluation of J.W. performed by The Chrysalis Center on September 18, 2003. The Center found that J.W. "fit the profile of a sexually aggressive child due to the fact that he continues to engage in extensive sexual behaviors with children younger than himself." Further, it was found that J.W. "[presented] a

risk of potentially becoming increasingly more aggressive” and “continuing sexually inappropriate behaviors.” The Center warned that J.W. “may seek out victims who are children and coerce them to engage in sexual activity.” And again the Center recommended specific counseling for J.W. and appropriate training for his caregivers, the Hanns.

Finally, in October 2003, the Hanns requested J.W. be placed in a therapeutic treatment facility as they did not feel equipped to provide him with services and interventions he needed. Therapeutic placement was authorized for J.W. and he was referred to Alternate Family Care in Jupiter, Florida. The Hanns were told that if J.W. was removed from their home they would not be permitted visitation privileges with him at the facility. The Hanns did not want to be the next in a series of parental figures that abandoned J.W. so they ultimately made the decision to maintain him in their home with a request for additional services to treat his ongoing issues. At this time the Hanns begin training to become therapeutic foster parents.

C.M.H.’s problems due to J.W.’s presence in the home continued at school. Beginning in late 2003 to early 2004, C.M.H. began to act out and have more conflicts in school. He received a student discipline referral for ongoing behavioral problems in the classroom. Additionally, in early 2004 he began gaining weight and would subsequently gain about 40 pounds over the next two years.

The Department of Children and Families failed to remove a dangerous child it had placed in the Hann home when requested by the Hanns.

Mrs. Hann was diagnosed with terminal cancer on March 3, 2004. As a result, Mr. Hann contacted DCF within 48 hours of the diagnosis and requested the process of having J.W.’s placement with them as “long-term non-relative care” be stopped and asked that J.W. be placed elsewhere. Ms. Parchment visited the Hann home within 24 hours after the request and advised the family that “we’ll get on it.”

Nothing was done and contrary to the express request and wishes of the Hanns and without their knowledge, DCF had the Hanns declared as “long term non-relative caregivers” of

J.W. The department subsequently closed the dependency case, leaving J.W. him the care of the Hanns.

The Department of Children and Family Services withdrew support for the Hann family when it was needed most.

The Hanns were not part of the foster care system so when DCF closed its dependency case, the Hann family lost approximately 50 percent of their services and counseling. Father Flanagan's suspended services to J.W. and the Hann family in April 2004. The Hanns would later directly attribute the resurgence in J.W.'s inappropriate sexual behavior to the loss of counseling services.

With almost no support from DCF, the Hanns grew more desperate as they tried to deal with Mrs. Hann's illness and J.W.'s escalating behavior.

C.M.H.'s troubles also continued. An April 2005 treatment plan from St. Mary's Child Development Center's Children's Provider Network noted that he began to have nightmares and was easily frustrated. The report also noted that his mother's diagnosis of terminal cancer and intensive chemotherapy treatments were contributing to C.M.H.'s increasing separation anxiety and grief issues. He was diagnosed with post-traumatic stress disorder.

In April 2005, Mr. Hann wrote DCF and the juvenile judge requesting help in placing J.W. in a residential placement. There was no response to his request, and J.W. remained in the Hann home.

A report from Child & Family Connections, the lead agency for community-based care in Palm Beach County, dated June 16, 2005, provided a description of J.W.'s personality and behavior, the high risk of sexual behavior problems and increasing aggression, his excessive masturbation, seeking out younger children, lies, and refusal to take responsibility for his actions. The reported stated that the Hanns "[had] been told that it is not a matter of will J.W. perpetrate on their son again, but a matter of when the perpetration would occur. [J.W. was] in need of a more restrictive setting with intensive services specializing in sexual specific treatment." The report also noted that J.W.'s previous therapist, current therapist,

and a psychosexual evaluation all recommended a full-time group home facility specializing in sexual specific treatment. The report concluded that J.W.'s condition was "so severe and the situation so urgent that treatment [could not] be safely attempted in the community."

Predictably, the numerous failures of the Department and its Family Services resulted in the sexual assault of another child.

On June 29, 2005, after a physical altercation between J.W. and Mrs. Hann, C.M.H., then 10 years old, told his parents that 2 years prior, J.W. had forced him to engage in oral sex while the boys were at a sleepover at this cousin's house. Mr. Hann called Girls & Boys Town and demanded that J.W. be removed from the home immediately. Later that same day, the department finally removed J.W. from the Hann home, and he was taken to an emergency shelter until a placement could be determined.

The court entered an order on August 11, 2005, authorizing the placement of J.W. into a residential treatment center. The court found that although a previous court order authorized placement in a specialized therapeutic group home, due to another incident that occurred while in emergency shelter, J.W. required a higher level of care.

Theresa Hann passed away the next year shortly after initiating litigation against DCF and its providers.

CLAIMANT'S POSITION:

The lawsuit was filed against the department, Camelot Community Care, Inc., Elaine Beckwith, Chrysalis Center, and Father Flanagan's Boys' Home d/b/a Girls and Boys Town of South Florida. The suit alleged the defendants were negligent and directly liable for the injuries suffered by C.M.H. as a result of the sexual abuse due to:

1. The initial placement of J.W. in the Hann home;
2. The failure of DCF to follow its own rules and operating procedures to provide the necessary treatment and services for J.W.;
3. The failure of DCF to provide the required information to the Hanns regarding J.W.'s history of sexual abuse and sexual aggressiveness, including the failure to formulate a safety plan for J.W. and all the children residing in the Hann home;

4. The failure of DCF to maintain the safety of J.W. and any children residing in the placement;
5. The failure of the DCF employee to report the allegations of sexual abuse of J.W. as mandated by s. 39.201, F.S.; and
6. DCF moving forward with having the court declare the Hanns "long-term non-relative caregivers," closing the case file, and leaving J.W. in the custody of the Hanns without notice to them and despite their request to stop the process.

RESPONDENT'S POSITION:

The Department of Children and Families defended the lawsuit. On November 18, 2013, after a 4-week jury trial, a judgment was entered in the amount of \$10,000,000. DCF was found to be 50 percent liable (\$5,000,000) and Mr. and Mrs. Hann were found to be 50 percent liable (\$5,000,000). The jury attributed no liability to the remaining defendants.

CONCLUSIONS OF LAW:

Every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. With respect to this claim bill, which is based on a negligence claim, the claimant proved that the state had a duty to the claimant, the state breached that duty, and that the breach caused the claimant's damages.

Duty

The Department of Children and Families had a duty pursuant to exercise reasonable care when placing a child involved in child-on-child sexual abuse or sexual assault in substitute care; to provide caregivers of children with sexual aggression and sexual abuse with written, detailed and complete information of the child's history; to establish appropriate safeguards and strategies to protect all children living in the foster or temporary care; to ensure the foster family is properly trained and equipped to meet the serious needs of the foster child; and to exercise reasonable care under the circumstances.

Breach

A preponderance of the evidence establishes that DCF breached its duties by failing to follow its governing statutes, rules, and internal operating procedures by:

- Placing J.W., a known sexually aggressive, severely emotionally disturbed, and dangerous child in the Hann home without legal authority and in direct conflict with recommendations of DCF service providers that J.W. not have access to young children;
- Failing to ensure that Mr. and Mrs. Hann were duly licensed and trained as required by department rule, making them capable of safely caring for a child with J.W.'s extensive needs;
- Failing to fully and completely inform the Hanns of J.W.'s history, and the risk and danger he posed to C.M.H. as required by department rule; and
- Failing to remove J.W. from the Hann home when it became clear that the placement was inappropriate and dangerous to the Hanns and C.M.H. particularly.

Causation

The sexual, physical and emotional abuse suffered by C.M.H. was the direct and proximate result of DCF's failure to fulfill its duties regarding the foster placement of a known sexually aggressive child.

Damages

At the conclusion of a 2-week trial, the jury found DCF and Mr. and Mrs. Hann each 50 percent responsible for the negligence that resulted in the injuries suffered by C.M.H. The jury awarded C.M.H. \$6 million for past pain and suffering, \$3.5 million for future pain and suffering, \$250,000.00 for future treatment and services and \$250,000.00 for future loss of earning capacity for a total award of \$10 million. The department and Mr. and Mrs. Hann were each responsible for \$5 million. The jury did not assess any liability for negligence against the remaining 6 defendants.

C.M.H. was initially diagnosed with post-traumatic stress disorder in 2005. Thomas N. Dikel, Ph.D., reaffirmed the diagnosis in 2010, finding that C.M.H.'s severe PTSD was caused by his "experiences of child-on-child sexual abuse, exacerbated and magnified by his mother's diagnosis of stage 4, metastatic colon cancer."

He was re-evaluated by Dr. Stephen Alexander in October 2014. Dr. Alexander found C.M.H. to continue to suffer from PTSD and major depression, but had become even more

dysfunctional since his initial evaluation due to lack of services. Dr. Alexander attributed the majority of C.M.H.'s psychological trauma to this mother's illness and death; however, he did note that due to J.W.'s presence in the home during her illness, the two events have become inextricably intertwined in this psyche.

Comprehensive Rehabilitation Consultants, Inc., created a life plan for C.M.H. to determine the funds necessary to provide the support needed by C.M.H. as a direct consequence of the sexual abuse he experienced. It was determined the cost for medical, psycho-therapies, educational and support services as well as ancillary services of transportation, housing and personal items would be \$2.23 million over C.M.H.'s life.

As a result of the judgment entered by the court against DCF, the state paid \$100,000 (the maximum allowed under the state's sovereign immunity waiver) with the remaining \$4.9 million to be paid if this claim bill is passed by the Legislature and signed into law by the Governor.

COLLATERAL SOURCES OF RECOVERY:

Father Flanagan's Boys' Home d/b/a Girls and Boys Town of South Florida (Father Flanagan) was a named defendant in the lawsuit. Father Flanagan executed a settlement agreement with Claimants on July 30, 2013, in the amount of \$340,000. However, in October 2013, the jury found that Father Flanagan was not negligent for any loss, injury or damage to C.M.H.

ATTORNEY FEES:

Claimant's attorneys have acknowledged in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorneys' fees.

RECOMMENDATIONS:

The negligence of the department and the Hanns were the legal proximate cause of the damages suffered by C.M.H. However, The jury award of \$9.5 million for non-economic damages or pain and suffering is not supported by the weight of the evidence. According to Dr. Alexander's October 2014 report, C.M.H. continues to suffer from PTSD but attributes a majority of C.M.H.'s psychological trauma to the illness and death of his mother. The department should not be held financially liable for C.M.H.'s psychological trauma that occurred due to the illness and death of his mother.

Damages awarded by the jury in the amount of \$500,000 for future treatment and services and lost wages due to the sexual abuse are reasonable under the circumstances and are fully supported by the weight of the evidence. C.M.H. requires intensive and long-term psychotherapy, psychiatric evaluation and treatment and possible psychotropic mediations to assist him in dealing with his PTSD.

It should be noted that since receiving the settlement from Father Flanagan's in 2013, C.M.H. has only sought psychiatric treatment one time.

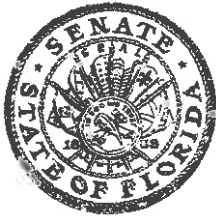
Accordingly, I recommend that SB 58 be reported FAVORABLY, with the amount to be paid amended to \$2.5 million. The jury awarded \$9.5 million (\$4.75 million assessed to DCF) for past and future pain and suffering. Based on a lack of objective evidence in the record, a 50 percent reduction of DCF's obligation or \$2.375 million may be a more appropriate amount to be paid for the non-economic damages. A corresponding reduction of 50 percent of DCF's share of the economic damages (\$125,000) would be appropriate.

I further recommend that the funds be paid into a trust established for C.M.H. in equal installments over 10 years to pay for expenses related to education, psycho-therapies and living expenses. Any funds remaining in the trust after 10 years should be distributed in full to C.M.H.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Debbie Brown, Secretary of the Senate



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA

20th District

February 2, 2016

The Honorable Rene Garcia, Chair
Senate Appropriations Subcommittee on Health and Human Services
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

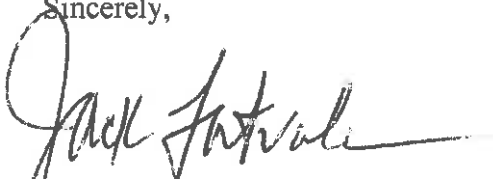
Dear Chairman Garcia:

I respectfully request consideration of Senate Bill 1082/ Evaluation of Students with Impairing Conditions Who are Preparing for Licensure as Health Care Practitioners or Veterinarians by the Senate Appropriations Subcommittee on Health and Human Services at your earliest convenience.

This bill creates the hardship evaluation program for students with financial hardships who are preparing for licensure as health care practitioners or veterinarians and who are referred to an impaired practitioners program.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,


Jack Latvala
State Senator
District 20

REPLY TO:

☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

SENATE APPROPRIATIONS
SUBCOMMITTEE
16 FEB -3 PM 12:51
STAFF

THE FLORIDA SENATE
APPEARANCE RECORD

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

1082

Bill Number (if applicable)

Meeting Date

Topic Impaired Students

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Consultant

Address 242 Office Plaza Dr.

Phone 850-766-8808

Tallahassee FL 32301
City State Zip

Email lisa@timminiusconsulting.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Professional Resource Network

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16

Meeting Date

1082

Bill Number (if applicable)

Topic Evaluation of Students

Amendment Barcode (if applicable)

Name Penelope Ziegler, M.D.

Job Title Medical Director, PRN

Address P.O. Box 16510

Phone 904-277-8004

Street

Fernandina Beach

State

FL 32054

Zip

Email drziegler@flpr.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing PRN

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1082

Bill Number (if applicable)

Topic Student Hardship Evaluation

Amendment Barcode (if applicable)

Name Alisa LaPort

Job Title _____

Address _____

Street

Tallahassee FL

City

State

Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Nurses Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16
Meeting Date

1082
Bill Number (if applicable)

Topic Student Hardship Evaluation

Amendment Barcode (if applicable)

Name Alisa LaPort

Job Title _____

Address _____

Phone _____

Street

Tallahassee, FL

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Intervention Project for Nurses

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: SB 1082

INTRODUCER: Senator Latvala

SUBJECT: Evaluation of Students with Impairing Conditions Who are Preparing for Licensure as Health Care Practitioners or Veterinarians

DATE: February 16, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Favorable
2.	Brown	Pigott	AHS	Recommend: Favorable
3.			AP	

I. Summary:

SB 1082 creates a hardship evaluation program for enrolled students who are preparing for licensure as health care practitioners or veterinarians and who are referred to an impaired practitioner program but cannot afford the required evaluation.

The bill has an indeterminate fiscal impact and provides that funding for the program will be made available each fiscal year from the Department of Health's (DOH) Medical Quality Assurance Trust Fund as provided by legislative appropriation or through a budget amendment to the DOH operating budget.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Impaired Student Health Care and Student Veterinary Practitioner Treatment Programs

Section 456.076, F.S., provides resources to assist a health care practitioner¹ who is impaired as a result of the misuse or abuse of alcohol, drugs, or a mental or physical condition which could affect the practitioner's ability to practice with skill and safety. For professions that do not have

¹ Health care practitioners are defined in s. 456.001(4), F.S., to include licensed acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dietitians, athletic trainers, orthotists, prosthetists, practitioners of electrolysis, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among other professions. These practitioners are regulated by the MQA within the DOH.

impaired practitioner programs provided for in their practice acts, the DOH designates approved impaired practitioners and programs. There are currently two DOH-approved treatment programs for impaired practitioners in Florida – the Professionals Resource Network (PRN) and the Intervention Project for Nurses (IPN). These programs also serve as consultants to the DOH.² Any information related to treatment of an impaired practitioner is exempt from state public records requirements except when a consultant determines that impairment affects a practitioner's practice, or ability to practice, and constitutes an immediate, serious danger to the public health, safety, or welfare.³

A medical school, or another school providing for the education of students enrolled in preparation for licensure as a health care practitioner or a veterinarian, may contract with the DOH-approved program or consultant to provide services to an enrolled student if the student is allegedly impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition.⁴ The DOH is not responsible for paying for the care provided by approved treatment providers or a consultant.

The Department of Business and Professional Regulation (DBPR) regulates veterinarians and veterinary students and has no statutory authority under the general provisions in ch.455, F.S., to create its own impaired practitioner program for veterinarians or veterinary students. However, ch. 455, F.S., does provide for disciplinary action against persons who do not fully participate in the program operated by the DOH. Section 455.227(1)(u), F.S., states that, "termination from a treatment program for impaired practitioners as described in s.456.076, F.S., for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee or failing to successfully complete a drug or alcohol treatment program" is grounds for disciplinary action from the DBPR. Further, s. 474.221, F. S., addresses impaired practitioner provisions for veterinarians licensed under ch. 474, and states that they are governed by s. 456.076, F.S., which includes veterinary students.

When a student is referred to the PRN by his or her school, the PRN reviews the intake information obtained from the school and makes a determination about the type of evaluation that is needed. The student is then given a choice of three possible PRN-approved evaluators and is responsible for contacting the chosen evaluator and setting up an appointment. The evaluation itself varies depending on the nature of the concern, but will always include an in-depth interview by the evaluator with the student, review of any relevant medical records, contact with the referral source and other significant collateral sources (treating practitioners, family members, significant other, etc.), and laboratory tests (which can include drug screens of urine, hair and blood; other lab studies as indicated). In many cases, formal psychological testing is also included.⁵

The cost of the evaluation is determined by the evaluator and can vary from \$300 to several thousand dollars depending on the nature of the evaluation, extent of testing required, etc. A

² See Professionals Resource Network, available at <http://www.flprn.org/> and Intervention Project for Nurses, available at <http://www.ipnfl.org/> (last visited Jan. 14, 2016).

³ Section 456.076(3)(e),(5) and (6), F.S.

⁴ Section 456.076(1)(c)2., F. S.

⁵ Penelope P. Ziegler, M.D., Medical Director, Professionals Resource Network, Inc., in correspondence to the Department of Health, November 2, 2015, (on file with the Senate Committee on Health Policy).

straightforward evaluation for a student who has been arrested for driving under the influence with no history of other problems is generally in the \$300-to-\$800 range. An evaluation for a student with an extensive history of mental health issues, substance use and behavioral disturbance might cost \$5,000 or more. The evaluation does not include treatment. The evaluator recommends the type of treatment needed, if any, and the PRN then provides options for treatment by PRN-approved treatment providers.⁶

The DOH contracts with the PRN, and the IPN specifies the duties and deliverables the PRN and the IPN must provide. The Fiscal Year 2015-2016 annual contract amounts for the PRN and the IPN are \$1,919,907 and \$1,832,601, respectively. Currently, the PRN has 970 enrollees and the IPN has 1,394 enrollees. In 2013 and 2014, the PRN evaluated 10 students each year.⁷

III. Effect of Proposed Changes:

The bill creates s. 456.0765, F.S., to establish a hardship evaluation program to fund mental or physical evaluations for enrolled students demonstrating financial hardship who are preparing for licensure as health care practitioners or veterinarians and who are referred to an impaired practitioner program. The purpose of the legislation is to protect public safety by assisting students who are, or may be, impaired as the result of the misuse or abuse of alcohol or drugs or due to a mental or physical condition that could affect the student's ability to practice with skill and safety when licensed. The bill provides that the hardship evaluation program is a collaboration between the DOH and consultants retained by the DOH to operate the impaired practitioner program.

In order to qualify for assistance under the program, a student must demonstrate, to the satisfaction of the applicable consultant, that he or she:

- Is enrolled in an institution of higher learning in this state for the purpose of preparing for licensure as a health care practitioner or as a veterinarian;
- Has been referred to an impaired practitioner program because of an actual, or alleged, impairing condition that is the result of the misuse or abuse of alcohol or drugs or caused by a mental or physical condition that could affect the student's ability to practice with skill and safety when licensed;
- Is eligible for participation in the impaired practitioner program to which he or she has been referred; and
- Is unable to afford the cost of the evaluation due to financial hardship.

Additionally, the student will be required by the consultant to undergo a mental or physical evaluation, or both.

Under the bill, "financial hardship" means the student:

- Is unemployed;
- Is receiving federal or state public assistance; or
- Has a monthly income that is at or below 150 percent of the federal income poverty level as published annually by the U.S. Department of Health and Human Services.

⁶ *Id.*

⁷ *Id.*

The federal poverty guidelines for 2015 establish that for a family of one, 150 percent of the federal income poverty guideline is \$17,655 annually or \$1,471.25 monthly.⁸

The consultant operating the impaired practitioner program has the sole, non-reviewable, responsibility of determining if the student meets the eligibility requirements and must obtain reasonable documentation of the financial hardship, but is not required to verify the authenticity or veracity of the documents. All records of the hardship program participants are to be redacted for any identifying information and the DOH is to pay the evaluator's invoice. The bill does not require the submission of supporting documentation to substantiate the services were provided.

The bill provides that funding for the program will be made available each fiscal year from the DOH's Medical Quality Assurance Trust Fund as provided by legislative appropriation or through a budget amendment to the DOH operating budget. If funds are exhausted in any fiscal year, the program must cease operating until funding becomes available.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under SB 1082, students who might not be able to afford an evaluation may be able to remain in school and become licensed health care practitioners or veterinarians.

⁸ 2015 Federal Poverty Guidelines, available at <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/eligibility/downloads/2015-federal-poverty-level-charts.pdf>, (last visited Jan. 28, 2016).

C. Government Sector Impact:

The number of individuals who are: (1) graduating students seeking to become licensed health care practitioners; (2) impaired; and (3) qualified for the program's financial assistance, is indeterminate. The DOH estimates that if everyone meeting the first two criteria were also financially eligible, the maximum cost would be roughly \$660,000 per year, not including veterinary students.⁹

Health care practitioner license fees are the main source of revenue for the DOH Medical Quality Assurance Trust Fund. The trust fund's revenue varies from year to year. The trust fund's total revenue for the 2014-2015 fiscal year was approximately \$68.8 million, and the trust fund had a \$19.2 million balance at the end of the fiscal year. Under the bill, the DOH would need spending authority by legislative appropriation or via a budget amendment in order to fund the program's implementation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOH reports that the bill calls for students to be enrolled in "an institution of higher learning" in order to be eligible for the program. This term is not defined. Training for students preparing for licensure as health care practitioners is varied and takes place in many venues. Without a definition of "an institution of higher learning," it will be difficult to determine whether or not a student would qualify for the hardship evaluation program.

VIII. Statutes Affected:

This bill creates section 456.0765 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

⁹ Department of Health, *2016 Agency Legislative Bill Analysis, SB 1082*, Jan. 13, 2016. On file with the Senate Appropriations Subcommittee on Health and Human Services.

By Senator Latvala

20-01043-16

20161082__

A bill to be entitled

An act relating to the evaluation of students with impairing conditions who are preparing for licensure as health care practitioners or veterinarians; creating s. 456.0765, F.S.; creating the hardship evaluation program for students with financial hardships who are preparing for licensure as health care practitioners or veterinarians and who are referred to an impaired practitioners program; providing conditions for participation; providing for the submission of invoices to the Department of Health by consultants and for the payment of evaluators directly by the department; requiring the submission of monthly progress reports to the department; requiring that the identity of participating students be protected in billing for services and progress reports; providing for funding from the Medical Quality Assurance Trust Fund; providing an effective date.

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

Section 1. Section 456.0765, Florida Statutes, is created to read:

456.0765 Hardship evaluation program.—There is created the hardship evaluation program to fund the mental or physical evaluation of enrolled students who are preparing for licensure as health care practitioners or veterinarians and who are referred to an impaired practitioner program, but cannot afford the required evaluation. The purpose of the hardship evaluation program is to protect the public safety by assisting such students who are or may be impaired as the result of the misuse

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or abuse of alcohol or drugs or due to a mental or physical condition that could affect the student's ability to practice with skill and safety when licensed. The hardship evaluation program is a collaboration between the department and consultants retained by the department pursuant to s. 456.076 to operate the impaired practitioner program.

(1) A student must satisfy all of the following conditions to be eligible for participation in the hardship evaluation program:

(a) Be enrolled in an institution of higher learning in this state for the purpose of preparing for licensure as a health care practitioner as defined in this chapter or as a veterinarian under chapter 474.

(b) Be referred to an impaired practitioner program operated by a consultant retained by the department pursuant to s. 456.076 or other law because of an actual or alleged impairing condition that is the result of the misuse or abuse of alcohol or drugs or caused by a mental or physical condition that could affect the student's ability to practice with skill and safety when licensed.

(c) Be eligible for participation in the impaired practitioner program to which they have been referred.

(d) Be required by the consultant to undergo a mental or physical evaluation, or both, by an evaluator approved by the department or the consultant to determine whether the individual has an impairing condition.

(e) Be unable to afford the cost of the evaluation due to financial hardship, as determined under subsection (2), by the consultant operating the applicable impaired practitioner

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62 program. For purposes of this paragraph, an individual has a
 63 financial hardship if he or she is unemployed; is receiving
 64 payments under a federal or state public assistance program; or
 65 has a monthly income that is at or below 150 percent of the
 66 federal income poverty level as published annually by the United
 67 States Department of Health and Human Services.

68 (2) The consultant operating the applicable impaired
 69 practitioner program is solely responsible for determining
 70 whether a student meets the eligibility criteria specified in
 71 subsection (1). The consultant must obtain reasonable
 72 documentation of financial hardship but is not required to
 73 verify the authenticity of the documentation and information
 74 received. The consultant's eligibility determination is final
 75 and not subject to review pursuant to chapter 120.

76 (3) After student eligibility for the hardship evaluation
 77 program has been determined and the evaluation has been
 78 completed, the consultant operating the impaired practitioner
 79 program shall redact any individually identifiable student
 80 information and forward the evaluator's invoice to the
 81 department for payment. Upon receipt of the invoice, the
 82 department shall pay the approved evaluator directly.

83 (4) The consultant must provide monthly progress reports to
 84 the department which include the number of hardship evaluation
 85 program participants and, for each participant, the cost of his
 86 or her examination, a summary of his or her status in the
 87 program, the name of his or her evaluator, the date of his or
 88 her evaluation, and the date that he or she is expected to
 89 complete his or her participation in the impaired practitioner
 90 program. Progress reports may not contain any individually

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91 identifiable student information.

92 (5) Funding for the hardship evaluation program shall be
 93 made available each fiscal year from the Medical Quality
 94 Assurance Trust Fund as provided by legislative appropriation or
 95 an approved amendment to the department's operating budget
 96 pursuant to chapter 216. If available funding is exhausted in
 97 any fiscal year, the program shall cease operation until funding
 98 becomes available.

99 Section 2. This act shall take effect July 1, 2016.

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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)

2/17/16

Meeting Date

858

Bill Number (if applicable)

Topic Health & Human Ser.

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr

Phone _____

Street

Largo

City

Fla.

State

33773

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Pinellas County Florida Government Corruption

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16
Meeting Date

258
Bill Number (if applicable)

Topic Relating to Clinical Social Work, marriage and Family Therapist Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Lobbyist

Address 119 East park Ave
Street
Tallahassee FL 32301
City State Zip

Phone 850-222-2591

Email Corinne@Mixonandassociates.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida mental health Counselors Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-16

Meeting Date

SB 858

Bill Number (if applicable)

Topic Social Worker, Family Therapist

Amendment Barcode (if applicable)

Name Richard Chapman

Job Title _____

Address 1935 E. 2nd Ave.

Phone 813-240-5261

Street

Tampa

FL

33505

City

State

Zip

Email Richard.Chapman82@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLA. Mental Health Counseling Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: SB 858

INTRODUCER: Senator Legg

SUBJECT: Clinical Social Worker, Marriage and Family Therapist, and Mental Health Counselor Interns

DATE: February 16, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Favorable
2.	Brown	Pigott	AHS	Recommend: Favorable
3.			FP	

I. Summary:

SB 858 requires that a clinical social work, marriage and family, or mental health counselling intern must practice under the supervision of a licensed clinical social worker, marriage and family therapist, or mental health counselor, as applicable, at all times. The bill provides that an intern may practice only if the supervising professional or another licensed mental health professional is present on-site.

The bill limits the duration of a registered internship to five years, with a grandfathering provision for licenses issued before April 1, 2017. The internship may be renewed only if the registration is issued after April 1, 2017, and the intern has passed the theory and practice examination required for full licensure. The bill prohibits a person who has held a provisional license from applying for an intern registration in the same profession.

The bill is estimated to have an indeterminate but likely insignificant fiscal impact on state government.

The bill's effective date is July 1, 2016.

II. Present Situation:

The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (board) is located within the Department of Health (DOH) and implements and enforces rules that regulate the practice of clinical social work, marriage and family therapy, and mental health counseling. The board is composed of nine members appointed by the Governor

and confirmed by the Senate.¹ Currently, the board regulates 9,246 licensed clinical social workers, 1,866 marriage and family therapists, and 10,018 mental health counselors.²

Clinical Social Work

The practice of clinical social work uses scientific and applied knowledge, theories, and methods for the purpose of describing, preventing, evaluating, and treating individual, couple, marital, family, or group behavior to prevent and treat undesired behavior and to enhance mental health. Included are methods of a psychological nature used to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders and dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. Clinical social work incorporates psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.³

Marriage and Family Therapy

The practice of marriage and family therapy uses scientific and applied methods and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior, within the context of marital and family systems. The practice is based on marriage and family systems theory, marriage and family development, human development, normal and abnormal behavior, psychopathology, human sexuality, psychotherapeutic and marriage and family therapy theories and technique. The practice of marriage and family therapy includes methods of a psychological nature to evaluate, assess, diagnose, treat, and prevent emotional and mental disorders or dysfunctions (whether cognitive, affective, or behavioral), sexual dysfunction, behavioral disorders, alcoholism, and substance abuse. Marriage and family therapy incorporates psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.⁴

Mental Health Counseling

Mental health counseling uses scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing, and treating undesired behaviors and enhancing mental health and human development. The practice is based on the person-in-situation perspectives derived from research and theory in personality, family, group, and organizational dynamics and development, career planning, cultural diversity, human growth and development, human sexuality, normal and abnormal behavior, psychopathology, psychotherapy, and rehabilitation. The practice of mental health counseling includes methods of a psychological nature that are used to evaluate, assess, diagnose, and treat emotional and mental dysfunctions or disorders (whether cognitive, affective, or behavioral), behavioral disorders, interpersonal

¹ Section 491.004(1), F.S.

² Florida Dep't of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2014-2015*, p. 13, available at http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1415.pdf (last visited Feb. 4, 2016).

³ Section 491.003(7), F.S.

⁴ Section 491.003(8), F.S.

relationships, sexual dysfunctions, alcoholism, and substance abuse. Mental health counseling incorporates psychotherapy, hypnotherapy, sex therapy, counseling, behavior modification, consultation, client-centered advocacy, crisis intervention, and the provision of needed information and education to clients.⁵

Interns

To be licensed as a clinical social worker, marriage and family therapist, or mental health counselor, an applicant must meet educational requirements, complete a two-year supervised postgraduate or postmaster's clinical practice, and pass a theory and practice examination.⁶ During the time in which an applicant is completing the required supervised clinical experience or internship, he or she must register with the DOH as an intern.⁷ The supervised clinical experience may be met by providing at least 1,500 hours of face-to-face psychotherapy with clients, which may not be accrued in less than 100 weeks.⁸

An applicant seeking registration as an intern must:⁹

- Submit a completed application form and a nonrefundable fee;
- Complete education requirements;
- Submit an acceptable supervision plan for meeting the practicum, internship, or field work required for licensure that was not satisfied by graduate studies; and
- Identify a qualified supervisor.

A registered intern may renew his or her registration every biennium, with no limit to the number of times it may be renewed. An intern may perform work on or off the premises of the supervising mental health professional, provided the off-premises work is not located at an independent private practice without a licensed mental health professional present when the intern is providing services.¹⁰

Currently, there are 3,949 clinical social work interns, 1,039 marriage and family therapy interns, and 4,966 registered mental health counselor interns.¹¹ More than 700 interns have continued to renew their intern registration for more than 10 years, and 150 of them have been renewing their registrations since the inception of the registration law in 1998. The renewal fee for an intern is \$80 for a biennium period and no continuing education is required. Comparatively, the requirements for renewal of a licensed mental health professional's license is payment of a \$130 per biennium and completion of 30 hours continuing education.¹²

⁵ Section 491.003(9), F.S.

⁶ Section 491.005, F.S.

⁷ Section 491.0045, F.S.

⁸ Rule 64B4-2.001, F.A.C

⁹ Section 491.0045(2), F.S.

¹⁰ Section 491.005(1)(c), F.S.

¹¹ *Supra*, note 2.

¹² Florida Dep't of Health, *Senate Bill 858 Analysis* (November 17, 2015) (on file with the Senate Committee on Health Policy). The registration renewal fee is \$80 for a two-year period.

Provisional Licenses

A provisional license allows an individual applying for licensure by examination or licensure by endorsement¹³ who has satisfied the clinical experience requirements, to practice under supervision while meeting additional coursework or examination requirements for licensure.¹⁴ Individuals must meet minimum coursework requirements and possess the respective graduate degree.¹⁵ A provisional license is valid for 24 months, after which it may not be renewed or reissued.¹⁶

There are 53 provisionally licensed clinical social workers, 25 provisionally licensed marriage and family therapists, and 152 provisionally licensed mental health counselors.¹⁷ The board has accepted applications for intern registrations from practitioners whose provisional licenses have expired. Currently, there is no prohibition against a provisional licensee applying for an intern registration.¹⁸

III. Effect of Proposed Changes:

The bill amends ss. 491.0045 and 491.005, F.S., to require that a clinical social work, marriage and family, or mental health counselling intern must practice under the supervision of a licensed clinical social worker, marriage and family therapist, or mental health counselor, as applicable, at all times. It clarifies that an intern may practice only if the supervising or another licensed mental health professional is present on-site.

The bill limits the duration of a registered internship to five years (60 months) from the date the intern registration is issued. An intern registration issued on or before April 1, 2017, will expire on March 31, 2022, and may not be renewed or reissued. Registrations issued after April 1, 2017, expire 60 months after the date of issuance and may be renewed only if the candidate has passed the theory and practice examination required for full licensure. The bill prohibits a person who has held a provisional license from applying for an intern registration in the same profession.

The bill deletes obsolete language, makes technical, grammatical, and conforming changes, and reenacts prohibitions on practicing clinical social work, marriage and family therapy, or mental health counseling unless the practitioner is licensed to practice that profession or is a registered intern.

The bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹³ The procedure for licensure by endorsement is provided in s. 491.006, F.S.

¹⁴ Section 491.0046(1), F.S., and Rule 64B4-3.0075, F.A.C.

¹⁵ Section 491.0046(2), F.S.

¹⁶ Section 491.0046(4), F.S.

¹⁷ *Supra*, note 12.

¹⁸ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under SB 858, the affected interns will have to meet new minimum qualifications for practice and will experience new requirements for supervision, which will have an indeterminate impact on their ability to practice. The affected interns will also be relieved of having to pay a biennial fee to renew their intern registrations.

C. Government Sector Impact:

The DOH reports that it will experience a decrease in revenue associated with the elimination of the biennial renewal fee for interns. However, with the internship time limit restricted to five years, it is anticipated that interns will then apply for full licensure, which will likely offset the decrease in intern registration renewal revenue.

The DOH will also be required to update its licensure system to accommodate the five-year intern license, which current resources will be adequate to absorb.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 491.0045 and 491.005.

This bill reenacts section 491.012 of the Florida Statutes.

¹⁹ *Supra*, note 12.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Legg

17-00689A-16

2016858__

A bill to be entitled

An act relating to clinical social worker, marriage and family therapist, and mental health counselor interns; amending s. 491.0045, F.S.; revising clinical social worker, marriage and family therapist, and mental health counselor intern registration requirements; revising requirements for supervision of registered interns; deleting specified education and experience requirements; establishing validity periods and providing for expiration of intern registrations; establishing requirements for a subsequent intern registration and for an applicant who has held a provisional license; amending s. 491.005, F.S.; requiring a licensed mental health professional to be on the premises when a registered intern provides services in clinical social work, marriage and family therapy, or mental health counseling; deleting a clinical experience requirement for such registered interns; deleting a provision requiring that certain registered interns meet educational requirements for licensure; reenacting s. 491.012(1)(i), (j), and (k), F.S., relating to penalties, to incorporate the amendment made to s. 491.0045, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 491.0045, Florida Statutes, is amended to read:

Page 1 of 9

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2016858__

491.0045 Intern registration; requirements.—

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

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

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

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

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

(c) Identified a qualified supervisor.

(3) An individual registered under this section must remain

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under supervision while practicing under registered intern status until he or she is in receipt of a license or a letter from the department stating that he or she is licensed to practice the profession for which he or she applied.

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

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

(5) An intern registration issued on or before April 1, 2017, expires March 31, 2022, and may not be renewed or reissued. An intern registration issued after April 1, 2017, expires 60 months after the date of issuance. No subsequent intern registration may be issued unless the candidate has passed the theory and practice examination described in s. 491.005 (1)(d), (3)(d), and (4)(d).

(6) An individual who has held a provisional license issued by the board may not apply for an intern registration in the same profession.

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Section 2. Paragraphs (a) and (c) of subsection (1), paragraphs (a) and (c) of subsection (3), paragraphs (a) and (c) of subsection (4), and subsections (5) and (6) of section 491.005, Florida Statutes, are amended to read:

491.005 Licensure by examination.—

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

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

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

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

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

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

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

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

(4) MENTAL HEALTH COUNSELING.—Upon verification of documentation and payment of a fee not to exceed \$200, as set by board rule, plus the actual per applicant cost to the department for purchase of the examination from the Professional Examination Service for the National Academy of Certified

17-00689A-16

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Clinical Mental Health Counselors or a similar national organization, the department shall issue a license as a mental health counselor to an applicant who the board certifies:

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

(c) Has had at least ~~not less than~~ 2 years of clinical experience in mental health counseling, which must be at the post-master's level under the supervision of a licensed mental health counselor or the equivalent who is a qualified supervisor as determined by the board. An individual who intends to practice in Florida to satisfy the clinical experience requirements must register pursuant to s. 491.0045 before ~~prior~~ ~~to~~ commencing practice. If a graduate has a master's degree with a major related to the practice of mental health counseling that did not include all the coursework required under subparagraphs (b)1.a.-b., credit for the post-master's level clinical experience shall not commence until the applicant has completed a minimum of seven of the courses required under subparagraphs (b)1.a.-b., as determined by the board, one of which must be a course in psychopathology or abnormal psychology. A doctoral internship may be applied toward the clinical experience requirement. A licensed mental health professional must be on the premises when clinical services are provided by a registered intern in a private practice setting. ~~The clinical experience requirement may be met by work performed on or off the premises of the supervising mental health counselor or the equivalent, provided the off premises work is not the independent private practice rendering of services that does not have a licensed mental health professional, as~~

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~~determined by the board, on the premises at the same time the intern is providing services.~~

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

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

Section 3. For the purpose of incorporating the amendment made by this act to section 491.0045, Florida Statutes, in a reference thereto, paragraphs (i), (j), and (k) of subsection (1) of section 491.012, Florida Statutes, are reenacted to read: 491.012 Violations; penalty; injunction.—

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

(i) Practice clinical social work in this state for compensation, unless the person holds a valid, active license to practice clinical social work issued pursuant to this chapter or is an intern registered pursuant to s. 491.0045.

(j) Practice marriage and family therapy in this state for compensation, unless the person holds a valid, active license to practice marriage and family therapy issued pursuant to this chapter or is an intern registered pursuant to s. 491.0045.

(k) Practice mental health counseling in this state for compensation, unless the person holds a valid, active license to practice mental health counseling issued pursuant to this

17-00689A-16

2016858__

233 chapter or is an intern registered pursuant to s. 491.0045.

234 Section 4. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

November 18, 2015

The Honorable Rene Garcia
Chair
Appropriations Subcommittee on Health and Human Services

Via email

Dear Chair Garcia:

My Senate Bill 604, Mental Health Services, has been referred to the
Appropriations Subcommittee on Health and Human Services

It passed out of the Judiciary committee yesterday.

Please agenda the bill at the next opportunity. Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 40

Cc: Scarlet Pigott, Staff Director; Robin Auber, Committee Administrative Assistant

REPLY TO:

- ☐ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- ☐ 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

604

Bill Number (if applicable)

Topic Mental Health Services in the Criminal

Amendment Barcode (if applicable)

Name Sarah Naf

Justice System

Job Title Director, Office of Community & Intergovernmental Relations, Office of the State Courts Administrator

Address 500 S. Duval St.

Phone 850-922-5692

Street

Tallahassee

FL

32399

Email nafs@flcourts.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

(of mental health & veterans courts provisions)

Representing Task Force on Substance Abuse & Mental Health Issues in the Courts

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

17 Feb 2016

Meeting Date

604
Bill Number (if applicable)

Topic Mental Health in the CJ System

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Legislative Affairs

Address 2868 Mahan Dr

Phone 878-2196

Street

Tallahassee

City

State

FL 32308

Zip

Email jill@fadaa.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Alcohol + Drug Abuse 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 (10/14/14)

I will like to speak AFTER Bill and I am Entitled to do so according to
THE FLORIDA SENATE
APPEARANCE RECORD
Florida Constitution

02/17/2016

Meeting Date

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

SB 604

Bill Number (if applicable)

Topic Practices of this Senate Committee

Amendment Barcode (if applicable)

Name Antonio Davis

Job Title Homeless Veteran

Address 2313 NW 6th Court

Phone

Street

FL

Lauderdale

State

33311

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/07/2016

Meeting Date

SB 604

Bill Number (if applicable)

Topic Mental Health Services

Amendment Barcode (if applicable)

Name Antonio Davis

Job Title Homeless Veteran

Address 2313 NW 6th Court

Phone _____

Street

Ft Lauderdale

City

FL

State

33311

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing U.S. Constitution / Florida Constitution

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: PCS/CS/SB 604 (907278)

INTRODUCER: Appropriations Subcommittee on Health and Human Services; Judiciary Committee; and Senator Diaz de la Portilla and others

SUBJECT: Mental Health Services in the Criminal Justice System

DATE: February 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	C. Brown	Cibula	JU	Fav/CS
2.	A. Brown	Pigott	AHS	Recommend: Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 604 expands the authority of courts to use treatment-based mental health and substance abuse treatment programs and specifies minimum requirements of those programs. Among the changes in the bill, the bill expands the eligibility criteria for these programs to enable the participation of children in delinquency court and veterans who were released under a general discharge. The bill authorizes dependency courts to require persons having or seeking custody of a child to participate in certain mental health programs. Other provisions of the bill address the designation of some county courts as “criminal county courts” for certain functions, county-funded mental health court programs and a forensic hospital diversion pilot program.

The bill encourages counties to establish and fund treatment-based mental health court programs. The bill also authorizes courts to admit defendants, on a voluntary basis, at both the pretrial intervention and post-adjudicatory level into the programs. The bill further encourages coordination among various state agencies, local government, and law enforcement agencies to facilitate these programs.

Contingent upon an appropriation by the Legislature, each judicial circuit must establish at least one coordinator position for treatment-based mental health court programs. Each judicial circuit must annually report data on the program to the Office of the State Courts Administrator (OSCA) for purposes of program evaluation.

The bill creates the Forensic Hospital Diversion Pilot Program, which replicates the model of the Miami-Dade Forensic Alternative Center in two additional counties. In addition to Miami-Dade, the Department of Children and Families (DCF) may implement the program in Escambia and Hillsborough Counties. The purpose of the program is to divert incarcerated defendants found mentally incompetent to proceed, or not guilty by reason of insanity, into a therapeutic setting that offers beds and community outpatient treatment.

Implementation of some components of the bill are contingent upon appropriations or sufficient existing resources. The cost to implement the pilot program is \$6.4 million, but the bill specifies that the pilot program may be implemented if existing resources are available on a recurring basis. Additionally, the cost of employing at least one mental health coordinator in each county, as authorized by the bill, would require significant funding, but this provision is contingent on an annual appropriation by the Legislature. See Section V.

The bill is effective on July 1, 2016.

II. Present Situation:

Problem-solving Courts

A problem-solving court is a type of specialty court designed to address specific needs of a defendant, including:

- Drug courts;
- Veterans' courts; and
- Mental health courts.¹

A veteran is defined as a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only, or who later received an upgraded discharge under honorable conditions.²

Both pretrial intervention and post-adjudicatory cases may be referred to a problem-solving court.³ A defendant who is eligible to participate in a problem-solving court may request that the court transfer the case to another county to receive treatment.⁴

Across the state:

- 17 counties operate felony veterans' courts;
- 38 counties operate felony drug courts; and
- 18 counties operate mental health courts.⁵

Offenders sentenced in problem-solving courts to felony probation are supervised by Department of Corrections' probation officers.

¹ Section 910.035(5)(a), F.S.

² Section 1.01(14), F.S.

³ Section 910.35(5)(d)1. and 2., F.S.

⁴ Section 910.35(5)(b), F.S.

⁵ Department of Corrections, *2016 Agency Legislative Bill Analysis* (Nov. 12, 2015) (on file with the Senate Committee on Judiciary).

Pre-trial Intervention in Criminal Cases

The Department of Corrections (DOC) supervises pretrial intervention programs for defendants who have criminal charges pending. Pretrial intervention is available to defendants who are charged with a misdemeanor or third degree felony as a first offense or who have previously committed one nonviolent misdemeanor.⁶

Before a case may be transferred to another county, the following is required:

- Approval from the administrator of the pretrial intervention program, a victim, the state attorney, and the judge who presided at the initial first appearance of the defendant;
- Voluntary and written agreement from the defendant; and
- Knowing and intelligent waiver of speedy trial rights from the defendant during the term of diversion.⁷

While a defendant is in the program, criminal charges remain pending. If the defendant fails to successfully complete the program, the program administrator may recommend further supervision or the state attorney may resume prosecution of the case. The defendant does not have the right to a public defender unless the defendant is subject to incarceration if convicted.⁸ If the defendant successfully completes the program, the program administrator may recommend that charges be dismissed without prejudice.⁹

The purpose of pretrial intervention is to offer eligible defendants a sentencing alternative in the form of counseling, education, supervision, and medical and psychological treatment as appropriate.¹⁰

Veterans Programs and Courts for Criminal Offenders

The Use of Veterans' Courts Nationally

A 2012 national survey found that 71 percent of participants in veterans' courts had experienced trauma while serving in the military.¹¹ More recently in 2014, a veterans' court report found that 46 percent of participants were diagnosed with substance abuse and mental health problems.

Veterans' courts are modeled after other specialty courts, such as drug courts and mental health courts. The goal of specialty courts is to provide treatment interventions to resolve underlying causes of criminal behavior to "reintegrate court participants into society, reduce future involvement with the criminal justice system, and promote public safety."¹²

⁶ A misdemeanor is punishable by up to a 1 year term in a county jail and a \$500 to a \$1,000 fine. Sections 775.08(2) and 775.083(1)(d) and (e), F.S. A felony is punishable by a minimum of more than a 1 year term of imprisonment in a state penitentiary and fines that range from \$5,000 to \$15,000. Sections 775.08(1) and 775.083(1)(a) through (d), F.S.

⁷ Section 948.08 (2), F.S.

⁸ Section 948.08(3) and (4), F.S.

⁹ Section 948.08(5), F.S. If a case is dismissed without prejudice, the case can be refiled at a later time.

¹⁰ Section 948.08(1), F.S.

¹¹ Office of Program Policy Analysis & Government Accountability, Research Memorandum, *State-Funded Veterans' Courts in Florida*, pg. 1 (Jan. 30, 2015).

¹² *Id.*

Like other specialty courts, veterans' courts require the defendant to appear before the court over a specified period of time. On average, it takes 12 to 18 months for a veterans' court to dispose of a case.¹³

Veterans' Courts in Florida Law

The 2012 Florida Legislature placed into law the "T. Patt Maney Veterans' Treatment Intervention Act."¹⁴ The law:

- Recognizes veterans' courts;
- Requires courts to hold a pre-sentencing hearing if a combat veteran alleges military-related injury, to determine if the defendant suffers from certain conditions, such as post-traumatic stress disorder, a traumatic brain injury, or a substance abuse disorder due to military service;
- Establishes pretrial and post-adjudication intervention programs for combat veterans having pending criminal charges or convictions; and
- Enables counties to establish programs to divert eligible defendants who are veterans into treatment programs.

Veterans' Courts

The chief judge of a judicial circuit may establish a Military Veterans and Service Members Court Program to serve the special needs of veterans and service members who are convicted of criminal offenses.¹⁵ In sentencing defendants, these specialty courts will consider whether military-related conditions, such as mental illness, traumatic brain injury, or substance abuse can be addressed through programs designed to serve the specific needs of the participant.¹⁶

Pre-trial Intervention Programs

Veterans charged with misdemeanors¹⁷ or felonies¹⁸ may be eligible to participate in diversion programs. However, veterans must not be charged with a disqualifying felony offense. Disqualifying offenses are serious felony offenses and include:

- Kidnapping and attempted kidnapping;
- Murder or attempted murder;
- Aggravated battery or attempted aggravated battery;
- Sexual battery or attempted sexual battery;
- Lewd or lascivious battery and certain other sexual offenses against children;
- Robbery or attempted robbery;
- Burglary or attempted burglary;
- Aggravated assault;

¹³ *Id.*

¹⁴ Senate Bill 138 (ch. 2012-159, Laws of Fla.).

¹⁵ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. Section 250.01(19), F.S.

¹⁶ The authority for Veterans' Courts Programs is in ch. 394, F.S., which addresses mental health. Section 394.47891, F.S.

¹⁷ Section 948.16 (2)(a), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

¹⁸ Section 948.08(7)(a), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans' treatment intervention programs.

- Aggravated stalking; and
- Treason.¹⁹

Prior to a veteran's placement in a program, a veterans' treatment intervention team must develop an individualized coordinated strategy for the veteran. The team must present the coordinated strategy to the veteran in writing before he or she agrees to enter the program. The strategy is modeled after the 10 therapeutic jurisprudence principles and key components for treatment-based drug court programs.²⁰

During the time that the defendant is allotted participation in the treatment program, the court retains jurisdiction in the case. At the end of the program, the court considers recommendations for disposition by the state attorney and the program administrator. If the veteran successfully completes the treatment program, the court must dismiss the criminal charges. If the court finds that the veteran did not successfully complete the program, the court can either order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.

Eligible veterans who successfully complete the diversion program may petition the court to order the expunction of the arrest record and the plea.

Post-adjudication Treatment Programs

Veterans and service members²¹ on probation or community control who committed a crime on or after July 1, 2012, and who suffer from a military-related mental illness, a traumatic brain injury, or a substance abuse disorder, may also qualify for treatment programs. A court may impose, as a condition of probation or community control, successful completion of a mental health or substance abuse treatment program.²²

Forensic Facilities and Mental Health Treatment for Criminal Defendants

State Forensic System

Chapter 916, F.S., governs secure forensic facilities that are under the jurisdiction of the Department of Children and Families (DCF). The state forensic system is a network of state facilities and community services for persons who have mental health issues and who are involved with the criminal justice system.

¹⁹ Section 948.06(8)(c), F.S.

²⁰ Section 948.08(7)(b), F.S., requires a coordinated strategy for veterans charged with felonies who are participating in pretrial intervention programs. Section 948.16(2)(b), F.S., requires a coordinated strategy for veterans charged with misdemeanors. Section 397.334(4), F.S., requires treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee.

²¹ Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions. A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. (Section 250.01(19), F.S.).

²² Section 948.21, F.S.

Two types of mentally ill defendants charged with felonies are eligible for involuntary commitment:

- Persons found incompetent to proceed²³ to trial or the entry of a plea; and
- Persons found not guilty by reason of insanity.²⁴

Forensic treatment is provided in the following settings:

- Separate and secure forensic facilities;
- Civil facilities; and
- Community residential programs or other community settings.

Circuit courts have the option of committing a person to a facility or releasing the person on conditional release.²⁵ Conditional release is release into the community, accompanied by outpatient care and treatment.²⁶ The committing court retains jurisdiction over the defendant while the defendant is either under involuntary commitment or conditional release.²⁷

The DCF oversees two state-operated facilities, Florida State Hospital and North Florida Evaluation and Treatment Center, and two privately-operated, maximum-security forensic treatment facilities, South Florida Evaluation and Treatment Center and Treasure Coast Treatment Center. In the 2011-2012 fiscal year, the appropriation for state forensic facilities was \$139 million from the General Revenue Fund.²⁸

Miami-Dade Forensic Alternative Center

The Miami-Dade Forensic Alternative Center (MDFAC) opened in 2009 as a community-based, forensic commitment program. The MDFAC serves adults who have lesser felony offenses and are not a danger to the community.²⁹ The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community.³⁰ The MDFAC currently operates a 16-bed facility at a daily cost of \$284.81 per bed.³¹

III. Effect of Proposed Changes:

This bill expands the authority of courts to use treatment-based mental health and substance abuse treatment programs and specifies minimum requirements of those programs. The premise of the bill is that some who become involved with the criminal justice system are less likely to become involved in the future if they receive treatment for mental health or substance abuse issues.

²³ Mental incompetence to proceed is defined in s. 916.12(1), F.S.

²⁴ Section 916.105(1), F.S.; The Florida Rules of Criminal Procedure define what is meant by “not guilty by reason of insanity,” rather than the statutes. Section 916.15(1), F.S.

²⁵ Section 916.17(1), F.S.

²⁶ *Id.*

²⁷ Section 916.16(1), F.S.

²⁸ Budget Subcommittee on Health and Human Services Appropriations, The Florida Senate, *Interim Report 2012-108, The Forensic Mental Health System* (Sept. 2011).

²⁹ Department of Children and Families (DCF), *2016 Agency Legislative Bill Analysis* (Nov. 13, 2015) (on file with the Senate Committee on Judiciary).

³⁰ The Florida Senate, *supra* note 28.

³¹ DCF, *supra* note 29, at 2.

Judicial Proceedings Relating to Children

The bill amends legislative findings and intent under s. 39.001, F.S., for mental health treatment to be included in dependency court services and for the state to contract with mental health service providers for such services.

The bill amends s. 39.507, F.S., to allow a dependency court to:

- Order a person requesting custody of a child to submit to a mental health or substance abuse disorder assessment or evaluation;
- Require participation of such person in a mental health court program or a treatment-based drug court program; and
- Oversee the progress and compliance with treatment by the person who has custody or is requesting custody of a child.

The bill amends s. 39.521, F.S., to authorize a court, with jurisdiction over a child that has been adjudicated dependent, to:

- Require the person who has custody or is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation;
- Require the person to participate in and comply with a mental health court program or drug court program, and
- Oversee the progress and compliance by the person who has custody or is requesting custody of a child.

Involuntary Outpatient Placement

The bill amends s. 394.4655, F.S., relating to involuntary outpatient placement for mental health services, to define “court” to mean a circuit court or a criminal county court. The bill also defines “criminal county court” to mean a county court exercising its original jurisdiction in a misdemeanor case under s. 34.01, F.S.

Under the bill, if a person has been ordered into involuntary outpatient placement and continues to meet the criteria for such placement, the mental health service provider with which the person has been placed must file a petition for continued involuntary outpatient placement in the court that issued the order for placement, and hearings on those petitions will be held by the court that issued the order for placement. Under current law, such petitions must be filed in circuit court and the hearings must be held by the circuit court.

The bill amends ss. 394.4599, 394.463, 394.455, 394.4615, and 790.065, F.S., to conform those sections to the functions of a criminal county court versus a circuit court or to update cross-references to changes made in the bill.

Eligibility for Participation in a Problem-Solving Court

The bill expands the population who may be served through a problem-solving court to include children who are enrolled in delinquency pretrial intervention programs.

The bill clarifies that:

- Service members are eligible to participate in problem-solving courts; and
- Veterans and service members may participate in a Military Veterans and Service Members Court Program as part of a pretrial intervention program.

Under current law, a veterans' court serves veterans who have been released from military service through an honorable discharge. The bill makes veterans who have been discharged or released under a less than honorable discharge also eligible to participate in veterans' court.

Treatment-based Mental Health Court Programs

Creation of the Treatment-based Mental Health Court Program

This bill authorizes counties to establish and fund treatment-based mental health court programs. The program facilitates the provision of therapeutic mental health treatment for persons who have mental health issues who are in the criminal justice system. Participation by defendants is voluntary.

The program may apply to:

- Pretrial intervention programs;
- Post-adjudicatory treatment-based mental health court programs; and
- Court review of the status of compliance or noncompliance of sentenced defendants.

In determining the suitability of a post-adjudicatory treatment-based mental health court program, for a particular defendant, the court must review the defendant's:

- Criminal history;
- Mental health screening outcome;
- Amenability to services of the program;
- Total sentence points; and
- Agreement to enter the program.

The court must also consider the recommendation of the state attorney and the victim.

If a defendant sentenced to a post-adjudicatory mental health court program is charged with a violation of probation or community control while in the program, the judge of the program will hear the violation of probation or community control case.

This bill encourages coordination among various state agencies, local government, and law enforcement agencies to establish and support these programs.

Contingent upon an appropriation by the Legislature, each judicial circuit is required to establish at least one coordinator position for the treatment-based mental health court program to coordinate responsibilities of participating agencies and service providers. The bill requires mental health court programs to collect client-level data and programmatic information to evaluate the program. Of the information collected, each mental health court program must then report programmatic information and aggregate data to the Office of the State Courts Administrator (OSCA).

If a county establishes a treatment-based mental health court program, the county must secure funding from sources other than the state for costs not otherwise required under the state constitution for state court system funding.³² Agencies of the state executive branch may provide funding for the program and counties may enter into inter-local agreements for the collective funding of these programs.

The bill authorizes the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based mental health court program. Members of the committee are:

- The chief judge or his or her designee serving as chair;
- The judge of the treatment-based mental health court program, unless otherwise designated by the chief judge or his or her designee;
- The state attorney and the public defender;
- Treatment-based mental health program coordinators;
- Community representatives and treatment representatives; and
- Any other person whom the chair deems appropriate.

Pretrial Intervention Mental Health Court Programs

Current law authorizes courts to establish specialty pretrial intervention programs for persons charged with misdemeanor or felony crimes.

Misdemeanor Program for Adults

Under the bill, a misdemeanor pretrial mental health court program is included as a type of pretrial intervention program. A defendant who is charged with a misdemeanor and identified as having a mental illness is eligible to participate in the program.

Felony Program for Adults

Current law authorizes a court to voluntarily admit a defendant who is a veteran released from military service under an honorable discharge into a pretrial veterans' treatment intervention program. This bill authorizes veterans who were released from military service under a less than honorable discharge to participate in a pretrial intervention program.

The bill specifies how a veteran charged with a felony qualifies to participate in a pretrial mental health program. To be eligible to participate, the defendant:

- Must be identified as having a mental illness;
- Must not have been convicted of a felony; and
- Must be charged with a nonviolent felony³³ or certain violent felonies if the state attorney and the victim consent.³⁴

³² Section 29.004, F.S., provides that pursuant to s. 14, Art. V of the State Constitution, state revenue funding for the state court system includes funding for appointed and elected judges; juror compensation and expenses; reasonable court reporting and transcription services; court administration; and case management, including the initial review and evaluation of cases, case monitoring, tracking, and coordination; and service referral, coordination, monitoring, and tracking for treatment-based drug court programs.

³³ A nonviolent felony is defined in the bill as an offense of burglary or trespass listed under ch. 810, F.S., which is charged as a third-degree felony or a non-forcible felony.

³⁴ These offenses are resisting arrest of an officer with violence; battery on a law enforcement officer; or aggravated assault.

The court retains jurisdiction over the disposition of the pending charges. If the court finds in writing that the defendant has successfully completed the program, the court shall order the dismissal of the criminal charges. If the court finds that the defendant has failed to successfully complete the program, the case may proceed to prosecution.

Delinquency Pretrial Intervention Program for Children

The bill establishes a pretrial intervention program for children who have been identified as having a mental illness. Treatment under the program is to be based on the clinical needs of the child and participation in the program is voluntarily. To qualify:

- The child must not have been previously adjudicated for a felony; and
- The criminal charge that is currently pending is limited to a misdemeanor, a nonviolent felony,³⁵ or certain forcible felonies, with victim consent.³⁶

At the end of the pretrial intervention period, the court will determine how to proceed with the case, based on the recommendation of the state attorney and the program administrator and whether the child has successfully completed the program. If the court dismisses the charges after a child successfully completes a mental health court program, and if the child otherwise qualifies, he or she may have his or her arrest record and plea of no lo contendere expunged.

Post-conviction Treatment-based Mental Health Court Program

Regardless of how a defendant would rank under the Criminal Punishment Code, a court is authorized to place a defendant convicted of a felony or a felony violation of probation or community control into a post-adjudicatory treatment-based mental health court program if:

- The offense is a nonviolent felony;³⁷
- The defendant is amenable to mental health treatment, including taking prescribed medication; and
- The court determines the defendant is suitable for placement, based on criteria identical to that required for assessments into the program of other defendants.

A court may also consider a defendant for the program for the offenses of certain forcible felonies after the court has considered a victim statement or testimony, if provided by the victim.³⁸

After a court orders placement of a defendant into a treatment-based mental health program, jurisdiction of the case transfers from the sentencing court to the post-adjudicatory treatment-based mental health court program for the interim that the defendant is in the program. Satisfactory completion of the program is a condition of the defendant's probation or community control.

³⁵ A nonviolent felony is defined in the bill as an offense of burglary or trespass listed under ch. 810, F.S., which is charged as a third-degree felony or a non-forcible felony.

³⁶ These offenses are resisting arrest of an officer with violence; battery on a law enforcement officer; or aggravated assault.

³⁷ A nonviolent felony is defined in the bill as an offense of burglary or trespass listed under ch. 810, F.S., which is charged as a third-degree felony or a non-forcible felony.

³⁸ These offenses are resisting arrest of an officer with violence; battery on a law enforcement officer; or aggravated assault.

The court may impose specialized treatment for probationers or community controllees who are veterans or service members and whose crime is committed after July 1, 2016 (the effective date of this bill). Specialized treatment will address a defendants' mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, as appropriate.

The bill provides a definition of "mental health probation" and authorizes the DOC to establish designated and trained mental health probation officers to support individuals under supervision of the mental health court program. Under the bill, "mental health probation" means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on the underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans. Mental health probation must be supervised by officers with restricted caseloads who are sensitized to the unique needs of individuals with mental health disorders, and who will work in tandem with community mental health case managers assigned to the defendant. The bill provides that caseloads of such officers should be restricted to a maximum of 50 cases per officer in order to ensure an adequate level of staffing and supervision.

Forensic Services

Forensic Hospital Diversion Pilot Program

This bill authorizes the DCF to create the Forensic Hospital Diversion Pilot Program (pilot program). The pilot program would divert incarcerated defendants who are found mentally incompetent to proceed at trial or not guilty by reason of insanity from state forensic mental health treatment facilities to community outpatient treatment. The goals of the pilot program are to provide competency-restoration and community-reintegration services. Services would be provided in either a locked residential treatment facility or a community-based facility, based on public safety, the needs of the individual, and available resources.

Under the bill, if DCF decides to implement the pilot program, it will be implemented in Escambia, Hillsborough, Miami-Dade, and Okaloosa counties. The model for the pilot program is the Miami-Dade Forensic Alternative Center (MDFAC), currently in operation.

The bill specifies that the DCF may implement the pilot program if existing resources are available on a recurring basis. The bill authorizes the DCF to request budget amendments under ch. 216, F.S., to realign funds between mental health services and community substance abuse and mental health services in order to implement the pilot program.

Participation in the pilot program is limited to persons who are:

- 18 years of age and older;
- Charged with a second or third degree felony;
- Do not have a significant history of violent criminal offenses;
- Have been adjudicated either incompetent to proceed to trial or not guilty by reason of insanity;
- Meet safety and treatment criteria established by the DCF for placement in the community; and
- Would otherwise be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court, in conjunction with the Florida Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts, to develop educational training for judges in the pilot program counties regarding the community forensic system.

The DCF is authorized to adopt rules to facilitate the provisions of the bill relating to the pilot program.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to contain a mandate because the bill authorizes but does not require counties to spend funds.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Judicial Proceedings Relating to Children

The Office of the State Courts Administrator (OSCA) advises that the bill's changes to ch. 39, F.S., to authorize dependency courts to require persons seeking custody of a child to submit to a mental health assessment and participation in a mental health court program, may increase the workload of the state courts system by increasing the number of mental health court cases. However, the OSCA cannot determine how many additional mental health court cases, if any, would result.³⁹

³⁹ Email from OSCA staff, Feb. 11, 2016, on file with staff of the Senate Appropriations Subcommittee on Health and Human Services.

Involuntary Outpatient Placement

The bill's designation of "criminal county courts" and the authorization of criminal county courts to order involuntary outpatient placement could impact judicial workload. A criminal county court would have to hold hearings on the petitions filed for involuntary outpatient placement. Further, the criminal county court would have to hold hearings for cases where continued outplacement placement is sought. However, the OSCA cannot determine how many additional outpatient placement petitions and cases, if any, would result from allowing criminal county courts to order outpatient placement.⁴⁰

Forensic Hospital Diversion Pilot Program

PCS/CS/SB 604 authorizes the Department of Children and Families (DCF) to replicate the Miami-Dade Forensic Alternative Center (MDFAC) as a pilot program in Escambia, Hillsborough, Miami-Dade, and Okaloosa counties. However, the authorization is contingent on the availability of existing resources on a recurring basis.

The DCF's current contract with the MDFAC costs almost \$1.6 million annually. Funding this model for the pilot program in three counties will require funding of almost \$6.4 million. The DCF anticipates that the redirection of \$6.4 million from the department's budget could impact or decrease the provision of services to other DCF clients. Therefore, the DCF would be unable to absorb the additional costs and would need additional funding for the pilot program.⁴¹

Cost savings may be realized, however, based on the success of the pilot program. The MDFAC is able to keep individuals whose competency has been restored in the program rather than in jail while awaiting trial. Doing so may shorten the process, as defendants are less likely to decompensate in the MDFAC compared to a jail setting and are more likely lose competency again in a jail setting due to the stress and the less-than-optimal treatment provided.⁴² Commitment bed and court cost savings are expected through this bill. The experience of the MDFAC indicates that competency is restored more quickly through the pilot program, which requires 100 days on average, than at state facilities, which require 125 days on average.⁴³

In Fiscal Year 2011-2012, the average cost for a secure forensic bed was \$333 per day. A bed at the MDFAC cost much less; \$229 a day in 2011-12.⁴⁴ However, the current cost per bed per day at the MDFAC is \$285 a day.⁴⁵

⁴⁰ *Id.*

⁴¹ DCF, *supra* note 29.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ The Florida Senate, *supra* note 28.

⁴⁵ DCF, *supra* note 29, at 2.

County Expenses for Treatment-Based Mental Health Court Programs

The bill encourages, but does not require, counties to create and fund treatment-based mental health court programs. The bill also, contingent upon appropriations, requires each judicial circuit to establish at least one coordinator for the treatment-based mental health programs within the circuit.

Problem-solving Courts

The OSCA anticipates additional judicial and court workload from:

- Creating mental health courts, as problem-solving court cases require more extensive hearings and time monitoring than traditional criminal cases. However, cost savings may be realized from lower recidivism and costs of incarceration.
- Expanding the eligibility criteria for veterans. Like other problem-solving courts, veterans' courts require more judicial time than traditional criminal cases.

The bill's fiscal impact on the state courts system is indeterminate, due to the lack of data needed to gauge the impact on judicial workload.⁴⁶

The DOC expects the bill to have a minimal impact on its supervised offender population, as felony offenders are already being referred by pretrial intervention drug courts or are sentenced to probation or community control by felony circuit courts and problem-solving courts. Some of these referrals include special conditions to address mental health or substance abuse treatment.⁴⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.001, 39.507, 39.521, 394.4655, 394.4599, 394.463, 394.455, 394.4615, 394.47891, 790.065, 910.035, 948.001, 948.01, 948.06, 948.08, 948.16, 948.21, and 985.345.

This bill creates the following sections of the Florida Statutes: 394.48792 and 916.185.

This bill reenacts the following sections of the Florida Statutes: 397.334 and 948.012.

⁴⁶ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (Nov. 13, 2015) (on file with the Senate Committee on Judiciary).

⁴⁷ Department of Corrections, *supra* note 5, at 4.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on February 17, 2016:

The proposed CS:

- Removes provisions allowing county court judges to release misdemeanor defendants on conditional release;
- Adds Okaloosa County to the list of counties in which the Department of Children and Families may implement the Forensic Hospital Diversion Pilot Program;
- Authorizes dependency courts to require persons having or seeking custody of a child to participate in certain mental health programs; and
- Creates a designation for some county courts as “criminal county courts” for involuntary outpatient placement and certain other functions.

CS by Judiciary on November 17, 2015:

- Establishes mental health probation as a form of specialized supervision that emphasizes mental health treatment;
- Clarifies that the mental health court program must collect client-level data but report aggregate data to the Office of the State Courts Administrator; and
- Makes technical clarifying changes.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on Health and Human Services (Sobel)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) of section 39.001, Florida
Statutes, is amended to read:

39.001 Purposes and intent; personnel standards and
screening.—

(6) MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.—

(a) The Legislature recognizes that early referral and



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comprehensive treatment can help combat mental illnesses and substance abuse disorders in families and that treatment is cost-effective.

(b) The Legislature establishes the following goals for the state related to mental illness and substance abuse treatment services in the dependency process:

1. To ensure the safety of children.

2. To prevent and remediate the consequences of mental illnesses and substance abuse disorders on families involved in protective supervision or foster care and reduce the occurrences of mental illnesses and substance abuse disorders, including alcohol abuse or related disorders, for families who are at risk of being involved in protective supervision or foster care.

3. To expedite permanency for children and reunify healthy, intact families, when appropriate.

4. To support families in recovery.

(c) The Legislature finds that children in the care of the state's dependency system need appropriate health care services, that the impact of mental illnesses and substance abuse disorders on health indicates the need for health care services to include treatment for mental health and substance abuse disorders ~~for services to~~ children and parents, where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's dependency system must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related mental illness and substance abuse problems.



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(d) It is the intent of the Legislature to encourage the use of the mental health court program model established under s. 394.47892 and the drug court program model established under s. 397.334 and authorize courts to assess children and persons who have custody or are requesting custody of children where good cause is shown to identify and address mental illnesses and substance abuse disorders ~~problems~~ as the court deems appropriate at every stage of the dependency process. Participation in treatment, including a mental health court program or a treatment-based drug court program, may be required by the court following adjudication. Participation in assessment and treatment before ~~prior to~~ adjudication is ~~shall be~~ voluntary, except as provided in s. 39.407(16).

(e) It is therefore the purpose of the Legislature to provide authority for the state to contract with mental health service providers and community substance abuse treatment providers for the development and operation of specialized support and overlay services for the dependency system, which will be fully implemented and used as resources permit.

(f) Participation in a mental health court program or a ~~the~~ treatment-based drug court program does not divest any public or private agency of its responsibility for a child or adult, but is intended to enable these agencies to better meet their needs through shared responsibility and resources.

Section 2. Subsection (10) of section 39.507, Florida Statutes, is amended to read:

39.507 Adjudicatory hearings; orders of adjudication.—

(10) After an adjudication of dependency, or a finding of dependency where adjudication is withheld, the court may order a



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69 person who has custody or is requesting custody of the child to
70 submit to a mental health or substance abuse disorder assessment
71 or evaluation. The assessment or evaluation must be administered
72 by a qualified professional, as defined in s. 397.311. The court
73 may also require such person to participate in and comply with
74 treatment and services identified as necessary, including, when
75 appropriate and available, participation in and compliance with
76 a mental health court program established under s. 394.47892 or
77 a treatment-based drug court program established under s.
78 397.334. In addition to supervision by the department, the
79 court, including the mental health court program or treatment-
80 based drug court program, may oversee the progress and
81 compliance with treatment by a person who has custody or is
82 requesting custody of the child. The court may impose
83 appropriate available sanctions for noncompliance upon a person
84 who has custody or is requesting custody of the child or make a
85 finding of noncompliance for consideration in determining
86 whether an alternative placement of the child is in the child's
87 best interests. Any order entered under this subsection may be
88 made only upon good cause shown. This subsection does not
89 authorize placement of a child with a person seeking custody,
90 other than the parent or legal custodian, who requires mental
91 health or substance abuse disorder treatment.

92 Section 3. Paragraph (b) of subsection (1) of section
93 39.521, Florida Statutes, is amended to read:

94 39.521 Disposition hearings; powers of disposition.—

95 (1) A disposition hearing shall be conducted by the court,
96 if the court finds that the facts alleged in the petition for
97 dependency were proven in the adjudicatory hearing, or if the



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parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(b) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health court program established under s. 394.47892 or a treatment-based drug court program established under s. 397.334. In addition to supervision by the department, the court, including the mental health court program or the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's



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best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse disorder treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department shall set forth the powers of the custodian of the child and shall include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, no further judicial reviews are required, so long as permanency has been established for the child.

Section 4. Subsections (1) through (7) of section 394.4655,



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Florida Statutes, are renumbered as subsections (2) through (8), respectively, paragraph (b) of present subsection (3), paragraph (b) of present subsection (6), and paragraphs (a) and (c) of present subsection (7) are amended, and a new subsection (1) is added to that section, to read:

394.4655 Involuntary outpatient placement.—

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

(a) "Court" means a circuit court or a criminal county court.

(b) "Criminal county court" means a county court exercising its original jurisdiction in a misdemeanor case under s. 34.01.

(4) ~~(3)~~ PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.—

(b) Each required criterion for involuntary outpatient placement must be alleged and substantiated in the petition for involuntary outpatient placement. A copy of the certificate recommending involuntary outpatient placement completed by a qualified professional specified in subsection (3) ~~(2)~~ must be attached to the petition. A copy of the proposed treatment plan must be attached to the petition. Before the petition is filed, the service provider shall certify that the services in the proposed treatment plan are available. If the necessary services are not available in the patient's local community to respond to the person's individual needs, the petition may not be filed.

(7) ~~(6)~~ HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.—

(b)1. If the court concludes that the patient meets the criteria for involuntary outpatient placement pursuant to subsection (2) ~~(1)~~, the court shall issue an order for involuntary outpatient placement. The court order shall be for a period of up to 6 months. The order must specify the nature and



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185 extent of the patient's mental illness. The order of the court
186 and the treatment plan shall be made part of the patient's
187 clinical record. The service provider shall discharge a patient
188 from involuntary outpatient placement when the order expires or
189 any time the patient no longer meets the criteria for
190 involuntary placement. Upon discharge, the service provider
191 shall send a certificate of discharge to the court.

192 2. The court may not order the department or the service
193 provider to provide services if the program or service is not
194 available in the patient's local community, if there is no space
195 available in the program or service for the patient, or if
196 funding is not available for the program or service. A copy of
197 the order must be sent to the Agency for Health Care
198 Administration by the service provider within 1 working day
199 after it is received from the court. After the placement order
200 is issued, the service provider and the patient may modify
201 provisions of the treatment plan. For any material modification
202 of the treatment plan to which the patient or the patient's
203 guardian advocate, if appointed, does agree, the service
204 provider shall send notice of the modification to the court. Any
205 material modifications of the treatment plan which are contested
206 by the patient or the patient's guardian advocate, if appointed,
207 must be approved or disapproved by the court consistent with
208 subsection (3) ~~(2)~~.

209 3. If, in the clinical judgment of a physician, the patient
210 has failed or has refused to comply with the treatment ordered
211 by the court, and, in the clinical judgment of the physician,
212 efforts were made to solicit compliance and the patient may meet
213 the criteria for involuntary examination, a person may be



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brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement pursuant to s. 394.467, the patient must be discharged from the receiving facility. The involuntary outpatient placement order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient placement or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if appointed, does agree, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if appointed, must be approved or disapproved by the court consistent with subsection (3) ~~(2)~~.

(8) ~~(7)~~ PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT PLACEMENT.—

(a)1. If the person continues to meet the criteria for involuntary outpatient placement, the service provider shall, before the expiration of the period during which the treatment is ordered for the person, file in the ~~circuit~~ court that issued the order for involuntary outpatient treatment a petition for continued involuntary outpatient placement.

2. The existing involuntary outpatient placement order remains in effect until disposition on the petition for continued involuntary outpatient placement.

3. A certificate shall be attached to the petition which



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includes a statement from the person's physician or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was involuntarily placed, and an individualized plan of continued treatment.

4. The service provider shall develop the individualized plan of continued treatment in consultation with the patient or the patient's guardian advocate, if appointed. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued treatment to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or the public defender.

(c) Hearings on petitions for continued involuntary outpatient placement shall be before the ~~circuit~~ court that issued the order for involuntary outpatient treatment. The court may appoint a master to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph shall be in accordance with subsection (7) ~~(6)~~, except that the time period included in paragraph (2) (e) ~~(1) (e)~~ is not applicable in determining the appropriateness of additional periods of involuntary outpatient placement.

Section 5. Paragraph (d) of subsection (2) of section 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(2) INVOLUNTARY ADMISSION.—

(d) The written notice of the filing of the petition for involuntary placement of an individual being held must contain the following:

1. Notice that the petition for:



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a. Involuntary inpatient treatment pursuant to s. 394.467
has been filed with the circuit court in the county in which the
individual is hospitalized and the address of such court; or

b. Involuntary outpatient treatment pursuant to s. 394.4655
has been filed with the criminal county court, as defined in s.
394.4655(1), or the circuit court, as applicable, in the county
in which the individual is hospitalized and the address of such
court.

2. Notice that the office of the public defender has been
appointed to represent the individual in the proceeding, if the
individual is not otherwise represented by counsel.

3. The date, time, and place of the hearing and the name of
each examining expert and every other person expected to testify
in support of continued detention.

4. Notice that the individual, the individual's guardian,
guardian advocate, health care surrogate or proxy, or
representative, or the administrator may apply for a change of
venue for the convenience of the parties or witnesses or because
of the condition of the individual.

5. Notice that the individual is entitled to an independent
expert examination and, if the individual cannot afford such an
examination, that the court will provide for one.

Section 6. Paragraphs (g) and (i) of subsection (2) of
section 394.463, Florida Statutes, are amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(g) A person for whom an involuntary examination has been
initiated who is being evaluated or treated at a hospital for an
emergency medical condition specified in s. 395.002 must be



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examined by a receiving facility within 72 hours. The 72-hour period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient placement pursuant to s. 394.4655(2) ~~394.4655(1)~~ or involuntary inpatient placement pursuant to s. 394.467(1), the patient may be offered voluntary placement, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary inpatient placement or involuntary outpatient placement must be entered into the patient's clinical record. Nothing in this paragraph is intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital prior to stabilization, provided the requirements of s. 395.1041(3)(c) have been met.

(i) Within the 72-hour examination period or, if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;

2. The patient shall be released, subject to the provisions of subparagraph 1., for voluntary outpatient treatment;



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3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient shall be admitted as a voluntary patient; or

4. A petition for involuntary placement shall be filed in the circuit court ~~if when outpatient or~~ inpatient treatment is deemed necessary or with the criminal county court, as defined in s. 394.4655(1), as applicable. ~~If When~~ inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. 394.4655(4)(a) ~~394.4655(3)(a)~~. A petition for involuntary inpatient placement shall be filed by the facility administrator.

Section 7. Subsection (34) of section 394.455, Florida Statutes, is amended to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(34) "Involuntary examination" means an examination performed under s. 394.463 to determine if an individual qualifies for involuntary inpatient treatment under s. 394.467(1) or involuntary outpatient treatment under s. 394.4655(2) ~~394.4655(1)~~.

Section 8. Subsection (3) of section 394.4615, Florida Statutes, is amended to read:

394.4615 Clinical records; confidentiality.—

(3) Information from the clinical record may be released in the following circumstances:



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(a) When a patient has declared an intention to harm other persons. When such declaration has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.

(b) When the administrator of the facility or secretary of the department deems release to a qualified researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.

For the purpose of determining whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan pursuant to s. 394.4655, the clinical record may be released to the state attorney, the public defender or the patient's private legal counsel, the court, and to the appropriate mental health professionals, including the service provider identified in s. 394.4655(7)(b)2. ~~394.4655(6)(b)2.~~, in accordance with state and federal law.

Section 9. Section 394.47891, Florida Statutes, is amended to read:

394.47891 Military veterans and servicemembers court programs.—The chief judge of each judicial circuit may establish a Military Veterans and Servicemembers Court Program under which veterans, as defined in s. 1.01, including veterans who were discharged or released under a general discharge, and servicemembers, as defined in s. 250.01, who are charged or



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convicted of a criminal offense and who suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem can be sentenced in accordance with chapter 921 in a manner that appropriately addresses the severity of the mental illness, traumatic brain injury, substance abuse disorder, or psychological problem through services tailored to the individual needs of the participant. Entry into any Military Veterans and Servicemembers Court Program must be based upon the sentencing court's assessment of the defendant's criminal history, military service, substance abuse treatment needs, mental health treatment needs, amenability to the services of the program, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program.

Section 10. Section 394.47892, Florida Statutes, is created to read:

394.47892 Mental health court programs.—

(1) Each county may fund a mental health court program under which a defendant in the justice system assessed with a mental illness shall be processed in such a manner as to appropriately address the severity of the identified mental illness through treatment services tailored to the individual needs of the participant. The Legislature intends to encourage the department, the Department of Corrections, the Department of Juvenile Justice, the Department of Health, the Department of Law Enforcement, the Department of Education, and other such agencies, local governments, law enforcement agencies, interested public or private entities, and individuals to support the creation and establishment of problem-solving court



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programs. Participation in a mental health court program does not relieve a public or private agency of its responsibility for a child or an adult, but enables such agency to better meet the child's or adult's needs through shared responsibility and resources.

(2) Mental health court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, postadjudicatory mental health court programs as provided in ss. 948.01 and 948.06, and review of the status of compliance or noncompliance of sentenced defendants through a mental health court program.

(3) Entry into a pretrial mental health court program is voluntary.

(4) (a) Entry into a postadjudicatory mental health court program as a condition of probation or community control pursuant to s. 948.01 or s. 948.06 must be based upon the sentencing court's assessment of the defendant's criminal history, mental health screening outcome, amenability to the services of the program, and total sentence points; the recommendation of the state attorney and the victim, if any; and the defendant's agreement to enter the program.

(b) A defendant who is sentenced to a postadjudicatory mental health court program and who, while a mental health court program participant, is the subject of a violation of probation or community control under s. 948.06 shall have the violation of probation or community control heard by the judge presiding over the postadjudicatory mental health court program. After a hearing on or admission of the violation, the judge shall dispose of any such violation as he or she deems appropriate if



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the resulting sentence or conditions are lawful.

(5) (a) Contingent upon an annual appropriation by the Legislature, the state courts system shall establish, at a minimum, one coordinator position in each mental health court program to coordinate the responsibilities of the participating agencies and service providers. Each coordinator shall provide direct support to the mental health court program by providing coordination between the multidisciplinary team and the judiciary, providing case management, monitoring compliance of the participants in the mental health court program with court requirements, and managing the collection of data for program evaluation and accountability.

(b) Each mental health court program shall collect sufficient client-level data and programmatic information for purposes of program evaluation. Client-level data includes primary offenses that resulted in the mental health court program referral or sentence, treatment compliance, completion status and reasons for failure to complete, offenses committed during treatment and the sanctions imposed, frequency of court appearances, and units of service. Programmatic information includes referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources. The programmatic information and aggregate data on the number of mental health court program admissions and terminations by type of termination shall be reported annually by each mental health court program to the Office of the State Courts Administrator.

(6) If a county chooses to fund a mental health court program, the county must secure funding from sources other than



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the state for those costs not otherwise assumed by the state pursuant to s. 29.004. However, this subsection does not preclude counties from using funds for treatment and other services provided through state executive branch agencies. Counties may provide, by interlocal agreement, for the collective funding of these programs.

(7) The chief judge of each judicial circuit may appoint an advisory committee for the mental health court program. The committee shall be composed of the chief judge, or his or her designee, who shall serve as chair; the judge or judges of the mental health court program, if not otherwise designated by the chief judge as his or her designee; the state attorney, or his or her designee; the public defender, or his or her designee; the mental health court program coordinator or coordinators; community representatives; treatment representatives; and any other persons who the chair deems appropriate.

Section 11. Paragraph (a) of subsection (2) of section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(a) Review any records available to determine if the potential buyer or transferee:

1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;

3. Has had adjudication of guilt withheld or imposition of



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sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred; or

4. Has been adjudicated mentally defective or has been committed to a mental institution by a court or as provided in sub-sub-subparagraph b.(II), and as a result is prohibited by state or federal law from purchasing a firearm.

a. As used in this subparagraph, "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.

b. As used in this subparagraph, "committed to a mental institution" means:

(I) Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a



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voluntary admission to a mental institution; or

(II) Notwithstanding sub-sub-subparagraph (I), voluntary admission to a mental institution for outpatient or inpatient treatment of a person who had an involuntary examination under s. 394.463, where each of the following conditions have been met:

(A) An examining physician found that the person is an imminent danger to himself or herself or others.

(B) The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed under s. 394.463(2)(i)4., or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition.

(C) Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and written notice that as a result of such finding, he or she may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06 and the person acknowledged such notice in writing, in substantially the following form:

"I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, a petition will be filed in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court



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hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

(D) A judge or a magistrate has, pursuant to sub-sub-subparagraph c.(II), reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department.

c. In order to check for these conditions, the department shall compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

(I) Except as provided in sub-sub-subparagraph (II), clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports shall be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias or former name, the sex, and the date of birth of the subject.

(II) For persons committed to a mental institution pursuant to sub-sub-subparagraph b.(II), within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgment must be filed by the administrator of the receiving or treatment facility, as defined in s. 394.455, with the clerk of the court



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for the county in which the involuntary examination under s. 394.463 occurred. No fee shall be charged for the filing under this sub-sub-subparagraph. The clerk must present the records to a judge or magistrate within 24 hours after receipt of the records. A judge or magistrate is required and has the lawful authority to review the records ex parte and, if the judge or magistrate determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, to order that the record be submitted to the department. If a judge or magistrate orders the submittal of the record to the department, the record must be submitted to the department within 24 hours.

d. A person who has been adjudicated mentally defective or committed to a mental institution, as those terms are defined in this paragraph, may petition the ~~circuit~~ court that made the adjudication or commitment, or the court that ordered that the record be submitted to the department pursuant to sub-sub-subparagraph c.(II), for relief from the firearm disabilities imposed by such adjudication or commitment. A copy of the petition shall be served on the state attorney for the county in which the person was adjudicated or committed. The state attorney may object to and present evidence relevant to the relief sought by the petition. The hearing on the petition may be open or closed as the petitioner may choose. The petitioner may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings



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of fact and conclusions of law on the issues before it and issue a final order. The court shall grant the relief requested in the petition if the court finds, based on the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability, and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order. The review shall be conducted de novo. Relief from a firearm disability granted under this sub-subparagraph has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or commitment to a mental institution from which relief is granted.

e. Upon receipt of proper notice of relief from firearm disabilities granted under sub-subparagraph d., the department shall delete any mental health record of the person granted relief from the automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

f. The department is authorized to disclose data collected pursuant to this subparagraph to agencies of the Federal



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Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is also authorized to disclose this data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license pursuant to s. 790.06(10). When a potential buyer or transferee appeals a nonapproval based on these records, the clerks of court and mental institutions shall, upon request by the department, provide information to help determine whether the potential buyer or transferee is the same person as the subject of the record. Photographs and any other data that could confirm or negate identity must be made available to the department for such purposes, notwithstanding any other provision of state law to the contrary. Any such information that is made confidential or exempt from disclosure by law shall retain such confidential or exempt status when transferred to the department.

Section 12. Paragraph (a) of subsection (5) of section 910.035, Florida Statutes, is amended to read:

910.035 Transfer from county for plea, sentence, or participation in a problem-solving court.—

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

(a) For purposes of this subsection, the term "problem-solving court" means a drug court pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a military veterans' and servicemembers' court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; ~~or~~ a mental health court program pursuant to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s.



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948.16; or a delinquency pretrial intervention court program pursuant to s. 985.345.

Section 13. Section 916.185, Florida Statutes, is created to read:

916.185 Forensic Hospital Diversion Pilot Program.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that many jail inmates who have serious mental illnesses and who are committed to state forensic mental health treatment facilities for restoration of competency to proceed could be served more effectively and at less cost in community-based alternative programs. The Legislature further finds that many people who have serious mental illnesses and who have been discharged from state forensic mental health treatment facilities could avoid returning to the criminal justice and forensic mental health systems if they received specialized treatment in the community. Therefore, it is the intent of the Legislature to create the Forensic Hospital Diversion Pilot Program to serve offenders who have mental illnesses or co-occurring mental illnesses and substance use disorders and who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities.

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

(a) "Best practices" means treatment services that incorporate the most effective and acceptable interventions available in the care and treatment of offenders who are diagnosed as having mental illnesses or co-occurring mental illnesses and substance use disorders.

(b) "Community forensic system" means the community mental



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health and substance use forensic treatment system, including the comprehensive set of services and supports provided to offenders involved in or at risk of becoming involved in the criminal justice system.

(c) "Evidence-based practices" means interventions and strategies that, based on the best available empirical research, demonstrate effective and efficient outcomes in the care and treatment of offenders who are diagnosed as having mental illnesses or co-occurring mental illnesses and substance use disorders.

(3) CREATION.—There is authorized a Forensic Hospital Diversion Pilot Program to provide competency-restoration and community-reintegration services in either a locked residential treatment facility when appropriate or a community-based facility based on considerations of public safety, the needs of the individual, and available resources.

(a) The department may implement a Forensic Hospital Diversion Pilot Program modeled after the Miami-Dade Forensic Alternative Center, taking into account local needs and resources in Duval County, in conjunction with the Fourth Judicial Circuit in Duval County; in Broward County, in conjunction with the Seventeenth Judicial Circuit in Broward County; and in Miami-Dade County, in conjunction with the Eleventh Judicial Circuit in Miami-Dade County.

(b) If the department elects to create and implement the program, the department shall include a comprehensive continuum of care and services that use evidence-based practices and best practices to treat offenders who have mental health and co-occurring substance use disorders.



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(c) The department and the corresponding judicial circuits may implement this section if existing resources are available to do so on a recurring basis. The department may request budget amendments pursuant to chapter 216 to realign funds between mental health services and community substance abuse and mental health services in order to implement this pilot program.

(4) ELIGIBILITY.—Participation in the Forensic Hospital Diversion Pilot Program is limited to offenders who:

(a) Are 18 years of age or older.

(b) Are charged with a felony of the second degree or a felony of the third degree.

(c) Do not have a significant history of violent criminal offenses.

(d) Are adjudicated incompetent to proceed to trial or not guilty by reason of insanity pursuant to this part.

(e) Meet public safety and treatment criteria established by the department for placement in a community setting.

(f) Otherwise would be admitted to a state mental health treatment facility.

(5) TRAINING.—The Legislature encourages the Florida Supreme Court, in consultation and cooperation with the Florida Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts, to develop educational training for judges in the pilot program areas which focuses on the community forensic system.

(6) RULEMAKING.—The department may adopt rules to administer this section.

Section 14. Subsections (6) through (13) of section 948.001, Florida Statutes, are renumbered as subsections (7)



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through (14), respectively, and a new subsection (6) is added to that section, to read:

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

(6) "Mental health probation" means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans. Mental health probation shall be supervised by officers with restricted caseloads who are sensitive to the unique needs of individuals with mental health disorders, and who will work in tandem with community mental health case managers assigned to the defendant. Caseloads of such officers should be restricted to a maximum of 50 cases per officer in order to ensure an adequate level of staffing and supervision.

Section 15. Subsection (8) is added to section 948.01, Florida Statutes, to read:

948.01 When court may place defendant on probation or into community control.—

(8) (a) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2016, the sentencing court may place the defendant into a postadjudicatory mental health court program if the offense is a nonviolent felony, the defendant is amenable to mental health treatment, including taking prescribed medications, and the defendant is otherwise qualified under s. 394.47892(4). The satisfactory completion of the program must be a condition of the defendant's probation or community control. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under



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chapter 810 or any other felony offense that is not a forcible
felony as defined in s. 776.08. Defendants charged with
resisting an officer with violence under s. 843.01, battery on a
law enforcement officer under s. 784.07, or aggravated assault
may participate in the mental health court program if the court
so orders after the victim is given his or her right to provide
testimony or written statement to the court as provided in s.
921.143.

(b) The defendant must be fully advised of the purpose of
the mental health court program and the defendant must agree to
enter the program. The original sentencing court shall
relinquish jurisdiction of the defendant's case to the
postadjudicatory mental health court program until the defendant
is no longer active in the program, the case is returned to the
sentencing court due to the defendant's termination from the
program for failure to comply with the terms thereof, or the
defendant's sentence is completed.

(c) The Department of Corrections may establish designated
and trained mental health probation officers to support
individuals under supervision of the mental health court
program.

Section 16. Paragraph (j) is added to subsection (2) of
section 948.06, Florida Statutes, to read:

948.06 Violation of probation or community control;
revocation; modification; continuance; failure to pay
restitution or cost of supervision.—

(2)

(j)1. Notwithstanding s. 921.0024 and effective for
offenses committed on or after July 1, 2016, the court may order



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the offender to successfully complete a postadjudicatory mental health court program under s. 394.47892 or a military veterans and servicemembers court program under s. 394.47891 if:

a. The court finds or the offender admits that the offender has violated his or her community control or probation;

b. The underlying offense is a nonviolent felony. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08. Offenders charged with resisting an officer with violence under s. 843.01, battery on a law enforcement officer under s. 784.07, or aggravated assault may participate in the mental health court program if the court so orders after the victim is given his or her right to provide testimony or written statement to the court as provided in s. 921.143;

c. The court determines that the offender is amenable to the services of a postadjudicatory mental health court program, including taking prescribed medications, or a military veterans and servicemembers court program;

d. The court explains the purpose of the program to the offender and the offender agrees to participate; and

e. The offender is otherwise qualified to participate in a postadjudicatory mental health court program under s. 394.47892(4) or a military veterans and servicemembers court program under s. 394.47891.

2. After the court orders the modification of community control or probation, the original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory mental health court program until the offender



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is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the program for failure to comply with the terms thereof, or the offender's sentence is completed.

Section 17. Subsection (8) of section 948.08, Florida Statutes, is renumbered as subsection (9), paragraph (a) of subsection (7) is amended, and a new subsection (8) is added to that section, to read:

948.08 Pretrial intervention program.—

(7)(a) Notwithstanding any provision of this section, a person who is charged with a felony, other than a felony listed in s. 948.06(8)(c), and identified as a veteran, as defined in s. 1.01, including a veteran who is discharged or released under a general discharge, or servicemember, as defined in s. 250.01, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, is eligible for voluntary admission into a pretrial veterans' treatment intervention program approved by the chief judge of the circuit, upon motion of either party or the court's own motion, except:

1. If a defendant was previously offered admission to a pretrial veterans' treatment intervention program at any time before trial and the defendant rejected that offer on the record, the court may deny the defendant's admission to such a program.

2. If a defendant previously entered a court-ordered veterans' treatment program, the court may deny the defendant's admission into the pretrial veterans' treatment program.

(8)(a) Notwithstanding any provision of this section, a



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defendant is eligible for voluntary admission into a pretrial
mental health court program established pursuant to s. 394.47892
and approved by the chief judge of the circuit for a period to
be determined by the court, based on the clinical needs of the
defendant, upon motion of either party or the court's own motion
if:

1. The defendant is identified as having a mental illness;

2. The defendant has not been convicted of a felony; and

3. The defendant is charged with:

a. A nonviolent felony that includes a third degree felony
violation of chapter 810 or any other felony offense that is not
a forcible felony as defined in s. 776.08;

b. Resisting an officer with violence under s. 843.01, if
the law enforcement officer and state attorney consent to the
defendant's participation;

c. Battery on a law enforcement officer under s. 784.07, if
the law enforcement officer and state attorney consent to the
defendant's participation; or

d. Aggravated assault, if the victim and state attorney
consent to the defendant's participation.

(b) At the end of the pretrial intervention period, the
court shall consider the recommendation of the program
administrator and the recommendation of the state attorney as to
disposition of the pending charges. The court shall determine,
by written finding, whether the defendant has successfully
completed the pretrial intervention program. If the court finds
that the defendant has not successfully completed the pretrial
intervention program, the court may order the person to continue
in education and treatment, which may include a mental health



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program offered by a licensed service provider, as defined in s. 394.455, or order that the charges revert to normal channels for prosecution. The court shall dismiss the charges upon a finding that the defendant has successfully completed the pretrial intervention program.

Section 18. Subsections (3) and (4) of section 948.16, Florida Statutes, are renumbered as subsections (4) and (5), respectively, paragraph (a) of subsection (2) and present subsection (4) of that section are amended, and a new subsection (3) is added to that section, to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program; misdemeanor pretrial mental health court program.—

(2) (a) A veteran, as defined in s. 1.01, including a veteran who is discharged or released under a general discharge, or servicemember, as defined in s. 250.01, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, and who is charged with a misdemeanor is eligible for voluntary admission into a misdemeanor pretrial veterans' treatment intervention program approved by the chief judge of the circuit, for a period based on the program's requirements and the treatment plan for the offender, upon motion of either party or the court's own motion. However, the court may deny the defendant admission into a misdemeanor pretrial veterans' treatment intervention program if the defendant has previously entered a court-ordered veterans' treatment program.

(3) A defendant who is charged with a misdemeanor and



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identified as having a mental illness is eligible for voluntary admission into a misdemeanor pretrial mental health court program established pursuant to s. 394.47892, approved by the chief judge of the circuit, for a period to be determined by the court, based on the clinical needs of the defendant, upon motion of either party or the court's own motion.

(5)~~(4)~~ Any public or private entity providing a pretrial substance abuse education and treatment program or mental health court program under this section shall contract with the county or appropriate governmental entity. The terms of the contract shall include, but not be limited to, the requirements established for private entities under s. 948.15(3). This requirement does not apply to services provided by the Department of Veterans' Affairs or the United States Department of Veterans Affairs.

Section 19. Section 948.21, Florida Statutes, is amended to read:

948.21 Condition of probation or community control; military servicemembers and veterans.—

(1) Effective for a probationer or community controllee whose crime is ~~was~~ committed on or after July 1, 2012, and who is a veteran, as defined in s. 1.01, or servicemember, as defined in s. 250.01, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, the court may, in addition to any other conditions imposed, impose a condition requiring the probationer or community controllee to participate in a treatment program capable of treating the probationer's ~~probationer~~ or community controllee's mental illness, traumatic



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brain injury, substance abuse disorder, or psychological problem.

(2) Effective for a probationer or community controllee whose crime is committed on or after July 1, 2016, and who is a veteran, as defined in s. 1.01, including a veteran who is discharged or released under a general discharge, or servicemember, as defined in s. 250.01, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, the court may, in addition to any other conditions imposed, impose a condition requiring the probationer or community controllee to participate in a treatment program capable of treating the probationer or community controllee's mental illness, traumatic brain injury, substance abuse disorder, or psychological problem.

(3) The court shall give preference to treatment programs for which the probationer or community controllee is eligible through the United States Department of Veterans Affairs or the Florida Department of Veterans' Affairs. The Department of Corrections is not required to spend state funds to implement this section.

Section 20. Section 985.345, Florida Statutes, is amended to read:

985.345 Delinquency pretrial intervention programs
~~program.~~—

(1)(a) Notwithstanding any other provision of law to the contrary, a child who is charged with a felony of the second or third degree for purchase or possession of a controlled substance under chapter 893; tampering with evidence;



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solicitation for purchase of a controlled substance; or obtaining a prescription by fraud, and who has not previously been adjudicated for a felony, is eligible for voluntary admission into a delinquency pretrial substance abuse education and treatment intervention program, including a treatment-based drug court program established pursuant to s. 397.334, approved by the chief judge or alternative sanctions coordinator of the circuit to the extent that funded programs are available, for a period based on the program requirements and the treatment services that are suitable for the offender, upon motion of either party or the court's own motion. However, if the state attorney believes that the facts and circumstances of the case suggest the child's involvement in the dealing and selling of controlled substances, the court shall hold a preadmission hearing. If the state attorney establishes by a preponderance of the evidence at such hearing that the child was involved in the dealing and selling of controlled substances, the court shall deny the child's admission into a delinquency pretrial intervention program.

(b)(2) While enrolled in a delinquency pretrial intervention program authorized by this subsection ~~section~~, a child is subject to a coordinated strategy developed by a drug court team under s. 397.334(4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the child for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or serving a period of secure detention under this chapter. The coordinated strategy must be



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provided in writing to the child before the child agrees to enter the pretrial treatment-based drug court program or other pretrial intervention program. A ~~Any~~ child whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585.

(c) (3) At the end of the delinquency pretrial intervention period, the court shall consider the recommendation of the state attorney and the program administrator as to disposition of the pending charges. The court shall determine, by written finding, whether the child has successfully completed the delinquency pretrial intervention program. Notwithstanding the coordinated strategy developed by a drug court team pursuant to s. 397.334(4), if the court finds that the child has not successfully completed the delinquency pretrial intervention program, the court may order the child to continue in an education, treatment, or drug testing ~~urine monitoring~~ program if resources and funding are available or order that the charges revert to normal channels for prosecution. The court may dismiss the charges upon a finding that the child has successfully completed the delinquency pretrial intervention program.

(2) (a) Notwithstanding any other law, a child who has been identified as having a mental illness and who has not been previously adjudicated for a felony is eligible for voluntary admission into a delinquency pretrial mental health court intervention program, established pursuant to s. 394.47892, approved by the chief judge of the circuit, for a period to be determined by the court, based on the clinical needs of the



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child, upon motion of either party or the court's own motion if
the child is charged with:

1. A misdemeanor;

2. A nonviolent felony, as defined in s. 948.01(8);

3. Resisting an officer with violence under s. 843.01, if
the law enforcement officer and state attorney consent to the
child's participation;

4. Battery on a law enforcement officer under 784.07, if
the law enforcement officer and state attorney consent to the
child's participation; or

5. Aggravated assault, if the victim and state attorney
consent to the child's participation.

(b) At the end of the delinquency pretrial mental health
court intervention period, the court shall consider the
recommendation of the state attorney and the program
administrator as to disposition of the pending charges. The
court shall determine, by written finding, whether the child has
successfully completed the program. If the court finds that the
child has not successfully completed the program, the court may
order the child to continue in an education, treatment, or
monitoring program if resources and funding are available or
order that the charges revert to normal channels for
prosecution. The court may dismiss the charges upon a finding
that the child has successfully completed the program.

(c) A child whose charges are dismissed after successful
completion of the delinquency pretrial mental health court
intervention program, if otherwise eligible, may have his or her
criminal history record for such charges expunged under s.
943.0585.



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(3)~~(4)~~ Any entity, whether public or private, providing pretrial substance abuse education, treatment intervention, drug testing, or a mental health court ~~and a urine monitoring program~~ under this section must contract with the county or appropriate governmental entity, and the terms of the contract must include, but need not be limited to, the requirements established for private entities under s. 948.15(3). It is the intent of the Legislature that public or private entities providing substance abuse education and treatment intervention programs involve the active participation of parents, schools, churches, businesses, law enforcement agencies, and the department or its contract providers.

Section 21. For the purpose of incorporating the amendments made by this act to sections 948.01 and 948.06, Florida Statutes, in references thereto, paragraph (a) of subsection (3) and subsection (5) of section 397.334, Florida Statutes, are reenacted to read:

397.334 Treatment-based drug court programs.—

(3) (a) Entry into any postadjudicatory treatment-based drug court program as a condition of probation or community control pursuant to s. 948.01, s. 948.06, or s. 948.20 must be based upon the sentencing court's assessment of the defendant's criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program.

(5) Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, treatment-based drug court programs



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authorized in chapter 39, postadjudicatory programs as provided in ss. 948.01, 948.06, and 948.20, and review of the status of compliance or noncompliance of sentenced offenders through a treatment-based drug court program. While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy developed by a drug court team under subsection (4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of secure detention under chapter 985 if a child or a period of incarceration within the time limits established for contempt of court if an adult. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.

Section 22. For the purpose of incorporating the amendment made by this act to section 948.06, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 948.012, Florida Statutes, is reenacted to read:

948.012 Split sentence of probation or community control and imprisonment.—

(2) The court may also impose a split sentence whereby the defendant is sentenced to a term of probation which may be followed by a period of incarceration or, with respect to a felony, into community control, as follows:

(b) If the offender does not meet the terms and conditions



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of probation or community control, the court may revoke, modify, or continue the probation or community control as provided in s. 948.06. If the probation or community control is revoked, the court may impose any sentence that it could have imposed at the time the offender was placed on probation or community control. The court may not provide credit for time served for any portion of a probation or community control term toward a subsequent term of probation or community control. However, the court may not impose a subsequent term of probation or community control which, when combined with any amount of time served on preceding terms of probation or community control for offenses pending before the court for sentencing, would exceed the maximum penalty allowable as provided in s. 775.082. Such term of incarceration shall be served under applicable law or county ordinance governing service of sentences in state or county jurisdiction. This paragraph does not prohibit any other sanction provided by law.

Section 23. This act shall take effect July 1, 2016.

===== 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 mental health services in the
criminal justice system; amending ss. 39.001, 39.507,
and 39.521, F.S.; conforming provisions to changes
made by the act; amending s. 394.4655, F.S.; defining
the terms "court" and "criminal county court" for



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1171 purposes of involuntary outpatient placement;
1172 conforming provisions to changes made by act; amending
1173 ss. 394.4599 and 394.463, F.S.; conforming provisions
1174 to changes made by act; conforming cross-references;
1175 amending s. 394.455 and 394.4615, F.S.; conforming
1176 cross-references; amending s. 394.47891, F.S.;
1177 expanding eligibility for military veterans and
1178 servicemembers court programs; creating s. 394.47892,
1179 F.S.; authorizing the creation of treatment-based
1180 mental health court programs; providing for
1181 eligibility; providing program requirements; providing
1182 for an advisory committee; amending s. 790.065, F.S.;
1183 conforming a provision to changes made by this act;
1184 amending s. 910.035, F.S.; revising the definition of
1185 the term "problem-solving court"; creating s. 916.185,
1186 F.S.; creating the Forensic Hospital Diversion Pilot
1187 Program; providing legislative findings and intent;
1188 providing definitions; authorizing the Department of
1189 Children and Families to implement a Forensic Hospital
1190 Diversion Pilot Program in specified judicial
1191 circuits; authorizing the department to request
1192 specified budget amendments; providing for eligibility
1193 for the program; providing legislative intent
1194 concerning training; authorizing rulemaking; amending
1195 s. 948.001, F.S.; defining the term "mental health
1196 probation"; amending ss. 948.01 and 948.06, F.S.;
1197 authorizing courts to order certain offenders on
1198 probation or community control to postadjudicatory
1199 mental health court programs; amending s. 948.08,



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1200 F.S.; expanding eligibility requirements for certain
1201 pretrial intervention programs; providing for
1202 voluntary admission into a pretrial mental health
1203 court program; creating s. 916.185, F.S.; creating the
1204 Forensic Hospital Diversion Pilot Program; providing
1205 legislative findings and intent; providing
1206 definitions; requiring the Department of Children and
1207 Families to implement a Forensic Hospital Diversion
1208 Pilot Program in specified judicial circuits;
1209 providing for eligibility for the program; providing
1210 legislative intent concerning training; authorizing
1211 rulemaking; amending ss. 948.01 and 948.06, F.S.;
1212 providing for courts to order certain defendants on
1213 probation or community control to postadjudicatory
1214 mental health court programs; amending s. 948.08,
1215 F.S.; expanding eligibility requirements for certain
1216 pretrial intervention programs; providing for
1217 voluntary admission into pretrial mental health court
1218 program; amending s. 948.16, F.S.; expanding
1219 eligibility of veterans for a misdemeanor pretrial
1220 veterans' treatment intervention program; providing
1221 eligibility of misdemeanor defendants for a
1222 misdemeanor pretrial mental health court program;
1223 amending s. 948.21, F.S.; expanding veterans'
1224 eligibility for participating in treatment programs
1225 while on court-ordered probation or community control;
1226 amending s. 985.345, F.S.; authorizing delinquency
1227 pretrial mental health court intervention programs for
1228 certain juvenile offenders; providing for disposition



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1229 of pending charges after completion of the program;
1230 authorizing expunction of specified criminal history
1231 records after successful completion of the program;
1232 reenacting s. 397.334(3)(a) and (5), F.S., relating to
1233 treatment-based drug court programs, to incorporate
1234 the amendments made by the act to ss. 948.01 and
1235 948.06, F.S., in references thereto; reenacting s.
1236 948.012(2)(b), F.S., relating to split sentence
1237 probation or community control and imprisonment, to
1238 incorporate the amendment made by the act to s.
1239 948.06, F.S., in a reference thereto; providing an
1240 effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
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Appropriations Subcommittee on Health and Human Services
(Grimsley) recommended the following:

Senate Amendment to Amendment (525910)

Delete lines 729 - 730
and insert:
County; in Miami-Dade County, in conjunction with the Eleventh
Judicial Circuit in Miami-Dade County; and in Okaloosa County,
in conjunction with the First Judicial Circuit in Okaloosa
County.

By the Committee on Judiciary; and Senators Diaz de la Portilla
and Hutson

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1 A bill to be entitled
2 An act relating to mental health services in the
3 criminal justice system; amending s. 394.47891, F.S.;
4 expanding eligibility for military veterans and
5 servicemembers court programs; creating s. 394.47892,
6 F.S.; authorizing the funding for mental health court
7 programs; providing legislative intent; providing for
8 eligibility; providing program requirements; providing
9 requirements for mental health court programs and
10 counties that participate in the program; requiring
11 the state courts system to establish at least one
12 coordinator position in each mental health court
13 program, contingent upon an annual appropriation;
14 annually report to the Office of the State Courts
15 Administrator specified data, programmatic
16 information, and aggregate data; providing for an
17 advisory committee; amending s. 910.035, F.S.;
18 revising the definition of the term "problem-solving
19 court"; amending s. 916.106, F.S.; redefining the term
20 "court" to include county courts in certain
21 circumstances; amending s. 916.17, F.S.; authorizing a
22 county court to order the conditional release of a
23 defendant for the provision of outpatient care and
24 treatment; creating s. 916.185, F.S.; creating the
25 Forensic Hospital Diversion Pilot Program; providing
26 legislative findings and intent; providing
27 definitions; authorizing the Department of Children
28 and Families to implement a Forensic Hospital
29 Diversion Pilot Program in specified judicial

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30 circuits; providing for funding; providing for
31 eligibility for the program; providing legislative
32 intent concerning training; authorizing rulemaking;
33 amending s. 948.001, F.S.; defining the term "mental
34 health probation"; amending ss. 948.01 and 948.06,
35 F.S.; authorizing courts to order certain offenders on
36 probation or community control to postadjudicatory
37 mental health court programs; amending s. 948.08,
38 F.S.; expanding eligibility requirements for certain
39 pretrial intervention programs; providing for
40 voluntary admission into a pretrial mental health
41 court program; amending s. 948.16, F.S.; expanding
42 eligibility of veterans for a misdemeanor pretrial
43 veterans' treatment intervention program; providing
44 eligibility of misdemeanor defendants for a
45 misdemeanor pretrial mental health court program;
46 amending s. 948.21, F.S.; expanding veterans'
47 eligibility for participating in treatment programs
48 while on court-ordered probation or community control;
49 amending s. 985.345, F.S.; authorizing pretrial mental
50 health court programs for certain juvenile offenders;
51 providing for disposition of pending charges after
52 completion of the pretrial intervention program;
53 expanding the services for which an entity must enter
54 into a contract with specified governmental entities
55 if such entity provides such services; reenacting ss.
56 394.658(1)(a) and 916.16(2), F.S., relating to
57 diverting individuals from judicial commitment to
58 community-based service programs and the jurisdiction

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of committing courts, respectively, to incorporate the amendment made to s. 916.17, F.S., in references thereto; reenacting s. 397.334(3)(a) and (5), F.S., relating to treatment-based drug court programs, to incorporate the amendments made to ss. 948.01 and 948.06, F.S., in references thereto; reenacting s. 948.012(2)(b), F.S., relating to split sentence probation or community control and imprisonment, to incorporate the amendment made to s. 948.06, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 394.47891, Florida Statutes, is amended to read:

394.47891 Military veterans and servicemembers court programs.—The chief judge of each judicial circuit may establish a Military Veterans and Servicemembers Court Program under which veterans, as defined in s. 1.01, including veterans who were discharged or released under a general discharge, and servicemembers, as defined in s. 250.01, who are charged or convicted of a criminal offense and who suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem can be sentenced in accordance with chapter 921 in a manner that appropriately addresses the severity of the mental illness, traumatic brain injury, substance abuse disorder, or psychological problem through services tailored to the individual needs of the participant. Entry into any Military Veterans and Servicemembers

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Court Program must be based upon the sentencing court's assessment of the defendant's criminal history, military service, substance abuse treatment needs, mental health treatment needs, amenability to the services of the program, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program.

Section 2. Section 394.47892, Florida Statutes, is created to read:

394.47892 Mental health court programs.—

(1) Each county may fund a mental health court program under which a defendant in the justice system assessed with a mental illness shall be processed in such a manner as to appropriately address the severity of the identified mental illness through treatment services tailored to the individual needs of the participant. The Legislature intends to encourage the department, the Department of Corrections, the Department of Juvenile Justice, the Department of Health, the Department of Law Enforcement, the Department of Education, and other such agencies, local governments, law enforcement agencies, interested public or private entities, and individuals to support the creation and establishment of problem-solving court programs. Participation in a mental health court program does not relieve a public or private agency of its responsibility for a child or an adult, but enables such agency to better meet the child's or adult's needs through shared responsibility and resources.

(2) Mental health court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, postadjudicatory mental health court programs as

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provided in ss. 948.01 and 948.06, and review of the status of compliance or noncompliance of sentenced defendants through a mental health court program.

(3) Entry into a pretrial mental health court program is voluntary.

(4) (a) Entry into a postadjudicatory mental health court program as a condition of probation or community control pursuant to s. 948.01 or s. 948.06 must be based upon the sentencing court's assessment of the defendant's criminal history, mental health screening outcome, amenability to the services of the program, and total sentence points; the recommendation of the state attorney and the victim, if any; and the defendant's agreement to enter the program.

(b) A defendant who is sentenced to a postadjudicatory mental health court program and who, while a mental health court program participant, is the subject of a violation of probation or community control under s. 948.06 shall have the violation of probation or community control heard by the judge presiding over the postadjudicatory mental health court program. After a hearing on or admission of the violation, the judge shall dispose of any such violation as he or she deems appropriate if the resulting sentence or conditions are lawful.

(5) (a) Contingent upon an annual appropriation by the Legislature, the state courts system shall establish, at a minimum, one coordinator position in each mental health court program to coordinate the responsibilities of the participating agencies and service providers. Each coordinator shall provide direct support to the mental health court program by providing coordination between the multidisciplinary team and the

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judiciary, providing case management, monitoring compliance of the participants in the mental health court program with court requirements, and managing the collection of data for program evaluation and accountability.

(b) Each mental health court program shall collect sufficient client-level data and programmatic information for purposes of program evaluation. Client-level data include primary offenses that resulted in the mental health court program referral or sentence, treatment compliance, completion status and reasons for failure to complete, offenses committed during treatment and the sanctions imposed, frequency of court appearances, and units of service. Programmatic information includes referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources. The programmatic information and aggregate data on the number of mental health court program admissions and terminations by type of termination shall be reported annually by each mental health court program to the Office of the State Courts Administrator.

(6) If a county chooses to fund a mental health court program, the county must secure funding from sources other than the state for those costs not otherwise assumed by the state pursuant to s. 29.004. However, this subsection does not preclude counties from using funds for treatment and other services provided through state executive branch agencies. Counties may provide, by interlocal agreement, for the collective funding of these programs.

(7) The chief judge of each judicial circuit may appoint an advisory committee for the mental health court program. The

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committee shall be composed of the chief judge, or his or her designee, who shall serve as chair; the judge of the mental health court program, if not otherwise designated by the chief judge as his or her designee; the state attorney, or his or her designee; the public defender, or his or her designee; the mental health court program coordinators; community representatives; treatment representatives; and any other persons who the chair deems appropriate.

Section 3. Paragraph (a) of subsection (5) of section 910.035, Florida Statutes, is amended to read:

910.035 Transfer from county for plea, sentence, or participation in a problem-solving court.—

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

(a) For purposes of this subsection, the term "problem-solving court" means a drug court pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a military veterans' and servicemembers' court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; ~~or~~ a mental health court program pursuant to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16; or a delinquency pretrial intervention court program pursuant to s. 985.345.

Section 4. Subsection (5) of section 916.106, Florida Statutes, is amended to read:

916.106 Definitions.—For the purposes of this chapter, the term:

(5) "Court" means the circuit court and includes a county court ordering the conditional release of a defendant as provided in s. 916.17.

Section 5. Subsection (1) of section 916.17, Florida

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Statutes, is amended to read:

916.17 Conditional release.—

(1) Except for an inmate currently serving a prison sentence, the committing court may order a conditional release of any defendant in lieu of an involuntary commitment to a facility pursuant to s. 916.13 or s. 916.15 based upon an approved plan for providing appropriate outpatient care and treatment. A county court may order the conditional release of a defendant for purposes of the provision of outpatient care and treatment only. Upon a recommendation that outpatient treatment of the defendant is appropriate, a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court, with copies to all parties. Such a plan may also be submitted by the defendant and filed with the court with copies to all parties. The plan shall include:

(a) Special provisions for residential care or adequate supervision of the defendant.

(b) Provisions for outpatient mental health services.

(c) If appropriate, recommendations for auxiliary services such as vocational training, educational services, or special medical care.

In its order of conditional release, the court shall specify the conditions of release based upon the release plan and shall direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of the release and progress in treatment, with copies to all parties.

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233 Section 6. Section 916.185, Florida Statutes, is created to
234 read:

235 916.185 Forensic Hospital Diversion Pilot Program.—

236 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
237 that many jail inmates who have serious mental illnesses and who
238 are committed to state forensic mental health treatment
239 facilities for restoration of competency to proceed could be
240 served more effectively and at less cost in community-based
241 alternative programs. The Legislature further finds that many
242 people who have serious mental illnesses and who have been
243 discharged from state forensic mental health treatment
244 facilities could avoid returning to the criminal justice and
245 forensic mental health systems if they received specialized
246 treatment in the community. Therefore, it is the intent of the
247 Legislature to create the Forensic Hospital Diversion Pilot
248 Program to serve offenders who have mental illnesses or co-
249 occurring mental illnesses and substance use disorders and who
250 are involved in or at risk of entering state forensic mental
251 health treatment facilities, prisons, jails, or state civil
252 mental health treatment facilities.

253 (2) DEFINITIONS.—As used in this section, the term:

254 (a) "Best practices" means treatment services that
255 incorporate the most effective and acceptable interventions
256 available in the care and treatment of offenders who are
257 diagnosed as having mental illnesses or co-occurring mental
258 illnesses and substance use disorders.

259 (b) "Community forensic system" means the community mental
260 health and substance use forensic treatment system, including
261 the comprehensive set of services and supports provided to

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262 offenders involved in or at risk of becoming involved in the
263 criminal justice system.

264 (c) "Evidence-based practices" means interventions and
265 strategies that, based on the best available empirical research,
266 demonstrate effective and efficient outcomes in the care and
267 treatment of offenders who are diagnosed as having mental
268 illnesses or co-occurring mental illnesses and substance use
269 disorders.

270 (3) CREATION.—There is created a Forensic Hospital
271 Diversion Pilot Program to provide competency-restoration and
272 community-reintegration services in either a locked residential
273 treatment facility when appropriate or a community-based
274 facility based on considerations of public safety, the needs of
275 the individual, and available resources.

276 (a) The department may implement a Forensic Hospital
277 Diversion Pilot Program modeled after the Miami-Dade Forensic
278 Alternative Center, taking into account local needs and
279 resources, in Escambia County, in conjunction with the First
280 Judicial Circuit in Escambia County; in Hillsborough County, in
281 conjunction with the Thirteenth Judicial Circuit in Hillsborough
282 County; and in Miami-Dade County, in conjunction with the
283 Eleventh Judicial Circuit in Miami-Dade County.

284 (b) If the department elects to create and implement the
285 program, the department shall include a comprehensive continuum
286 of care and services that use evidence-based practices and best
287 practices to treat offenders who have mental health and co-
288 occurring substance use disorders.

289 (c) The department and the corresponding judicial circuits
290 may implement this section if existing resources are available

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to do so on a recurring basis. The department may request budget amendments pursuant to chapter 216 to realign funds between mental health services and community substance abuse and mental health services in order to implement this pilot program.

(4) ELIGIBILITY.—Participation in the Forensic Hospital Diversion Pilot Program is limited to offenders who:

(a) Are 18 years of age or older.

(b) Are charged with a felony of the second degree or a felony of the third degree.

(c) Do not have a significant history of violent criminal offenses.

(d) Are adjudicated incompetent to proceed to trial or not guilty by reason of insanity pursuant to this part.

(e) Meet public safety and treatment criteria established by the department for placement in a community setting.

(f) Otherwise would be admitted to a state mental health treatment facility.

(5) TRAINING.—The Legislature encourages the Florida Supreme Court, in consultation and cooperation with the Florida Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts, to develop educational training for judges in the pilot program areas which focuses on the community forensic system.

(6) RULEMAKING.—The department may adopt rules to administer this section.

Section 7. Present subsections (6) through (13) of section 948.001, Florida Statutes, are renumbered as subsections (7) through (14), respectively, and new subsection (6) is added to that section, to read:

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

(6) "Mental health probation" means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on the underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans. Mental health probation shall be supervised by officers with restricted caseloads who are sensitized to the unique needs of individuals with mental health disorders, and who will work in tandem with community mental health case managers assigned to the defendant. Caseloads of such officers should be restricted to a maximum of 50 cases per officer in order to ensure an adequate level of staffing and supervision.

Section 8. Subsection (8) is added to section 948.01, Florida Statutes, to read:

948.01 When court may place defendant on probation or into community control.—

(8) (a) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2016, the sentencing court may place the defendant into a postadjudicatory mental health court program if the offense is a nonviolent felony, the defendant is amenable to mental health treatment, including taking prescribed medications, and the defendant is otherwise qualified under s. 394.47892(4). The satisfactory completion of the program must be a condition of the defendant's probation or community control. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08. Defendants charged with

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resisting an officer with violence under s. 843.01, battery on a law enforcement officer under s. 784.07, or aggravated assault may participate in the mental health court program if the court so orders after the victim is given his or her right to provide testimony or written statement to the court as provided in s. 921.143.

(b) The defendant must be fully advised of the purpose of the mental health court program and the defendant must agree to enter the program. The original sentencing court shall relinquish jurisdiction of the defendant's case to the postadjudicatory mental health court program until the defendant is no longer active in the program, the case is returned to the sentencing court due to the defendant's termination from the program for failure to comply with the terms thereof, or the defendant's sentence is completed.

(c) The Department of Corrections may establish designated and trained mental health probation officers to support individuals under supervision of the mental health court program.

Section 9. Paragraph (j) is added to subsection (2) of section 948.06, Florida Statutes, to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(2)

(j)1. Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2016, the court may order the offender to successfully complete a postadjudicatory mental health court program under s. 394.47892 or a military veterans

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and servicemembers court program under s. 394.47891 if:

a. The court finds or the offender admits that the offender has violated his or her community control or probation;

b. The underlying offense is a nonviolent felony. As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08. Offenders charged with resisting an officer with violence under s. 843.01, battery on a law enforcement officer under s. 784.07, or aggravated assault may participate in the mental health court program if the court so orders after the victim is given his or her right to provide testimony or written statement to the court as provided in s. 921.143;

c. The court determines that the offender is amenable to the services of a postadjudicatory mental health court program, including taking prescribed medications, or a military veterans and servicemembers court program;

d. The court explains the purpose of the program to the offender and the offender agrees to participate; and

e. The offender is otherwise qualified to participate in a postadjudicatory mental health court program under s. 394.47892(4) or a military veterans and servicemembers court program under s. 394.47891.

2. After the court orders the modification of community control or probation, the original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory mental health court program until the offender is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the

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program for failure to comply with the terms thereof, or the offender's sentence is completed.

Section 10. Present subsection (8) of section 948.08, Florida Statutes, is renumbered as subsection (9), paragraph (a) of subsection (7) is amended, and a new subsection (8) is added to that section, to read:

948.08 Pretrial intervention program.—

(7) (a) Notwithstanding any provision of this section, a person who is charged with a felony, other than a felony listed in s. 948.06(8)(c), and identified as a veteran, as defined in s. 1.01, including a veteran who was discharged or released under a general discharge, or servicemember, as defined in s. 250.01, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, is eligible for voluntary admission into a pretrial veterans' treatment intervention program approved by the chief judge of the circuit, upon motion of either party or the court's own motion, except:

1. If a defendant was previously offered admission to a pretrial veterans' treatment intervention program at any time before trial and the defendant rejected that offer on the record, the court may deny the defendant's admission to such a program.

2. If a defendant previously entered a court-ordered veterans' treatment program, the court may deny the defendant's admission into the pretrial veterans' treatment program.

(8) (a) Notwithstanding any provision of this section, a defendant is eligible for voluntary admission into a pretrial mental health court program established pursuant to s. 394.47892

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and approved by the chief judge of the circuit for a period to be determined by the court, based on the clinical needs of the defendant, upon motion of either party or the court's own motion if:

1. The defendant is identified as having a mental illness;
2. The defendant has not been convicted of a felony; and
3. The defendant is charged with:

a. A nonviolent felony that includes a third degree felony violation of chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08;

b. Resisting an officer with violence under s. 843.01, if the law enforcement officer and state attorney consent to the defendant's participation;

c. Battery on a law enforcement officer under s. 784.07, if the law enforcement officer and state attorney consent to the defendant's participation; or

d. Aggravated assault, if the victim and state attorney consent to the defendant's participation.

(b) At the end of the pretrial intervention period, the court shall consider the recommendation of the program administrator and the recommendation of the state attorney as to disposition of the pending charges. The court shall determine, by written finding, whether the defendant has successfully completed the pretrial intervention program. If the court finds that the defendant has not successfully completed the pretrial intervention program, the court may order the person to continue in education and treatment, which may include a mental health program offered by a licensed service provider, as defined in s. 394.455, or order that the charges revert to normal channels for

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prosecution. The court shall dismiss the charges upon a finding that the defendant has successfully completed the pretrial intervention program.

Section 11. Present subsections (3) and (4) of section 948.16, Florida Statutes, are renumbered as subsections (4) and (5), respectively, paragraph (a) of subsection (2) and present subsection (4) of that section are amended, and a new subsection (3) is added to that section, to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program; misdemeanor pretrial mental health court program.—

(2) (a) A veteran, as defined in s. 1.01, including a veteran who was discharged or released under a general discharge, or servicemember, as defined in s. 250.01, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, and who is charged with a misdemeanor is eligible for voluntary admission into a misdemeanor pretrial veterans' treatment intervention program approved by the chief judge of the circuit, for a period based on the program's requirements and the treatment plan for the offender, upon motion of either party or the court's own motion. However, the court may deny the defendant admission into a misdemeanor pretrial veterans' treatment intervention program if the defendant has previously entered a court-ordered veterans' treatment program.

(3) A defendant who is charged with a misdemeanor and identified as having a mental illness is eligible for voluntary

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admission into a misdemeanor pretrial mental health court program established pursuant to s. 394.47892, approved by the chief judge of the circuit, for a period to be determined by the court, based on the clinical needs of the defendant, upon motion of either party or the court's own motion.

(5) ~~(4)~~ Any public or private entity providing a pretrial substance abuse education and treatment program or mental health court program under this section shall contract with the county or appropriate governmental entity. The terms of the contract shall include, but not be limited to, the requirements established for private entities under s. 948.15(3). This requirement does not apply to services provided by the Department of Veterans' Affairs or the United States Department of Veterans Affairs.

Section 12. Section 948.21, Florida Statutes, is amended to read:

948.21 Condition of probation or community control; military servicemembers and veterans.—

(1) Effective for a probationer or community controllee whose crime is ~~was~~ committed on or after July 1, 2012, and who is a veteran, as defined in s. 1.01, or servicemember, as defined in s. 250.01, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, the court may, in addition to any other conditions imposed, impose a condition requiring the probationer or community controllee to participate in a treatment program capable of treating the probationer's ~~probationer~~ or community controllee's mental illness, traumatic brain injury, substance abuse disorder, or psychological

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problem.

(2) Effective for a probationer or community controllee whose crime is committed on or after July 1, 2016, and who is a veteran, as defined in s. 1.01, including a veteran who was discharged or released under a general discharge, or servicemember, as defined in s. 250.01, who suffers from a military service-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, the court may, in addition to any other conditions imposed, impose a condition requiring the probationer or community controllee to participate in a treatment program capable of treating the probationer's or community controllee's mental illness, traumatic brain injury, substance abuse disorder, or psychological problem.

(3) The court shall give preference to treatment programs for which the probationer or community controllee is eligible through the United States Department of Veterans Affairs or the Florida Department of Veterans' Affairs. The Department of Corrections is not required to spend state funds to implement this section.

Section 13. Present subsection (4) of section 985.345, Florida Statutes, is renumbered as subsection (7) and amended, and new subsections (4), (5), and (6) are added to that section, to read:

985.345 Delinquency pretrial intervention program.—

(4) Notwithstanding any other provision of law, a child who has been identified as having a mental illness and who has not been previously adjudicated for a felony is eligible for voluntary admission into a delinquency pretrial mental health

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court program, established pursuant to s. 394.47892, approved by the chief judge of the circuit, for a period to be determined by the court, based on the clinical needs of the child, upon motion of either party or the court's own motion if the child is charged with:

(a) A misdemeanor;

(b) A nonviolent felony; for purposes of this paragraph, the term "nonviolent felony" means a third degree felony violation of chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08;

(c) Resisting an officer with violence under s. 843.01, if the law enforcement officer and state attorney consent to the child's participation;

(d) Battery on a law enforcement officer under s. 784.07, if the law enforcement officer and state attorney consent to the child's participation; or

(e) Aggravated assault, if the victim and state attorney consent to the child's participation.

(5) At the end of the delinquency pretrial intervention period, the court shall consider the recommendation of the state attorney and the program administrator as to disposition of the pending charges. The court shall determine, by written finding, whether the child has successfully completed the delinquency pretrial intervention program. If the court finds that the child has not successfully completed the delinquency pretrial intervention program, the court may order the child to continue in an education, treatment, or monitoring program if resources and funding are available or order that the charges revert to normal channels for prosecution. The court may dismiss the

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charges upon a finding that the child has successfully completed the delinquency pretrial intervention program.

(6) A child whose charges are dismissed after successful completion of the mental health court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585.

~~(7)~~(4) Any entity, whether public or private, providing pretrial substance abuse education, treatment intervention, drug testing, or ~~and a mental health court urine monitoring~~ program under this section must contract with the county or appropriate governmental entity, and the terms of the contract must include, but need not be limited to, the requirements established for private entities under s. 948.15(3). It is the intent of the Legislature that public or private entities providing substance abuse education and treatment intervention programs involve the active participation of parents, schools, churches, businesses, law enforcement agencies, and the department or its contract providers.

Section 14. For the purpose of incorporating the amendment made by this act to section 916.17, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 394.658, Florida Statutes, is reenacted to read:

394.658 Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program requirements.—

(1) The Criminal Justice, Mental Health, and Substance Abuse Statewide Grant Review Committee, in collaboration with the Department of Children and Families, the Department of Corrections, the Department of Juvenile Justice, the Department of Elderly Affairs, and the Office of the State Courts

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Administrator, shall establish criteria to be used to review submitted applications and to select the county that will be awarded a 1-year planning grant or a 3-year implementation or expansion grant. A planning, implementation, or expansion grant may not be awarded unless the application of the county meets the established criteria.

(a) The application criteria for a 1-year planning grant must include a requirement that the applicant county or counties have a strategic plan to initiate systemic change to identify and treat individuals who have a mental illness, substance abuse disorder, or co-occurring mental health and substance abuse disorders who are in, or at risk of entering, the criminal or juvenile justice systems. The 1-year planning grant must be used to develop effective collaboration efforts among participants in affected governmental agencies, including the criminal, juvenile, and civil justice systems, mental health and substance abuse treatment service providers, transportation programs, and housing assistance programs. The collaboration efforts shall be the basis for developing a problem-solving model and strategic plan for treating adults and juveniles who are in, or at risk of entering, the criminal or juvenile justice system and doing so at the earliest point of contact, taking into consideration public safety. The planning grant shall include strategies to divert individuals from judicial commitment to community-based service programs offered by the Department of Children and Families in accordance with ss. 916.13 and 916.17.

Section 15. For the purpose of incorporating the amendment made by this act to section 916.17, Florida Statutes, in a reference thereto, subsection (2) of section 916.16, Florida

590-01331-16

2016604c1

Statutes, is reenacted to read:

916.16 Jurisdiction of committing court.—

(2) The committing court shall retain jurisdiction in the case of any defendant placed on conditional release pursuant to s. 916.17. Such defendant may not be released from the conditions of release except by order of the committing court.

Section 16. For the purpose of incorporating the amendments made by this act to sections 948.01 and 948.06, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) and subsection (5) of section 397.334, Florida Statutes, are reenacted to read:

397.334 Treatment-based drug court programs.—

(3) (a) Entry into any postadjudicatory treatment-based drug court program as a condition of probation or community control pursuant to s. 948.01, s. 948.06, or s. 948.20 must be based upon the sentencing court's assessment of the defendant's criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program.

(5) Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs as provided in ss. 948.01, 948.06, and 948.20, and review of the status of compliance or noncompliance of sentenced offenders through a treatment-based drug court program. While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy developed by a drug court team under

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subsection (4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of secure detention under chapter 985 if a child or a period of incarceration within the time limits established for contempt of court if an adult. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.

Section 17. For the purpose of incorporating the amendment made by this act to section 948.06, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 948.012, Florida Statutes, is reenacted to read:

948.012 Split sentence of probation or community control and imprisonment.—

(2) The court may also impose a split sentence whereby the defendant is sentenced to a term of probation which may be followed by a period of incarceration or, with respect to a felony, into community control, as follows:

(b) If the offender does not meet the terms and conditions of probation or community control, the court may revoke, modify, or continue the probation or community control as provided in s. 948.06. If the probation or community control is revoked, the court may impose any sentence that it could have imposed at the time the offender was placed on probation or community control. The court may not provide credit for time served for any portion

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2016604c1

697 of a probation or community control term toward a subsequent
698 term of probation or community control. However, the court may
699 not impose a subsequent term of probation or community control
700 which, when combined with any amount of time served on preceding
701 terms of probation or community control for offenses pending
702 before the court for sentencing, would exceed the maximum
703 penalty allowable as provided in s. 775.082. Such term of
704 incarceration shall be served under applicable law or county
705 ordinance governing service of sentences in state or county
706 jurisdiction. This paragraph does not prohibit any other
707 sanction provided by law.
708 Section 18. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL

15th District

January 27, 2016

The Honorable Rene Garcia
Senate Appropriations Subcommittee
On Health and Human Services, Chair
310 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Garcia:

I respectfully request that SB 1722, related to *Termination of Pregnancies*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in dark ink that reads "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Kelli Stargel
State Senator, District 15

Cc: Scarlet Pigott/ Staff Director
Robin Jackson/ AA

REPLY TO:

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- ☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

Feb. 17, 2016

Meeting Date

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

1722
Bill Number (if applicable)

Topic Termination of Pregnancies

466546
Amendment Barcode (if applicable)

Name Amber Kelly

Job Title Legislative Affairs

Address 4853 S. Orange Ave
Street
Orlando FL 32806
City State Zip

Phone (407) 418-0250
Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Family Action

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16
Meeting Date

1722
Bill Number (if applicable)

466546
Amendment Barcode (if applicable)

Topic Termination of Pregnancies

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av Phone _____
Street

Tallahassee FL 32301 Email _____
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-16
Meeting Date

~~1722~~
Bill Number (if applicable)

Topic Termination of pregnancy
Name Barbara DeWade

1722
Amendment Barcode (if applicable)

Job Title MS

Address 625 E. Bernard St

Phone 222-3969

Jellahussee FL 32308

Email barbaradewade10

City State Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL NOW

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 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-17-16

Meeting Date

SB 1722

Bill Number (if applicable)

Topic Termination of pregnancies

Amendment Barcode (if applicable)

Name Deborah Maurer

Job Title Realtor

Address 29246 Beauclaire Dr

Street

Phone 352-742-1987

Tavares FL 32778

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic Health & Human Serv.

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo Fla. 33723

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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APPEARANCE RECORD

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

2/17/16
Meeting Date

SB1722
Bill Number (if applicable)

Topic SB 1722

Amendment Barcode (if applicable)

Name Jana McKinnon

Job Title _____

Address _____

Phone _____

Street Tallahassee FL 32303
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Myself

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB1722
Bill Number (if applicable)

Meeting Date _____

Topic SB 1722

Amendment Barcode (if applicable) _____

Name Sarah Bardolph

Job Title Executive Assistant, Monticello Opera House

Address 641 Muriel Ct

Phone _____

Street

Tallahassee

FL

32303

City

State

Zip

Email _____

Speaking: ☐ For ☒ ~~Against~~ ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing myself

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB1722
Bill Number (if applicable)

Meeting Date _____

Topic SB1722

Amendment Barcode (if applicable) _____

Name ~~XXXXXXXXXX~~ Roxanne Finch

Job Title _____

Address _____

Phone _____

Street Tallahassee FL 32310
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Myself

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)

SB1722

Bill Number (if applicable)

Meeting Date

Topic SB1722

Amendment Barcode (if applicable)

Name Maria Guattieri

Job Title _____

Address _____

Phone _____

Street

Tallahassee

FL

32313

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Myself

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic abortion & healthy adolescents Act.

Amendment Barcode (if applicable)

Name x Juanita ALVAREZ

Job Title Activiste For Organization Planned Parenthood & national Latina Institute

Address x905 SW 1st, #508

Phone 786 970 2457

Street

Miami, Florida 33130

City

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing National Latina Institute & Planned Parenthood Org.

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)

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic passionate oppose bill that hinder care but does Amendment Barcode (if applicable)
Nothing to cure it

Name X Evelyn Pugh Richard

Job Title Retired Registered Nurse

Address X 9740 SW 16th CT

Street

Pembroke Pines, FL 33025

City

State

Zip

Phone 786-252-0914

Email pughe66@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing National Latina Institute for Reproductive Health & Planned Parenthood

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB 1722
Bill Number (if applicable)

Meeting Date _____

Topic SB 1722

Amendment Barcode (if applicable) _____

Name Alex Bradbury

Job Title Anonymous Editor

Address 2040 Warwick St

Phone _____

Street

Tyngsboro

City

FL

State

32310

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Myself

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)

2/17/16
Meeting Date

1722
Bill Number (if applicable)

Topic Abortion Bill

Amendment Barcode (if applicable)

Name X Norma Aquino

Job Title _____

Address X 349 NW 31st Miami
Street
Miami FL 33129
City State Zip

Phone _____

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/17/16

Meeting Date

SB 1722

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name ☒ Cherilyn Bean

Job Title _____

Address ☒ 2777 SW Archer road

Phone _____

Street

Gainesville

FL

32608

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name ☒ Laura Hernandez

Job Title _____

Address ☒ 8430 S.W. 8 St #301B

Phone _____

Street

Miami

City

FL

State

33144

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name ☒ Handee Gomez

Job Title _____

Address ☒ 11450 NW 19th ave

Phone 305 244 2823

Street

Miami-Dade Florida 33167

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Dian Alarcon

Job Title FL Field Coordinator

Address 8330 Biscayne Blvd

Phone _____

Street

Miami

FL

33138

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Nat. Latina Inst. for Repro. Health

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

SB1722

Bill Number (if applicable)

Topic Abortion

Amendment Barcode (if applicable)

Name PATRICIA GONZALEZ

Job Title _____

Address 2758 W 69TH TER

Street

Phone 305-915-2913

HIACLEAH

City

FL

State

33016

Zip

Email PATTYGONZALEZ75@NETMARK.COM

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Carlos Gonzalez

Job Title _____

Address 2758 W 69 Ter.

Phone _____

Street

Hialeah

FL

33016

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gabriel Garcia-Vera

Job Title FL Field Coordinator

Address 8330 Biscayne Blvd

Phone _____

Street

City

Miami

FL

State

33138

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Nat. Latina Inst. for Reproductive Health

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

SB 1722

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

x Carolina Cuevas

Job Title

Address

x 680 S.W 7th Miami FL 33130

Phone

Street

Email

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name ☒ Emilani Alarcón

Job Title _____

Address ☒ PO Box 370907
Street

Phone _____

City State Zip
33181

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name ☒ Medina Maria Patricia

Job Title _____

Address ☒ 2034 SW 3rd #2

Phone _____

Street

Miami

FL

State

33129

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-16

Meeting Date

1722

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Concerned Women for America of FL

Job Title (Cathy Fruit)

Address 3313 Dartmouth Drive
Street

Phone _____

Tallahassee FL 32312
City State Zip

Email cm.fruit@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.17.16

Meeting Date

1722

Bill Number (if applicable)

Topic TERMINATION OF PREGNANCIES

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 341644

Phone 813.264.2977

Street

TAMPA FL 33694

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Missy Wesolowski

Job Title Director of Governmental Affairs

Address 2300 W Florida Mango Rd

Phone 561-472-9942

Street

West Palm Beach FL 33409

City

State

Zip

Email Missy@ppsenfl.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Alliance of Planned Parenthood Affiliates

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-17-16

Meeting Date

SB 1722

Bill Number (if applicable)

Topic

SB 1722

Amendment Barcode (if applicable)

Name

Lissette Vazquez

Job Title

Address

2922 SW 16 St

Street

Miami

City

FL

State

33145

Zip

Phone

786 270 7908

Email

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

for my self

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Hannah Wilford

Job Title _____

Address 630 Hillcrest St APT 10

Phone 407 481 5460

Street

City

Orlando

State

FL

Zip

32803

Email hannah@eqfl.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Kimberly Kent

Job Title _____

Address 1464 Dr. Martin Luther King Jr. Mem Rd

Street

Crawfordsville

City

FL

State

32327

Zip

Phone (850) 766-9633

Email Kimberly.kent@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

Feb. 17, 2016

Meeting Date

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

1722

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Amber Kelly

Job Title Legislative Affairs

Address 4853 S. Orange Ave

Phone (407) 418-0250

Street

Orlando

FL

32806

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Family Action

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/16

Meeting Date

SB1722

Bill Number (if applicable)

Topic SB1722

Amendment Barcode (if applicable)

Name Brenda L Smith

Job Title Retired

Address 32301
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

SB1722

Bill Number (if applicable)

Topic SB1722

Amendment Barcode (if applicable)

Name Samreena Farooqui

Job Title

Address

Street

Tallahassee

City

FL

State

32310

Zip

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

1722

Bill Number (if applicable)

Topic Termination of Pregnancies

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av
Street

Phone _____

Tallahassee
City

FL
State

32301
Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: PCS/SB 1722 (950510)

INTRODUCER: Appropriations Subcommittee on Health and Human Services and Senator Stargel

SUBJECT: Termination of Pregnancies

DATE: February 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Favorable
2.	Brown	Pigott	AHS	Recommend: Fav/CS
3.			FP	

I. Summary:

PCS/SB 1722 amends various statutes relating to the termination of pregnancies. The bill:

- Defines the terms “gestation,” “first trimester,” “second trimester,” and “third trimester;”
- Prohibits the sale and donation of fetal remains from an abortion and increases penalties for the improper disposal of fetal remains;
- Restricts state agencies, local governmental entities, and Medicaid managed care plans from contracting with, or expending funds for the benefit of, an organization that owns, operates, or is affiliated with one or more clinics that perform abortions, with some exceptions;
- Requires the Agency for Health Care Administration (AHCA) to collect certain data from medical facilities in which abortions are performed and to submit data to the federal Centers for Disease Control and Prevention (CDC);
- Requires the AHCA to:
 - Perform annual licensure inspections of abortion clinics;
 - Inspect at least 50 percent of abortion clinic records during a license inspection; and
 - Promptly investigate all credible allegations of unlicensed abortions being performed;
- Requires, in clinics that perform only first trimester abortions, that either:
 - The clinic must have a written patient transfer agreement with a hospital within reasonable proximity; or
 - All physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity of the clinic;
- Requires, in clinics that perform second trimester abortions, that all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity of the clinic, unless the clinic has a written patient transfer agreement with a hospital within reasonable proximity of the clinic which includes the transfer of the patient’s medical records held by both the clinic and the treating physician;

- Requires the AHCA to submit an annual report to the Legislature summarizing regulatory actions taken by the AHCA pursuant to its authority under ch. 390, F.S.; and
- Requires abortion referral and counseling agencies to register with the AHCA and pay a registration fee, with some exceptions.

The bill's fiscal impact is indeterminate. The bill provides that the AHCA will collect fees in an amount not to exceed the costs incurred to implement the bill, but estimates of those amounts are not available.

The bill has an effective date of July 1, 2016, except as otherwise expressly provided.

II. Present Situation:

Abortion in Florida

Under Florida law, abortion is defined as the termination of a human pregnancy with an intention other than to produce a live birth or remove a dead fetus.¹ The termination of a pregnancy must be performed by a physician² licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.³

The termination of a pregnancy may not be performed in the third trimester or if a physician determines that the fetus has achieved viability, unless there is a medical necessity. Florida law defines the third trimester to mean the weeks of pregnancy after the 24th week and defines viability to mean the state of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures.⁴ Specifically, an abortion may not be performed after viability or within the third trimester unless two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, other than a psychological condition. If a second physician is not available, one physician may certify in writing to the medical necessity for legitimate emergency medical procedures for the termination of the pregnancy.⁵

Sections 390.0111(4) and 390.01112(3), F.S., provide that if a termination of pregnancy is performed during the third trimester or during viability, the physician who performs or induces the termination of pregnancy must use that degree of professional skill, care, and diligence to preserve the life and health of the fetus, which the physician would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. However, the woman's life and health constitute an overriding and superior consideration to the concern for the life and health of the fetus when the concerns are in conflict. Such a termination of a pregnancy must be performed in a hospital.⁶

¹ Section 390.011(1), F.S.

² Section 390.0111(2), F.S.

³ Section 390.011(8), F.S.

⁴ Sections 390.011(11) and (12), F.S.

⁵ Sections 390.0111(1) and 390.01112(1), F.S.

⁶ Sections 797.03(3), F.S.

Case Law on Abortion

Federal Case Law

In 1973, the U.S. Supreme Court issued the landmark *Roe v. Wade* decision.⁷ Using the strict scrutiny standard, the Court determined that a woman's right to terminate a pregnancy is protected by a fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.⁸ Further, the Court reasoned that state regulations limiting the exercise of this right must be justified by a compelling state interest and must be narrowly drawn.⁹

In 1992, the U.S. Supreme Court ruled on the constitutionality of a Pennsylvania statute involving a 24-hour waiting period between the provision of information to a woman and the performance of an abortion. In that decision, *Planned Parenthood of Southeastern Pennsylvania v. Casey*,¹⁰ the Court upheld the statute and relaxed the standard of review in abortion cases involving adult women from "strict scrutiny" to "unduly burdensome." An undue burden exists and makes a statute invalid if the statute's purpose or effect is to place a substantial obstacle in the way of a woman seeking an abortion before the fetus is viable.¹¹ The Court held that the undue burden standard is an appropriate means of reconciling a state's interest in human life with the woman's constitutionally protected liberty to decide whether to terminate a pregnancy. The Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference. Before viability, a state's interests are not strong enough to support prohibiting an abortion or the imposition of a substantial obstacle to the woman's right to elect the procedure.¹² However, once viability occurs, a state has the power to restrict abortions if the law contains exceptions for pregnancies that endanger a woman's life or health.

Florida Law on Abortion

Florida law embraces more privacy interests and expressly extends more privacy protection to its citizens than does the U.S. Constitution. Article I, s. 23 of the State Constitution provides an express right to privacy. The Florida Supreme Court has recognized that this constitutional right to privacy "is clearly implicated in a woman's decision whether or not to continue her pregnancy."¹³ The Florida Supreme Court ruled in *In re T. W.*:¹⁴

Under Florida law, prior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must

⁷ 410 U.S. 113 (1973).

⁸ *Id.*

⁹ *Id.*

¹⁰ 505 U.S. 833 (1992).

¹¹ *Id.* at 878.

¹² *Id.* at 846.

¹³ *In re T.W.*, 551 So. 2d 1186 (Fla. 1989).

¹⁴ 551 So. 2d 1186, 1192 (Fla. 1989) (holding that a parental consent statute was unconstitutional because it intrudes on a minor's right to privacy).

substantially further important state interests... Under our Florida Constitution, the state's interest becomes compelling upon viability Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures.¹⁵

The Court concluded that, "Following viability, the state may protect its interest in the potentiality of life by regulating abortion, provided that the mother's health is not jeopardized."¹⁶

Unlike the U.S. Supreme Court, however, the Florida Supreme Court reached a different standard of review for privacy laws involving abortion. The Florida Supreme Court held that, when determining the constitutionality of a statute that impinges upon a right of privacy under the Florida Constitution, the strict scrutiny standard of review applies.¹⁷

Abortion and Related Services Funding

Currently, neither the federal government nor the state of Florida funds abortion procedures, except in limited situations.¹⁸ Federal funding for abortions, including Medicaid funding, has been restricted since 1977 with the passage of the Hyde amendment.¹⁹ The Hyde amendment restricts the federal government from spending funds or administrative expenses in connection with abortions unless the pregnancy was the result of rape or incest or if the life of the mother would be in danger if the fetus were carried to term.

However, the Hyde amendment and state law do not restrict federal or state funds from being expended for other services offered by abortion providers, such as family planning services, and Medicaid under fee-for-service arrangements may not exclude qualified health care providers because they separately provide abortion services.²⁰ This provision is often referred to as the "any willing provider" provision. However, the Florida Medicaid managed care program is exempt from the any willing provider provision.²¹

Regulation of Clinics Providing Only First Trimester Abortions vs. Regulation of Clinics Providing Second Trimester Abortions

As detailed above, the constitutionality of regulations on abortion differs for abortions performed in the first trimester and the second trimester. The effect of this difference can be seen in Florida statute and rule. Section 390.012, F.S., details numerous requirements for clinics providing second trimester abortions, but only requires that the Agency for Health Care Administration

¹⁵ *Id.* at 1193-94.

¹⁶ *Id.* at 1194.

¹⁷ *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*, 866 So. 2d 612 (Fla. 2003).

¹⁸ See ss. 627.64995, 627.66996, and 641.31099, F.S.

¹⁹ For an example of Hyde amendment language passed in a Federal appropriations act, see Pub. Law 111-8, ss. 613 and 614, March 11, 2009.

²⁰ CMCS Informational Bulletin, Cindy Mann director of the Center for Medicaid, CHIP and Survey and Certification, June 1, 2011, available at <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/6-1-11-Info-Bulletin.pdf> (last visited on January 22, 2016).

²¹ See s. 409.975, F.S., and Centers for Medicare and Medicaid Services Special Terms and Conditions Number 11-w-00206/4 Florida Medicaid Medical Assistance Program, Number 37 Freedom of Choice, p. 22, October 15, 2015.

(AHCA) rules “be comparable to rules that apply to all surgical procedures requiring approximately the same degree of skill and care” for first trimester abortions.²² The AHCA currently has no rules specific to first trimester clinics, but has issued guidelines for clinics as to which requirements must be met by clinics providing first and second trimester abortions and those providing only first trimester abortions.²³ In general, clinics providing only first trimester abortions must be licensed, inspected annually,²⁴ and must adhere to the restrictions on abortions in general²⁵ but are not required to meet specific regulations regarding clinic staffing, physical plant, equipment, medical screening, the abortion procedure, and recovery room standards.

Confusion Over the Timing of the First and Second Trimester

In recent months there has been widely publicized confusion over the definitions of first and second trimester. Currently, AHCA rule defines the “first trimester” as “the first 12 weeks of pregnancy (the first 14 completed weeks from the last normal menstrual period)” and “second trimester” as “the portion of a pregnancy following the 12th week and extending through the 24th week of gestation.”²⁶ These definitions are important due to the much more stringent regulation of clinics providing second trimester abortions.

In August of 2015, the AHCA cited several clinics associated with Planned Parenthood of Southwest and Central Florida for performing unlicensed second trimester abortions. The clinics were licensed only to provide first trimester abortions but the citation reported that several patient reports from the clinics indicated that abortions had been performed after 13 weeks of gestation.²⁷ The AHCA cited the clinics for performing abortions beyond their license.

Planned Parenthood challenged the citations, alleging that the clinics had not violated the law and that the AHCA redefined first trimester to mean 12 weeks from the last normal menstrual cycle, rather than 12 weeks from point of gestation.²⁸ The lawsuit is currently ongoing.

²² The Department of Health’s rules on office surgery (Rule 64B15-14.007, F.A.C.) regulate procedures that may be comparable to first trimester abortions. Specifically, a comparison can most closely be drawn between first trimester abortions and either level I or level II office surgery. Criteria for level I and level II office surgery are detailed in Rule 64B15-14.007(3) and (4), F.A.C., respectively. Rules for level I office surgery have no requirements for patient transfer agreements or admitting privileges. Rules for level II office surgery require either that the physician’s office have a transfer agreement with a hospital within reasonable proximity or that the physician performing the surgery have privileges at hospital within reasonable proximity.

²³ AHCA ASPEN: Regulation Set (RS), Aug. 11, 2015, available at http://ahca.myflorida.com/mchq/Current_Reg_Files/Abortion_Clinic_ST_A.pdf, (last visited Jan. 21, 2016).

²⁴ Rule 59A-9.021, F.A.C.

²⁵ General restrictions include, but are not limited to: the requirement that all abortions must be performed by a physician, the requirement to obtain informed consent before performing an abortion, requirements regarding the disposal of fetal remains, and the requirement that the physician performing the abortion notify the parent or guardian of a minor before performing such abortion. See ss. 390.0111 and 390.01114, F.S.

²⁶ Rule 59A-9.019, F.S.

²⁷ For an example see: AHCA statement of deficiencies for Planned Parenthood of Collier County, available at http://apps.ahca.myflorida.com/dm_web/DMWeb_Docs/6359763.pdf, (last visited Jan. 21, 2016).

²⁸ See <http://www.capitalnewyork.com/article/florida/2015/08/8574447/planned-parenthood-sues-says-state-trying-redefine-1st-trimester> (last visited on January 21, 2016).

Centers for Disease Control Abortion Surveillance

In 1969, the Centers for Disease Control and Prevention (CDC) began abortion surveillance in order to document the number and characteristics of women obtaining legal induced abortions. States voluntarily report abortion data to the CDC and the CDC's Division of Reproductive Health prepares surveillance reports as data becomes available.²⁹ Information reported to the CDC includes maternal age, gestational age of the fetus in weeks at the time of the abortion, race, ethnicity, method of abortion, marital status, maternal residence, the number of previous live births, and the number of previous abortions. Currently, Florida is one of six states and the District of Columbia that does not report data to the CDC.³⁰

Disposal of Fetal Remains

Currently, Florida statute and rule require that fetal remains be disposed of in a sanitary and appropriate manner in accordance with standard health practices and the laws and rules covering the disposal of biomedical waste.³¹ An abortion clinic must obtain a biomedical waste generator permit from the Department of Health (DOH), unless the clinic generates less than 25 pounds of biomedical waste per month. Also, s. 873.05, F.S., prohibits any knowing advertisement or offer to purchase or sell a human embryo for valuable consideration.³² A violation of this prohibition is a second degree felony.

If an abortion clinic fails to dispose of fetal remains properly, the clinic could be liable for penalties under both s. 381.0098, F.S., and ch. 390, F.S. Section 381.0098, F.S., states that any person or public body that violates that section or applicable rules is subject to DOH sanction as well as an administrative fine of up to \$2,500 for each day of a continuing violation. Additionally, any failure by an abortion clinic to dispose of fetal remains in accordance with DOH rule and standard health practices is a second degree misdemeanor.³³ Any failure by an owner, operator, or employee of an abortion clinic to dispose of fetal remains and tissue consistent with the disposal of other human tissue is a first degree misdemeanor and allows the AHCA to suspend, revoke, or deny the clinic's license.³⁴

Abortion Referral and Counseling Agencies

Section 390.025, F.S., defines an abortion referral and counseling agency as "any person, group, or organization, whether funded publicly or privately, that provides advice or help to persons in obtaining abortions." Such an agency is required to provide a full and detailed explanation of abortion, including the effects and alternatives to abortion, to a person seeking an abortion before making a referral or aiding the person in obtaining an abortion. If the person seeking a referral is

²⁹ CDC's Abortion Surveillance System FAQ, available at http://www.cdc.gov/reproductivehealth/Data_Stats/Abortion.htm, (last visited on January 21, 2016).

³⁰ Abortion Surveillance Report for 2012, available at http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6410a1.htm?s_cid=ss6410a1_e#tab2, (last visited on January 21, 2016).

³¹ s. 390.0111(7), F.S., and rule 59A-9.030, F.A.C. (laws and rules governing the disposal of biomedical waste are contained in s. 381.0098, F.S., and rule ch. 64E-16, F.A.C.)

³² "Valuable consideration" does not include the reasonable costs associated with the removal, storage, and transportation of human embryos.

³³ s. 390.0111(7), F.S.

³⁴ s. 390.012(7), F.S.

a minor, the agency must make a good-faith effort to furnish the required information to his or her parents or guardian. Additionally, the agency is prohibited from accepting fees, kickbacks, or other compensation in return for referring a person for an abortion. Any violation of these provisions is a misdemeanor of the first degree.

III. Effect of Proposed Changes:

The bill amends various sections of law related to the termination of pregnancies. In addition to the substantive changes detailed below, the bill also makes various technical and conforming changes.

Section 1 amends s. 390.011, F.S., to define the terms:

- “Gestation” to mean the development of a human embryo or fetus between fertilization and birth;
- “First trimester” to mean the period of time from fertilization through the end of the 11th week of gestation;
- “Second trimester” to mean the period of time from the beginning of the 12th week of gestation through the end of the 23rd week of gestation; and
- “Third trimester” to mean the period of time from the beginning of the 24th week of gestation to birth.

Section 2 amends s. 390.0111, F.S., to;

- Clarify that the disposal of fetal remains must be in accordance with s. 381.0098, F.S., and the Department of Health (DOH) rules;
- Increase the penalty for improperly disposing of fetal remains from a second degree misdemeanor to a first degree misdemeanor; and
- Restrict state agencies, local governmental entities, and Medicaid managed care plans from expending funds for the benefit of, paying funds to, or initiating or renewing a contract with any organization that owns, operates, or is affiliated with one or more clinics that are licensed under ch. 390, F.S., and perform abortions, except for the following:
 - Clinics that only perform abortions on fetuses that are the result of rape or incest or abortions that are necessary to preserve the life of the pregnant woman or to avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, other than a psychological condition;
 - Funds that must be expended to fulfill the terms of a contract entered into before July 1, 2016; and
 - Funds that must be expended as reimbursement for Medicaid services provided on a fee-for-service basis.

Section 3 amends s. 390.0112, F.S., to update the reporting requirements for abortion clinics to, beginning no later than January 1, 2017, include information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the Centers for Disease Control and Prevention (CDC). Additionally, the bill requires that the Agency for Health Care Administration (AHCA) must submit all such reported data to the CDC as requested by the CDC.

Section 4 of the bill amends s. 390.012, F.S., to:

- Require the AHCA to:
 - Perform annual license inspections of all abortion clinics;³⁵
 - When performing a licensure inspection of an abortion clinic, review at least 50 percent of patient records generated since the clinic's last license inspection;
 - Promptly investigate all credible allegations of abortions being performed at a clinic that is not licensed to perform such abortions; and
 - Beginning February 1, 2017, annually report to the Legislature on all regulatory actions taken during the prior year by the AHCA under ch. 390, F.S.;
- Require, in clinics that only perform first trimester abortions, that either:
 - The clinic must have a written patient transfer agreement with a hospital within reasonable proximity that includes the transfer of the patient's medical records; or
 - All physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity of the clinic; and
- Require, in clinics that perform abortions after the first trimester, that all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity of the clinic, unless the clinic has a written patient transfer agreement with a hospital within reasonable proximity of the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician.

Section 5 amends s. 390.014, F.S., to allow the AHCA to establish in rule a license fee that may not be more than required to pay for the costs incurred by the AHCA in administering ch. 390, F.S. Current law caps the license fee at \$500.

Section 6 amends s. 390.025, F.S., to require that, effective January 1, 2017, abortion referral and counseling agencies must be registered with the AHCA and pay a registration fee. The amount of the initial and renewal fees are to be established in rule in an amount not to exceed the costs incurred by the AHCA in administering this provision. Registrants are required to include the registration number issued by the AHCA in any advertising materials disseminated by the registrant. The AHCA may also assess costs related to investigations that result in a successful prosecution. The AHCA is granted rulemaking authority for these provisions. The following are exempt from the requirement to register:

- Facilities licensed under chs. 390, 395, 400, and 408, F.S.;
- Facilities that are exempt from the requirement to be licensed as a clinic and that refer five or fewer patients for abortions per month; and
- Health care practitioners who do not, in the course of their practice outside of a licensed facility, refer more than five patients for abortions each month.

Section 7 amends s. 873.05, F.S., to prohibit any offer to sell, purchase, donate, or transfer fetal remains obtained from an abortion other than the transportation or transfer of fetal remains for disposal pursuant to s. 381.0098, F.S., and applicable rules. Advertisements for such prohibited behaviors are also prohibited. A violation of these prohibitions is a first degree felony.

³⁵ Note: the AHCA currently performs annual inspections of abortion clinics; however, this requirement is not established in statute.

Section 8 provides that, unless otherwise expressly provided, the bill's effective date is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

It is unclear, given Florida's stricter constitutional protections against regulations of abortions in the first trimester, whether or not the changes in the bill relating to clinics providing only first trimester abortions may be successfully challenged under Florida's constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/SB 1722 may have a negative fiscal impact on clinics providing abortions due to the additional requirements established in the bill. Additionally, the bill may have a negative fiscal impact on organizations affiliated with clinics providing abortions if such organizations currently receive funds which would be restricted by the bill.

The bill will likely have a negative fiscal impact on abortion referral and counseling agencies due to the requirement to register with the Agency for Health Care Administration (AHCA) and pay a registration fee.

C. Government Sector Impact:

The AHCA will incur additional costs due to the increased time required for inspections at licensed abortion clinics and for the registration and oversight functions of abortion referral and counseling agencies. The AHCA is required to set fees at a level that will not exceed these costs, which authorizes the AHCA to collect fees sufficient to cover the costs. The estimated amounts of such costs and fees are not available at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 390.011, 390.0111, 390.0112, 390.012, 390.014, 390.025, and 873.05.

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

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

Recommended CS by Appropriations Subcommittee on Health and Human Services on February 17, 2016:

The proposed CS revises the bill's requirements for clinics that perform abortions after the first trimester of pregnancy. SB 1722 required that in such clinics, all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity to the clinic and that the clinic must have a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician. The proposed CS instead requires that in such clinics, all physicians who perform abortions in the clinic must have admitting privileges at a hospital within reasonable proximity to the clinic, unless the clinic has such a written patient transfer agreement.

B. Amendments:

None.



466546

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on Health and Human Services (Bean)
recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 181 - 183
and insert:
reasonable proximity of the clinic, unless the clinic ~~or~~ has a
written patient transfer agreement with a ~~licensed~~ hospital
within reasonable proximity of the clinic which includes the
transfer of the patient's medical records held by both the
clinic and the treating physician.

Delete lines 248 - 252.



466546

=====
===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 133 - 135

and insert:

Florida Statutes, are amended,

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

And the title is amended as follows:

Delete line 31

and insert:

reasonable proximity of the clinic; specifying for
clinics that perform or claim to perform abortions
after the first trimester of pregnancy that the rules
must require all physicians performing abortions at
the clinic to have admitting privileges at a hospital
within a reasonable proximity unless the clinic has a
transfer agreement with such a hospital and the
agreement includes certain provisions; revising

By Senator Stargel

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1 A bill to be entitled
 2 An act relating to termination of pregnancies;
 3 amending s. 390.011, F.S.; defining the term
 4 "gestation" and revising the term "third trimester";
 5 amending s. 390.0111, F.S.; revising the requirements
 6 for disposal of fetal remains; revising the criminal
 7 punishment for failure to properly dispose of fetal
 8 remains; prohibiting state agencies, local
 9 governmental entities, and Medicaid managed care plans
 10 from expending or paying funds to or initiating or
 11 renewing contracts under certain circumstances with
 12 certain organizations that perform abortions;
 13 providing exceptions; amending s. 390.0112, F.S.;
 14 requiring directors of certain hospitals and
 15 physicians' offices and licensed abortion clinics to
 16 submit monthly reports to the Agency for Health Care
 17 Administration on a specified form; prohibiting the
 18 report from including personal identifying
 19 information; requiring the agency to submit certain
 20 data to the Centers for Disease Control and Prevention
 21 on a quarterly basis; amending s. 390.012, F.S.;
 22 requiring the agency to develop and enforce rules
 23 relating to license inspections and investigations of
 24 certain clinics; requiring the agency to adopt rules
 25 that require certain clinics to have written
 26 agreements with local hospitals for certain
 27 contingencies; specifying that the rules must require
 28 physicians who perform abortions at a clinic that
 29 performs abortions in the first trimester of pregnancy
 30 to have admitting privileges at a hospital within
 31 reasonable proximity to the clinic; revising
 32 requirements for rules that prescribe minimum recovery

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

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33 room standards; revising requirements for the disposal
 34 of fetal remains; requiring the agency to submit an
 35 annual report to the Legislature; amending s. 390.014,
 36 F.S.; providing a different limitation on the amount
 37 of a fee; amending s. 390.025, F.S.; requiring certain
 38 organizations that provide abortion referral services
 39 or abortion counseling services to register with the
 40 agency, pay a specified fee, and include certain
 41 information in advertisements; requiring biennial
 42 renewal of a registration; providing exemptions from
 43 the registration requirement; requiring the agency to
 44 adopt rules; providing for the assessment of costs in
 45 certain circumstances; amending s. 873.05, F.S.;
 46 prohibiting an offer to purchase, sell, donate, or
 47 transfer fetal remains obtained from an abortion and
 48 the purchase, sale, donation, or transfer of such
 49 remains, excluding costs associated with certain
 50 transportation of remains; providing effective dates.

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

53
 54 Section 1. Present subsections (6) through (12) of section
 55 390.011, Florida Statutes, are redesignated as subsections (7)
 56 through (13), respectively, a new subsection (6) is added to
 57 that section, and present subsection (11) of that section is
 58 amended, to read:

59 390.011 Definitions.—As used in this chapter, the term:
 60 (6) "Gestation" means the development of a human embryo or
 61 fetus between fertilization and birth.

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~~(12)(11)~~ "Third Trimester" means one of the following three distinct periods of time in the duration of a pregnancy:

(a) "First trimester," which is the period of time from fertilization through the end of the 11th week of gestation.

(b) "Second trimester," which is the period of time from the beginning of the 12th week of gestation through the end of the 23rd week of gestation.

(c) "Third trimester," which is the period of time from the beginning of the 24th week of gestation through birth the weeks of pregnancy after the 24th week of pregnancy.

Section 2. Subsection (7) of section 390.0111, Florida Statutes, is amended, and subsection (15) is added to that section, to read:

390.0111 Termination of pregnancies.—

(7) FETAL REMAINS.—Fetal remains shall be disposed of in a sanitary and appropriate manner pursuant to s. 381.0098 and rules adopted thereunder and in accordance with standard health practices, as provided by rule of the Department of Health. Failure to dispose of fetal remains in accordance with this subsection ~~department rules~~ is a misdemeanor of the first ~~second~~ degree, punishable as provided in s. 775.082 or s. 775.083.

(15) USE OF PUBLIC FUNDS RESTRICTED.—A state agency, a local governmental entity, or a managed care plan providing services under part IV of chapter 409 may not expend funds for the benefit of, pay funds to, or initiate or renew a contract with an organization that owns, operates, or is affiliated with one or more clinics that are licensed under this chapter and perform abortions unless one or more of the following applies:

(a) All abortions performed by such clinics are:

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1. On fetuses that are conceived through rape or incest; or

2. Are medically necessary to preserve the life of the pregnant woman or to avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, other than a psychological condition.

(b) The funds must be expended to fulfill the terms of a contract entered into before July 1, 2016.

(c) The funds must be expended as reimbursement for Medicaid services provided on a fee-for-service basis.

Section 3. Subsection (1) of section 390.0112, Florida Statutes, is amended, present subsections (2), (3), and (4) of that section are redesignated as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to that section, to read:

390.0112 Termination of pregnancies; reporting.—

(1) The director of any medical facility in which abortions are performed, including a physician's office, any pregnancy is terminated shall submit a monthly report each month to the agency. The report may be submitted electronically, may not include personal identifying information, and must include:

(a) Until the agency begins collecting data under paragraph (e), the number of abortions performed.

(b) The reasons such abortions were performed.

(c) For each abortion, the period of gestation at the time the abortion was performed.

(d) ~~which contains the number of procedures performed, the reason for same, the period of gestation at the time such procedures were performed, and~~ The number of infants born alive or alive during or immediately after an attempted abortion.

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(e) Beginning no later than January 1, 2017, information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the Centers for Disease Control and Prevention.

(2) The agency shall ~~keep be responsible for keeping~~ such reports in a central location for the purpose of compiling and analyzing place from which statistical data and shall submit data reported pursuant to paragraph (1) (e) to the Division of Reproductive Health within the Centers for Disease Control and Prevention, as requested by the Centers for Disease Control and Prevention analysis can be made.

Section 4. Paragraph (c) of subsection (1), subsection (2), and paragraphs (c) and (f) of subsection (3) of section 390.012, Florida Statutes, are amended, present paragraphs (g) and (h) of subsection (3) are redesignated as paragraphs (h) and (i), respectively, a new paragraph (g) is added to that subsection, subsection (7) of that section is amended, and subsection (8) is added to that section, to read:

390.012 Powers of agency; rules; disposal of fetal remains.—

(1) The agency may develop and enforce rules pursuant to ss. 390.011-390.018 and part II of chapter 408 for the health, care, and treatment of persons in abortion clinics and for the safe operation of such clinics.

(c) The rules shall provide for:

1. The performance of pregnancy termination procedures only by a licensed physician.

2. The making, protection, and preservation of patient records, which shall be treated as medical records under chapter

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458. When performing a license inspection of a clinic, the agency shall inspect at least 50 percent of patient records generated since the clinic's last license inspection.

3. Annual inspections by the agency of all clinics licensed under this chapter to ensure that such clinics are in compliance with this chapter and agency rule.

4. The prompt investigation of credible allegations of abortions being performed at a clinic that is not licensed to perform such procedures.

(2) For clinics that perform abortions in the first trimester of pregnancy only, these rules ~~must~~ shall be comparable to rules that apply to all surgical procedures requiring approximately the same degree of skill and care as the performance of first trimester abortions and must require:

(a) Clinics to have a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by the clinic and the treating physician to the licensed hospital; or

(b) Physicians who perform abortions at the clinic to have admitting privileges at a hospital within reasonable proximity to the clinic.

(3) For clinics that perform or claim to perform abortions after the first trimester of pregnancy, the agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter, including the following:

(c) Rules relating to abortion clinic personnel. At a minimum, these rules shall require that:

1. The abortion clinic designate a medical director who is

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178 licensed to practice medicine in this state, and all physicians
 179 who perform abortions in the clinic have ~~who has~~ admitting
 180 privileges at a ~~licensed hospital in this state within~~
 181 reasonable proximity to the clinic ~~or has a transfer agreement~~
 182 ~~with a licensed hospital within reasonable proximity of the~~
 183 ~~elinie.~~

184 2. If a physician is not present after an abortion is
 185 performed, a registered nurse, licensed practical nurse,
 186 advanced registered nurse practitioner, or physician assistant
 187 ~~shall~~ be present and remain at the clinic to provide
 188 postoperative monitoring and care until the patient is
 189 discharged.

190 3. Surgical assistants receive training in counseling,
 191 patient advocacy, and the specific responsibilities associated
 192 with the services the surgical assistants provide.

193 4. Volunteers receive training in the specific
 194 responsibilities associated with the services the volunteers
 195 provide, including counseling and patient advocacy as provided
 196 in the rules adopted by the director for different types of
 197 volunteers based on their responsibilities.

198 (f) Rules that prescribe minimum recovery room standards.
 199 At a minimum, these rules must ~~shall~~ require that:

200 1. Postprocedure recovery rooms be ~~are~~ supervised and
 201 staffed to meet the patients' needs.

202 2. Immediate postprocedure care consist ~~consists~~ of
 203 observation in a supervised recovery room for as long as the
 204 patient's condition warrants.

205 3. ~~The clinic arranges hospitalization if any complication~~
 206 ~~beyond the medical capability of the staff occurs or is~~

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207 ~~suspected-~~

208 4. A registered nurse, licensed practical nurse, advanced
 209 registered nurse practitioner, or physician assistant who is
 210 trained in the management of the recovery area and is capable of
 211 providing basic cardiopulmonary resuscitation and related
 212 emergency procedures remain ~~remains~~ on the premises of the
 213 abortion clinic until all patients are discharged.

214 ~~4.5-~~ A physician ~~shall~~ sign the discharge order and be
 215 readily accessible and available until the last patient is
 216 discharged to facilitate the transfer of emergency cases if
 217 hospitalization of the patient or viable fetus is necessary.

218 ~~5.6-~~ A physician discuss ~~discusses~~ Rho(D) immune globulin
 219 with each patient for whom it is indicated and ensure ~~ensures~~
 220 that it is offered to the patient in the immediate postoperative
 221 period or ~~that it~~ will be available to her within 72 hours after
 222 completion of the abortion procedure. If the patient refuses the
 223 Rho(D) immune globulin, she and a witness must sign a refusal
 224 form approved by the agency which must be ~~shall be signed by the~~
 225 ~~patient and a witness and~~ included in the medical record.

226 ~~6.7-~~ Written instructions with regard to postabortion
 227 coitus, signs of possible problems, and general aftercare which
 228 are specific to the patient be ~~are~~ given to each patient. The
 229 instructions must include information ~~Each patient shall have~~
 230 ~~specific written instructions~~ regarding access to medical care
 231 for complications, including a telephone number for use in the
 232 event of a to-call-for medical emergency emergencies.

233 ~~7.8-~~ ~~There is~~ A ~~specified~~ minimum length of time be
 234 specified, by type of abortion procedure and duration of
 235 gestation, during which ~~that~~ a patient must remain ~~remains~~ in

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the recovery room ~~by type of abortion procedure and duration of gestation.~~

~~8.9-~~ The physician ~~ensure~~ ensures that, with the patient's consent, a registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant from the abortion clinic makes a good faith effort to contact the patient by telephone, ~~with the patient's consent~~, within 24 hours after surgery to assess the patient's recovery.

~~9.10-~~ Equipment and services ~~be~~ are readily accessible to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or viable fetus to the hospital.

(g) Rules that require clinics to have a written patient transfer agreement with a hospital within reasonable proximity to the clinic which includes the transfer of the patient's medical records held by both the clinic and the treating physician.

(7) If an ~~any~~ owner, operator, or employee of an abortion clinic fails to dispose of fetal remains and tissue in a sanitary manner pursuant to s. 381.0098, rules adopted thereunder, and rules adopted by the agency pursuant to this section consistent with the disposal of other human tissue in a competent professional manner, the license of such clinic may be suspended or revoked, and such person ~~commits is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Beginning February 1, 2017, and annually thereafter, the agency shall submit a report to the President of the Senate and the Speaker of the House of Representatives which summarizes

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all regulatory actions taken during the prior year by the agency under this chapter.

Section 5. Subsection (3) of section 390.014, Florida Statutes, is amended to read:

390.014 Licenses; fees.—

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this chapter and part II of chapter 408. The amount of the fee shall be established by rule and may not be more than required to pay for the costs incurred by the agency in administering this chapter less than \$70 or more than \$500.

Section 6. Effective January 1, 2017, present subsection (3) of section 390.025, Florida Statutes, is amended, and new subsections (3), (4), and (5) are added to that section, to read:

390.025 Abortion referral or counseling agencies; penalties.—

(3) An abortion referral or counseling agency, as defined in subsection (1), shall register with the Agency for Health Care Administration. To register or renew a registration an applicant must pay an initial or renewal registration fee established by rule, which must not exceed the costs incurred by the agency in administering this section. Registrants must include in any advertising materials the registration number issued by the agency and must renew their registration biennially.

(4) The following are exempt from the requirement to register pursuant to subsection (3):

(a) Facilities licensed pursuant to chapter 390, chapter

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294 395, chapter 400, or chapter 408;

295 (b) Facilities that are exempt from licensure as a clinic
 296 under s. 400.9905(4) and that refer five or fewer patients for
 297 abortions per month; and

298 (c) Health care practitioners, as defined in s. 456.001,
 299 who, in the course of their practice outside of a facility
 300 licensed pursuant to chapter 390, chapter 395, chapter 400, or
 301 chapter 408, refer five or fewer patients for abortions each
 302 month.

303 (5) The agency shall adopt rules to administer this section
 304 and part II of chapter 408.

305 (6)(3) Any person who violates the provisions of subsection
 306 (2) this section is guilty of a misdemeanor of the first degree,
 307 punishable as provided in s. 775.082 or s. 775.083. In addition
 308 to any other penalties imposed pursuant to this chapter, the
 309 Agency for Health Care Administration may assess costs related
 310 to an investigation of violations of this section which results
 311 in a successful prosecution. Such costs may not include attorney
 312 fees.

313 Section 7. Section 873.05, Florida Statutes, is amended to
 314 read:

315 873.05 Advertising, purchase, or sale, or transfer of human
 316 embryos or fetal remains prohibited.-

317 (1) A ~~No~~ person may not ~~shall~~ knowingly advertise or offer
 318 to purchase or sell, or purchase, sell, or otherwise transfer, a
 319 ~~any~~ human embryo for valuable consideration.

320 ~~(2)~~ As used in this subsection ~~section~~, the term "valuable
 321 consideration" does not include the reasonable costs associated
 322 with the removal, storage, and transportation of a human embryo.

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323 (2) A person may not advertise or offer to purchase, sell,
 324 donate, or transfer, or purchase, sell, donate, or transfer,
 325 fetal remains obtained from an abortion, as defined in s.
 326 390.011. This subsection does not prohibit the transportation or
 327 transfer of fetal remains for disposal pursuant to s. 381.0098
 328 or rules adopted thereunder.

329 (3) A person who violates ~~the provisions of~~ this section is
 330 guilty of a felony of the second degree, punishable as provided
 331 in s. 775.082, s. 775.083, or s. 775.084.

332 Section 8. Except as otherwise expressly provided in this
 333 act, this act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Rene Garcia, Chair
Appropriations Subcommittee on Health and Human Services

Subject: Committee Agenda Request

Date: February 9, 2016

I respectfully request that **Senate Bill #236**, relating to Certificate of Need for Rural Hospitals, and **Senate Bill 946**, relating to Authorized Practices of Advanced Registered Nurse Practitioners and Licensed Physician Assistants be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 21

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

SB 946

Bill Number (if applicable)

Topic Authorized Practices ARNPs - PAs

Amendment Barcode (if applicable)

Name Mike ANWAY

Job Title _____

Address _____

Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

946

~~636~~

Bill Number (if applicable)

Topic ARNP prescribing / ordering

Amendment Barcode (if applicable)

Name Alisa LaPorte

Job Title Lobbyist

Address _____

Phone _____

Street

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

waive

Representing Florida Nurses Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

946

Bill Number (if applicable)

Topic ARNP + LPA

Amendment Barcode (if applicable)

Name Laura Cantwell

Job Title ASD

Address 400 Carillon Pkwy, Suite 100

Phone 850-570-2110

Street

St. Pete

City

FL

State

33702

Zip

Email lcantwell@aarp.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

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.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

SB 946

Bill Number (if applicable)

Topic Authorized Practicing ARNPs

Amendment Barcode (if applicable)

Name Susan Langston

Job Title Vice President of Advocacy

Address 1812 Riggins Rd
Street
Tallahassee FL 32308
City State Zip

Phone (850) 671-3700
Email slangston@leadingageflorida.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Leading Age Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-16

Meeting Date

946

Bill Number (if applicable)

Topic Ordering medications

Amendment Barcode (if applicable)

Name MARTHA DeCASTRO

Job Title VP for Nursing

Address 306 E College

Phone 850 222 9800

Street

City

State

Zip

Tallahassee FL 32301

Email martha@pha.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Hosp 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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16
Meeting Date

946
Bill Number (if applicable)

Topic Ordering of Medications

Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Lobbyist

Address 119 E. Park Ave
Street

Phone 766 5795

Tallahassee FL 32301
City State Zip

Email corinnemixon@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Mental Health Counselors Associations

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

946

Bill Number (if applicable)

Topic

ARNP

Amendment Barcode (if applicable)

Name

Tam Parker

Job Title

Director of Reimbursement

Address

307 W Park Ave

Phone 224-3907

Street

Tallahassee FL 32301

Email tparker@FHCA.ORG

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida Health Care Association

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/2016
Meeting Date

946
Bill Number (if applicable)

Topic Authorized Practice of APRN's & PA's

Amendment Barcode (if applicable)

Name Chris Floyd

Job Title Consultant

Address 101 E College Ave.

Phone 813-624-5117

Tallahassee FL 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Assoc. of Nurse Practitioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/2016
Meeting Date

946
Bill Number (if applicable)

Topic Authorized Practices of APRN's & PA's

Amendment Barcode (if applicable)

Name Stan Whitaker

Job Title NP

Address 101 E. College Ave
Street

Phone _____

Jallaherree FL 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Assoc. of Nurse Practitioners

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 946

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Authorized Practices of Advanced Registered Nurse Practitioners and Licensed Physician Assistants

DATE: February 16, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Fav/CS
2.	Brown	Pigott	AHS	Recommend: Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 946 authorizes an advanced registered nurse practitioners (ARNP) to order any medication, including controlled substances, for administration to patients in certain facilities under a protocol established with an allopathic or osteopathic physician or dentist. The bill authorizes a physician to delegate to a physician assistant (PA) and the PA to prescribe controlled substances to a patient in a nursing home. The bill also conforms ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act, to reflect the authorization for ARNPs and PAs to order controlled substances for administration to patients in certain facilities under certain circumstances when authorized by a supervising physician or dentist.

The bill is estimated to have no fiscal impact on state government.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Under current Florida law a supervising physician may delegate to a PA the authority to order controlled substances for the practitioner's patients in hospitals, ambulatory surgery centers, and

mobile surgical facilities.¹ However, under current Florida law, there is no equivalent delegation of authority for the supervising physician of an ARNP.

Also, unlike all other states, Florida does not allow ARNPs to prescribe controlled substances and is one of two states that does not allow PAs to prescribe controlled substances.² States have varying authority with respect to the schedules³ from which an ARNP or PA may prescribe, as well as the performance of additional functions by ARNPs and PAs, such as dispensing, administering, or handling samples.

Physician Shortages

According to a recent study commissioned by the Safety Net Hospital Alliance of Florida,⁴ Florida's total current supply of primary care physicians falls short of the national average of physicians per patient by approximately six percent. Under a traditional definition of primary care specialties (i.e., general and family practice, general internal medicine, general pediatrics and geriatric medicine), supply falls short of demand by approximately three percent.

Regulation of Physician Assistants in Florida

Chapter 458, F.S., sets forth the provisions for the regulation of the practice of allopathic medicine by the Board of Medicine (BOM). Chapter 459, F.S., similarly sets forth the provisions for the regulation of the practice of osteopathic medicine by the Board of Osteopathic Medicine (BOOM). PAs are regulated by both boards. Licensure of PAs is overseen jointly by the boards through the Council on Physician Assistants.⁵ During the 2014-2015 state fiscal year, there were 6,744 in-state, actively licensed PAs in Florida.⁶

Physician Assistants are trained and required by statute to work under the supervision and control of allopathic or osteopathic physicians.⁷ The BOM and the BOOM have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct⁸ and indirect⁹ supervision. A supervising physician's

¹ See ss. 458.347(4) and 459.022(4), F.S.

² DEA Diversion Control, U.S. Department of Justice, *Mid-Level Practitioners Authorization by State* (last updated November 10, 2015) available at http://www.deadiversion.usdoj.gov/drugreg/practioners/mlp_by_state.pdf (last visited Feb. 1, 2016). Kentucky does not allow PAs to prescribe controlled substances.

³ Controlled substances are assigned to Schedules I - V based on their accepted medical use and potential for abuse.

⁴ IHS Global Inc., *Florida Statewide and Regional Physician Workforce Analysis: Estimating Current and Forecasting Future Supply and Demand*, (January 28, 2016) available at https://ahca.myflorida.com/medicaid/Finance/finance/LIP-DSH/GME/docs/FINAL_Florida_Statewide_and_Regional_Physician_Workforce_Analysis.pdf, (last visited Feb. 1, 2016).

⁵ The council consists of three physicians who are members of the Board of Medicine; one physician who is a member of the Board of Osteopathic Medicine; and a physician assistant appointed by the State Surgeon General. (s. 458.348(9), F.S. and s. 459.022(9), F.S.)

⁶ Florida Dep't of Health, Division of Medical Quality Assurance, *Annual Report and Long Range Plan Fiscal Year 2014-2015*, p. 11, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1415.pdf>, (last visited Feb. 1, 2016).

⁷ Sections 458.347(4), and 459.022(4), F.S.

⁸ "Direct supervision" requires the physician to be on the premises and immediately available. (See Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.).

⁹ "Indirect supervision" requires the physician to be within reasonable physical proximity. (Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.).

decision to permit a PA to perform a task or procedure under direct or indirect supervision must be based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient. The supervising physician must be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.¹⁰ Each physician, or group of physicians supervising a licensed PA, must be qualified in the medical areas in which the PA is to work and is individually or collectively responsible and liable for the performance and the acts and omissions of the PA.¹¹

Current law allows a supervisory physician to delegate authority to prescribe or dispense any medication used in the physician's practice, except controlled substances, general anesthetics, and radiographic contrast materials.¹² However, the law allows a supervisory physician to delegate authority to a PA to order any medication, including controlled substances, general anesthetics, and radiographic contrast materials, for a patient during the patient's stay in a facility licensed under ch. 395, F.S.¹³

Regulation of Advanced Registered Nurse Practitioners in Florida

Chapter 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (BON).¹⁴ During the 2014-2015 fiscal year, there were 18,276 in-state, actively licensed ARNPs in Florida.¹⁵

An ARNP is a licensed nurse who is certified in advanced or specialized nursing.¹⁶ Florida recognizes three types of ARNPs: nurse practitioners (NP), certified registered nurse anesthetists (CRNA), and certified nurse midwives (CNM).¹⁷ To be certified as an ARNP, a nurse must hold a current license as a registered nurse¹⁸ and submit proof to the BON that the ARNP applicant meets one of the following requirements:¹⁹

- Satisfactory completion of a formal, post-basic educational program of specialized or advanced nursing practice;

¹⁰ Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.

¹¹ Sections 458.347(3) and (15) and 459.022(3) and (15), F.S.

¹² Sections 458.347(4)(e) and (f)1., and 459.022(4)(e), F.S.

¹³ See s. 395.002(16), F.S. The facilities licensed under chapter 395 are hospitals, ambulatory surgical centers, and mobile surgical facilities.

¹⁴ The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. Seven of the 13 members must be nurses who reside in Florida and have been engaged in the practice of professional nursing for at least 4 years. Of those seven members, one must be an advanced registered nurse practitioner, one a nurse educator at an approved nursing program, and one a nurse executive. Three members of the BON must be licensed practical nurses who reside in the state and have engaged in the practice of practical nursing for at least 4 years. The remaining three members must be Florida residents who have never been licensed as nurses and are in no way connected to the practice of nursing, any health care facility, agency, or insurer. Additionally, one member must be 60 years of age or older. See s. 464.004(2), F.S.

¹⁵ *Supra*, note 5. Certified Nurse Specialists account for 26 of the in-state actively licensed ARNPs.

¹⁶ "Advanced specialized nursing practice" is defined as the performance of advanced-level nursing acts approved by the BON which, by virtue of postbasic specialized education, training and experience, are appropriately performed by an ARNP. (See s. 464.003(2), F.S.)

¹⁷ Section 464.003(3), F.S. Florida certifies clinical nurse specialists as a category distinct from ARNPs. (See ss. 464.003(7) and 464.0115, F.S.)

¹⁸ Practice of professional nursing. (See s. 464.003(20), F.S.)

¹⁹ Section 464.012(1), F.S.

- Certification by an appropriate specialty board;²⁰ or
- Completion of a master's degree program in the appropriate clinical specialty with preparation in specialty-specific skills.

Advanced or specialized nursing acts may only be performed under the protocol of a supervising physician or dentist. Within the established framework of the protocol, an ARNP may:²¹

- Monitor and alter drug therapies;
- Initiate appropriate therapies for certain conditions; and
- Order diagnostic tests and physical and occupational therapy.

The statute further describes additional acts that may be performed within an ARNP's specialty certification (CRNA, CNM, and NP).²²

An ARNP must meet financial responsibility requirements, as determined by rule of the BON, and the practitioner profiling requirements.²³ The BON requires professional liability coverage of at least \$100,000 per claim with a minimum annual aggregate of at least \$300,000 or an unexpired irrevocable letter of credit in the same amounts payable to the ARNP.²⁴

Florida does not allow ARNPs to prescribe controlled substances.²⁵ However, s. 464.012(4)(a), F.S., provides express authority for a CRNA to order certain controlled substances "to the extent authorized by the established protocol approved by the medical staff of the facility in which the anesthetic service is performed."

Educational Preparation

Physician Assistants²⁶

Physician assistant education is modeled on physician education. PA programs are accredited by the Accreditation Review Commission on Education for the Physician Assistant. All PA programs must meet the same set of national standards for accreditation. PA program applicants must complete at least two years of college courses in basic science and behavioral science as a prerequisite to PA training. The average length of PA education programs is about 26 months. A student begins his or her course of study with a year of basic medical science classes (anatomy, pathophysiology, pharmacology, physical diagnosis, etc.) Then the student enters the clinical phase of training, which includes classroom instruction and clinical rotations in medical and

²⁰ Specialty boards expressly recognized by the BON: Council on Certification of Nurse Anesthetists, or Council on Recertification of Nurse Anesthetists; American College of Nurse Midwives; American Nurses Association (American Nurses Credentialing Center); National Certification Corporation for OB/GYN, Neonatal Nursing Specialties; National Board of Pediatric Nurse Practitioners and Associates; National Board for Certification of Hospice and Palliative Nurses; American Academy of Nurse Practitioners; Oncology Nursing Certification Corporation; American Association of Critical-Care Nurses Adult Acute Care Nurse Practitioner Certification. (Rule 64B9-4.002(2), F.A.C.)

²¹ Section 464.012(3), F.S.

²² Section 464.012(4), F.S.

²³ Sections 456.0391 and 456.041, F.S.

²⁴ Rule 64B9-4.002(5), F.A.C.

²⁵ Sections 893.02(21) and 893.05(1), F.S.

²⁶ See American Academy of Physician Assistants, *PAs as Prescribers of Controlled Medications – Issue Brief* (June 2014) available at <https://www.aapa.org/WorkArea/DownloadAsset.aspx?id=2549> (last viewed Feb. 1, 2016).

surgical specialties. PA students, on average, complete 48.5 weeks of supervised clinical practice by the time they graduate.

All PA educational programs include pharmacology courses, and, nationally, the average amount of required formal classroom instruction in pharmacology is 75 hours. This does not include instruction in pharmacology that students receive during clinical medicine coursework and clinical clerkships. Based on national data, the mean amount of total instruction in clinical medicine is 358.9 hours, and the average length of required clinical clerkships is 48.5 weeks. A significant percentage of time is focused on patient management. Coursework in pharmacology addresses, but is not limited to, pharmacokinetics, drug interactions, adverse effects, contraindications, indications, and dosage.

Advanced Registered Nurse Practitioners²⁷

Applicants for Florida licensure as ARNPs who graduated on or after October 1, 1998, must have completed requirements for a master's degree or post-master's degree.²⁸ Applicants who graduated before that date may be or may have been eligible through a certificate program.²⁹

The curriculum of a program leading to an advanced degree must include, among other things:

- Theory and directed clinical experience in physical and biopsychosocial assessment;
- Interviewing and communication skills relevant to obtaining and maintaining a health history;
- Pharmacotherapeutics, including selecting, prescribing, initiating, and modifying medications in the management of health and illness;
- Selecting, initiating, and modifying diets and therapies in the management of health and illness;
- Performance of specialized diagnostic tests that are essential to the area of advanced practice;
- Differential diagnosis pertinent to the specialty area;
- Interpretation of laboratory findings;
- Management of selected diseases and illnesses;
- Professional socialization and role realignment;
- Legal implications of the advanced nursing practice and nurse practitioner role;
- Health delivery systems, including assessment of community resources and referrals to appropriate professionals or agencies; and
- Providing emergency treatments.

The program must provide a minimum of 500 hours (12.5 weeks) of preceptorship/supervised clinical experience³⁰ in the performance of the specialized diagnostic procedures that are essential to practice in that specialty area.

²⁷ Rule 64B9-4.003, F.A.C.

²⁸ Florida Board of Nursing, *ARNP Licensure Requirements* <http://floridasnursing.gov/licensing/advanced-registered-nurse-practitioner/>, (last visited Feb.1, 2016).

²⁹ *Id.*, and s. 464.012(1), F.S.

³⁰ Preceptorship/supervised clinical experience must be under the supervision of a qualified preceptor, who is defined as a practicing certified ARNP, a licensed medical doctor, osteopathic physician, or a dentist. *See* Rule 64B9-4.001(13), F.A.C.

Drug Enforcement Agency Registration

The Drug Enforcement Administration (DEA) within the U.S. Department of Justice grants practitioners federal authority to handle controlled substances. However, a DEA-registered practitioner may only engage in those activities that are authorized under state law for the jurisdiction in which the practice is located.³¹

According to requirements of the DEA, a prescription for a controlled substance may be issued only by a physician, dentist, podiatrist, veterinarian, mid-level practitioner,³² or other registered practitioner who is:

- Authorized to prescribe controlled substances by the jurisdiction in which the practitioner is licensed to practice;
- Registered with the DEA or exempted from registration; or
- An agent or employee of a hospital or other institution acting in the normal course of business or employment under the registration of the hospital or other institution which is registered in lieu of the individual practitioner being registered provided that additional requirements are met, including:³³
 - The dispensing, administering, or prescribing must be in the usual course of professional practice;
 - The practitioner must be authorized to do so by the state in which he or she practices;
 - The hospital or other institution must verify that the practitioner is permitted to administer, dispense, or prescribe controlled substances within the state;
 - The practitioner must act only within the scope of employment in the hospital or other institution;
 - The hospital or other institution must authorize the practitioner to administer, dispense, or prescribe under its registration and must assign a specific internal code number for each practitioner; and
 - The hospital or other institution must maintain a current list of internal codes for the corresponding practitioner.³⁴

III. Effect of Proposed Changes:

The bill amends s. 464.012, F.S., to authorize an ARNP to order controlled substances for administration to patients in hospitals, ambulatory surgery centers, mobile surgical facilities, and nursing homes under an established protocol with a supervising allopathic or osteopathic physician, or dentist, which is filed with the DOH.

The bill amends s. 893.05, F.S., to allow ARNPs and PAs to order controlled substances for administration to patients in hospitals, ambulatory surgery centers, mobile surgical facilities and nursing homes within the framework of an established protocol or as delegated under a supervisory relationship with a physician.

³¹ U.S. Department of Justice, Drug Enforcement Administration, *Practitioner's Manual*, (August 2006), p. 7, available at http://www.deadiversion.usdoj.gov/pubs/manuals/pract/pract_manual012508.pdf, (last visited Feb. 1, 2016).

³² Examples of mid-level practitioners include, but are not limited to: nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, and physician assistants.

³³ *Supra*, note 30, at 18.

³⁴ *Supra*, note 30, at 12.

The bill amends ss. 458.347 and 458.022, F.S., to authorize a physician to delegate his or her authority to prescribe medications, including controlled substances, to PAs while treating the physician's patients in a nursing home licensed under part II, of ch. 400, F.S., and for the PA to order these medications.

The bill also makes technical changes to s. 893.05, F.S., and reenacts several statutory sections to conform to changes made by the bill.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. None. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.347, 459.022, 464.012, 893.05, 401.445, 766.103, and 893.0551.

IX. Additional Information:

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

CS by Health Policy on February 9, 2016:

Authorizes a physician to delegate his or her authority to prescribe medications, including controlled substances, to PAs and for the PA to so order, while treating the physician's patients in a nursing home licensed under part II, of ch. 400, F.S.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senator Grimsley

588-03255-16

2016946c1

A bill to be entitled

An act relating to authorized practices of advanced registered nurse practitioners and licensed physician assistants; amending ss. 458.347 and 459.022, F.S.; authorizing a supervisory physician to delegate to a licensed physician assistant the authority to order medications for a patient during his or her care at a licensed nursing home facility; amending s. 464.012, F.S.; authorizing an advanced registered nurse practitioner to order medication for administration to patients in specified facilities; amending s. 893.05, F.S.; authorizing a licensed practitioner to authorize a licensed physician assistant or advanced registered nurse practitioner to order controlled substances for administration to patients in specified facilities under certain circumstances; reenacting ss. 401.445(1) and 766.103(3), F.S., to incorporate the amendment made to s. 464.012, F.S., in references thereto; reenacting s. 893.0551(3)(d), F.S., to incorporate the amendment made to s. 893.05, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (g) of subsection (4) of section 458.347, Florida Statutes, is amended to read:

458.347 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(g) A supervisory physician may delegate to a licensed physician assistant the authority to order medications for the supervisory physician's patient during his or her care in a facility licensed under chapter 395 or part II of chapter 400,

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notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation. For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 or part II of chapter 400 may order any medication under the direction of the supervisory physician.

Section 2. Paragraph (f) of subsection (4) of section 459.022, Florida Statutes, is amended to read:

459.022 Physician assistants.—

(4) PERFORMANCE OF PHYSICIAN ASSISTANTS.—

(f) A supervisory physician may delegate to a licensed physician assistant the authority to order medications for the supervisory physician's patient during his or her care in a facility licensed under chapter 395 or part II of chapter 400, notwithstanding any provisions in chapter 465 or chapter 893 which may prohibit this delegation. For the purpose of this paragraph, an order is not considered a prescription. A licensed physician assistant working in a facility that is licensed under chapter 395 or part II of chapter 400 may order any medication under the direction of the supervisory physician.

Section 3. Paragraph (a) of subsection (3) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees.—

(3) An advanced registered nurse practitioner shall perform those functions authorized in this section within the framework of an established protocol that is filed with the board upon biennial license renewal and within 30 days after entering into a supervisory relationship with a physician or changes to the

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62 protocol. The board shall review the protocol to ensure
 63 compliance with applicable regulatory standards for protocols.
 64 The board shall refer to the department licensees submitting
 65 protocols that are not compliant with the regulatory standards
 66 for protocols. A practitioner currently licensed under chapter
 67 458, chapter 459, or chapter 466 shall maintain supervision for
 68 directing the specific course of medical treatment. Within the
 69 established framework, an advanced registered nurse practitioner
 70 may:

71 (a) Monitor and alter drug therapies and order any
 72 medication for administration to a patient in a facility
 73 licensed under chapter 395 or part II of chapter 400.

74 Section 4. Subsection (1) of section 893.05, Florida
 75 Statutes, is amended to read:

76 893.05 Practitioners and persons administering controlled
 77 substances in their absence.—

78 (1)(a) A practitioner, in good faith and in the course of
 79 his or her professional practice only, may prescribe,
 80 administer, dispense, mix, or otherwise prepare a controlled
 81 substance, or the practitioner may cause the controlled
 82 substance ~~same~~ to be administered by a licensed nurse or an
 83 intern practitioner under his or her direction and supervision
 84 only.

85 (b) Pursuant to s. 458.347(4)(g), s. 459.022(4)(f), or s.
 86 464.012(3), as applicable, a practitioner who supervises a
 87 licensed physician assistant or advanced registered nurse
 88 practitioner may authorize the licensed physician assistant or
 89 advanced registered nurse practitioner to order controlled
 90 substances for administration to a patient in a facility

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91 licensed under chapter 395 or part II of chapter 400.

92 (c) A veterinarian may ~~se~~ prescribe, administer, dispense,
 93 mix, or prepare a controlled substance for use on animals only,
 94 and may cause the controlled substance ~~it~~ to be administered by
 95 an assistant or orderly only under the veterinarian's direction
 96 and supervision ~~only~~.

97 (d) A certified optometrist licensed under chapter 463 may
 98 not administer or prescribe a controlled substance listed in
 99 Schedule I or Schedule II of s. 893.03.

100 Section 5. Subsection (1) of s. 401.445 and subsection (3)
 101 of s. 766.103, Florida Statutes, are reenacted for the purpose
 102 of incorporating the amendment made by this act to s. 464.012,
 103 Florida Statutes, in references thereto.

104 Section 6. Paragraph (d) of subsection (3) of s. 893.0551,
 105 Florida Statutes, is reenacted for the purpose of incorporating
 106 the amendment made by this act to s. 893.05, Florida Statutes,
 107 in a reference thereto.

108 Section 7. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Rene Garcia, Chair
Appropriations Subcommittee on Health and Human Services

Subject: Committee Agenda Request

Date: February 11, 2016

I respectfully request that **Senate Bill #1316**, relating to Nurse Licensure Compact to be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 21

THE FLORIDA SENATE
APPEARANCE RECORD

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

17 FEB 2016

Meeting Date

1316
Bill Number (if applicable)

714384
Amendment Barcode (if applicable)

Topic _____

Name PAUL JESS

Job Title _____

Address 218 S. MONROE ST

Street

Phone 850-224-9403

TALLAHASSEE FL 32301

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

OF AMENDMENT
Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

17 FEB 2016

Meeting Date

1316
Bill Number (if applicable)

454610
Amendment Barcode (if applicable)

Topic _____

Name PAUL JESS

Job Title _____

Address 218 S. MONROE ST
Street
TALLAHASSEE FL 32301
City State Zip

Phone 850-251-4292

Email _____

Speaking: ☐ For ☐ Against ☐ Information

OF AMENDMENT
Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1316

Bill Number (if applicable)

Topic Nurse Licensure Compact

Amendment Barcode (if applicable)

Name Tom Parker

Job Title Director of Reimbursement

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City

State

Zip

Email Tparker@FHCA.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Health Care Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/16
Meeting Date

1316
Bill Number (if applicable)

Topic Nurse Licensure Compact

Amendment Barcode (if applicable)

Name MARTHA DE CASTRO

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Hospital Assoc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2-17-16

Meeting Date

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

SB1316

Bill Number (if applicable)

Topic NURSE LICENSURE COMPACT

Amendment Barcode (if applicable)

Name Layne Smith

Job Title Director, State Government Relations

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Florida

32224

Email smith.layne@mayo.edu

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Mayo Clinic

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1316

Bill Number (if applicable)

Topic Nurse Licensure Compact

Amendment Barcode (if applicable)

Name Laura Cantwell

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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing AARP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/16

Meeting Date

1316

Bill Number (if applicable)

Topic Nurse Licensure Compact

Amendment Barcode (if applicable)

Name Alisa LaPort

Job Title _____

Address _____

Street

Tallahassee FL

City

State

Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Nurses Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: PCS/SB 1316 (802108)

INTRODUCER: Appropriations Subcommittee on Health and Human Services and Senator Grimsley

SUBJECT: Nurse Licensure Compact

DATE: February 19, 2016

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Lloyd	Stovall	HP	Favorable
2. Brown	Pigott	AHS	Recommend: Fav/CS
3. _____	_____	AP	_____

I. Summary:

PCS/SB 1316 authorizes Florida to enter the revised Nurse Licensure Compact (NLC), a multi-state agreement that establishes a mutual recognition system for the licensure of registered nurses and licensed practical or vocational nurses. The bill enacts the NLC into law, which is a prerequisite for joining the compact.

A nurse who is issued a multi-state license from a state that is a party to the NLC is permitted to practice in any state that is also a party to the compact. However, the nurse must comply with the practice laws of the state in which he or she is practicing or where the patient is located. A party state may continue to issue a single-state license, authorizing practice only in that state.

The bill has an indeterminate fiscal impact on the Department of Health (DOH).

The bill is effective on December 31, 2018, or upon enactment of the NLC into law by 26 states, whichever occurs first.

II. Present Situation:

The Nurse Practice Act, ch. 464, F.S., governs the licensure and regulation of nurses in Florida. The Department of Health (DOH) is the licensing agency and the Board of Nursing (board) is the regulatory authority. The board comprises 13 members appointed by the Governor and confirmed by the Senate.¹

To be licensed as a nurse by examination, an individual must:

- Submit an application with the appropriate fee;
- Satisfactorily complete a criminal background screening;

¹ Section 464.004(1), F.S.

- Demonstrate English competency;
- Successfully complete an approved nursing educational program; and
- Pass a licensure exam.²

A nurse from out of state who wishes to work temporarily in the state of Florida may obtain licensure via examination or endorsement. Requirements for licensure by endorsement can be found in s. 464.009, F.S., and include:

- Holding a valid license to practice professional or practical nursing in another state or territory of the United States, provided that, when the applicant secured his or her original license, the requirements for licensure were substantially equivalent to or more stringent than those existing in Florida at that time;
- Meeting the qualifications for Florida licensure examination and having successfully completed a state, regional, or national examination which is substantially equivalent to or more stringent than the Florida examination; or
- Having actively practiced nursing in another state, jurisdiction, or territory of the United States for two of the preceding three years without a license being acted against by the licensing authority of any jurisdiction.

Any applicant for temporary licensure via endorsement must submit to an electronic fingerprint scanning procedure through the Florida Department of Law Enforcement (FDLE) for the purpose of a criminal history records check. An applicant who has ever been found guilty of, or pled guilty or no contest/nolo contendere to, any charge other than a minor traffic offense must list each offense on the application.³

Health care boards or the DOH are not permitted to issue a license, certificate, or registration to any candidate if the applicant:

- Has been convicted of, or entered a plea of nolo contendere to, regardless of adjudication, 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), or similar felony offense(s) in another state or jurisdiction;
- Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss 801-970 (relating to controlled substances) or 42 U.S.C. ss 1395-1396 (relating to public health, welfare, Medicare, and Medicaid issues);
- Has been terminated for cause from the Medicaid program pursuant to s. 409.913, F.S., unless the candidate has been in good standing for the most recent five years;
- Has been terminated for cause, pursuant to the appeals procedures established by the state or federal government, from any other state Medicaid program, unless the candidate or applicant has been in good standing with a state Medicaid program for the most recent five years and the termination occurred at least 20 years before the date of application; or

² Section 464.008, F.S., For its licensure examination, the department uses the National Council Licensure Examination (NCLEX), developed by the National Council of State Boards of Nursing.

³ Florida Board of Nursing, *Licensed Practical Nurse & Registered Nurse by Endorsement* (page modified November 20, 2015) available at <http://floridasnursing.gov/licensing/licensed-practical-nurse-registered-nurse-by-endorsement/> (last visited Feb. 2, 2016).

- Is currently listed on the U.S. Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.⁴

Licenses are renewed biennially.⁵ Each renewal period, a registered nurse (RN) or licensed practical nurse (LPN) must document completion of one contact hour of continuing education for each calendar month of the licensure cycle.⁶ As part of the total continuing education hours required, all licensees must complete a two-hour course on the prevention of medical errors and a two-hour course in Florida laws and rules.⁷ Effective August 1, 2017, all licensees must also complete a two-hour course in recognizing impairment in the workplace.⁸

Interstate Compacts

An interstate compact is an agreement between two or more states to address common problems or issues, create an independent, multistate governing authority, or establish uniform guidelines, standards, or procedures for the compact's member states.⁹ Article I, Section 10, Clause 3 (Compact Clause) of the U.S. Constitution authorizes states to enter into agreements with each other, without the consent of Congress. Interstate agreements that encroach on the federal government's power are subject to congressional approval, however.¹⁰ Florida is a party to at least 25 interstate compacts, including the Interstate Compact on Educational Opportunity for Military Children, Compact on Adoption and Medical Assistance, and the Compact on the Placement of Children.¹¹

The Nurse Licensure Compact

The National Council of State Boards of Nursing (council) administers the Nurse Licensure Compact (NLC). The council is a non-profit organization that coordinates the efforts of the member states. The council includes the boards of nursing in the 50 states, the District of Columbia, and four U.S. Territories.

The NLC allows RNs and LPNs the ability to practice in all member states by maintaining a single license in their primary state of residence.¹² A second compact covers Advanced Practice Registered Nurses, such as nurse anesthetists, nurse practitioners, nurse midwives, and clinical

⁴ Id.

⁵ Section 464.013, F.S.

⁶ Rule 64B9-5.002, F.A.C. A course in HIV/AIDS is required in the first biennium only and a domestic violence course is required every third biennium.

⁷ Rule 64b9-5.011, F.A.C.

⁸ *Supra* note 5 and Rule 64B9-5.014, F.A.C.

⁹ Council of State Governments, *Capitol Research: Interstate Compacts*, <http://knowledgecenter.csg.org/kc/content/interstate-compacts-background-and-history> (last visited Feb. 2, 2016).

¹⁰ See *Virginia v. Tennessee*, 148 U.S. 503 (1893) and *New Hampshire v. Maine*, 426 U.S. 363 (1976).

¹¹ OPPAGA, *2015 Nurse Licensure Compact Revisions Address Some Barriers and Disadvantages in 2006 OPPAGA Report* (November 20, 2015) (on file in the Senate Committee on Health Policy).

¹² The compact model rules defined "primary state of residence" to mean the state of a person's declared, fixed permanent and principal home for legal purposes.

nurse specialists. Currently, 25 states have enacted the original NLC legislation,¹³ and 1.4 million of the nation's nurses hold a multistate license.¹⁴

To join the NLC, a state must pass the NLC model legislation, the state board of nursing must implement the compact, and the state licensing agency must pay an annual fee of \$6,000.¹⁵ States that adopted the NLC prior to revisions made in 2015 must adopt the revised NLC to become members of the new compact.¹⁶

The council also manages NURSYSTM, the national database for verification of nurse licensure, discipline, and practice privileges for RNs licensed by participating boards of nursing, including all states in the compact. Fifty-three states or territories participate in the NURSYSTM database, including Florida.

There are three publicly available components to the verification system:

- e-Notify which provides real-time licensure and publicly available discipline data to institutions about nurses employed by that institution and for nurses to manage their licenses statuses and renewals;
- Licensure QuickConfirm that allows employers and recruiters to receive licensure and discipline information in one location; and
- Nurse Licensure Verification service which enables nurses to verify their licenses from a participating board when applying for endorsement for \$30 per license type, per each board.¹⁷

2015 Revised Nurse Licensure Compact

Under the NLC, an applicant for a license to practice as an RN or LPN has to apply in his or her home state for a multistate license.¹⁸ The home state is the applicant's primary state of residence.¹⁹ The NLC has 11 articles covering areas such as general jurisdiction, application process, governance, and rule-making.

¹³ Id. The 25 states are: Arizona, Arkansas, Colorado, Delaware, Idaho, Iowa, Kentucky, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin.

¹⁴ Florida Dep't of Health, *House Bill 1061 Analysis* (January 11, 2016) (on file with the Senate Committee on Health Policy).

¹⁵ *Supra* note 16.

¹⁶ *Supra* note 15.

¹⁷ National Council of State Boards of Nursing, *License Verification (Nursys.com)* <https://www.ncsbn.org/license-verification.htm> (last visited Feb. 2, 2016).

¹⁸ A multistate license is a license to practice as an RN or LPN/LVN issued by a home state licensing board that authorizes the license holder to practice in all party states under a multistate licensure privilege.

¹⁹ Pursuant to the model rules developed under the prior NLC, a nurse's home state may be evidenced by a drivers' license with a home address, voter registration card with a home address, federal income tax return, military documentation of state of legal residence, or a W2 from the U.S. government or any bureau, division, or agency thereof. *See* Nurse Licensure Compact Administrators, *Nurse Licensure Compact Model Rules and Regulations*, (Rev. Nov. 13, 2012, Aug. 4, 2008, Sept. 16, 2004), available at https://www.ncsbn.org/NLC_Model_Rules.pdf (last visited Feb. 2, 2016).

OPPAGA Review of the NLC

2006 OPPAGA Report

In 2006, the Office of Program Policy Analysis and Government Accountability (OPPAGA) released a report evaluating the possibility of Florida adopting the original NLC.²⁰ The OPPAGA concluded that adopting the NLC would allow the state to alleviate short-term nursing shortages but would not resolve the state's long-term nursing shortage. The report identified several benefits that would be realized by adopting the NLC.

Conversely, the report also identified several disadvantages to joining the compact at that time:

- Potentially, there could be an increase in disciplinary cases, both domestic and multistate, which could have a negative fiscal impact on the DOH;
- Florida's continuing education requirements would not apply to a nurse working in Florida but whose home state is not Florida;
- A nurse whose home state was not Florida may not be subject to a criminal background screening because some party states did not require criminal background screening for licensure;
- Public access to licensure and disciplinary action may be impaired; and
- The DOH and board will incur some initial start-up costs in implementing the NLC.

Additionally, OPPAGA identified barriers to implementing the original NLC legislation:

- The provisions of the original NLC language may conflict with Florida's public records and open meetings laws;
- The original NLC provided general and broad authorization for the compact administrators to develop rules that were required to be adopted by party states, which raised concern about an unlawful delegation of legislative authority;
- The DOH and the board would need to educate nurses and employers on the NLC and its requirements for the NLC to operate as intended; and
- A compact nurse is not required to notify the board when he or she enters the state to practice nursing, making it difficult for the workforce data to be captured.

The report made several recommendations, including seeking approval to use alternative compact language to address the barriers identified in the report. Other recommendations including authorizing the board to require employers to report employment data, providing a later effective date to allow for education of the public regarding the NLC, and requiring the board to report information to the legislature on the effect of the NLC two years after its implementation.

²⁰ OPPAGA, *Nurse Licensure Compact Would Produce Some Benefits But Not Resolve the Nursing Shortage*, Report No. 06-02 (Jan. 2006) available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=06-02> (last visited Feb. 2, 2016).

2015 OPPAGA Memorandum

In 2015, the OPPAGA reviewed the revised NLC to determine if it adequately addresses concerns identified in the 2006 report.²¹ The OPPAGA found that the revised NLC resolved some of the barriers and disadvantages listed above, and specifically it found:

- The revised NLC partially addresses the concerns regarding constitutional issues related to public meetings but did not address public records concerns:
 - Under the revised NLC, there are provisions requiring the commission to publicly notice meetings on its website, as well as the websites of party states. However, the commission is allowed to have closed door meetings to address certain issues. Such meetings may be deemed inconsistent with Florida's open meetings law.
 - A party state may still designate information it provides as confidential and restrict the sharing of such information. However, once the information is in the possession of the board, it may be considered a public record under Florida law, available through the board.
- The revised NLC addresses the issue of delegation of legislative authority, by limiting the scope of the rules the commission may adopt to only those rules that would facilitate and coordinate the implementation and administration of the NLC. The OPPAGA suggests that the Legislature include an expiration date, an automatic repeal provision, or a required review of the NLC to provide the legislature with an opportunity to review the rules adopted by the commission;
- The revised NLC does not become effective until it has been enacted by 26 states or December 31, 2018, whichever is earlier. This provides the state with the time needed to educate nurses and employers about the NLC.
- The revised NLC does not require employers of compact nurses who are practicing in a state under a multistate licensure privilege to report such employment to the state's board of nursing;
- Public access to nurse disciplinary information has improved due to the increased state participation in NURSIS[®], the coordinated licensure information system;
- The revised NLC requires a criminal background screening for licensees. However, this requirement only applies to new multistate licensure applicants, and a nurse who currently holds a multistate license will not have to undergo a criminal background screening unless required by his or her home state; and
- The NLC does not address continuing education requirements. Although most states require some continuing education, not all states do. Florida authorities would be unable to enforce continuing education requirements for those practicing in the state under the multistate licensing privilege.

The OPPAGA advises that the revised NLC does not affect the benefits it identified in its 2006 report. In addition to those benefits, it noted that as a member of the NLC, the processing time and resources required to process a licensure by endorsement would be reduced or eliminated. Florida would also be able to access investigative information earlier and would be able to open its own investigation if the nurse is practicing in this state.

²¹ OPPAGA, *2015 Nurse Licensure Compact Revisions Address Some Barriers and Disadvantages in 2006 OPPAGA Report*, A Presentation to the House Select Committee on Affordable Healthcare Access (December 1, 2015) available at <http://www.oppaga.state.fl.us/Presentations.aspx> (last visited Feb 2, 2016).

Florida Nursing Workforce

The Florida Center for Nursing was established by the Legislature in 2001, to address the issues of supply and demand for nursing, including the recruitment, retention, and utilization of nurse workforce resources.²² The Florida Center for Nursing is authorized to request any information held by the board regarding nurses licensed in this state, holding a multistate license, or any information reported by employers of such nurses, other than personally identifiable information.

The Florida Center for Nursing prepares long-range forecasts of nurse supply and demand periodically to assist with the state's planning. The last published report was posted in October 2010 for the forecasting period of 2010-2025. The nursing supply shortage was projected to worsen beginning in 2014 with the combination of health care reform, an aging population requiring more health care services, and as older nurses retired from the workforce.²³ The 2010 model projected a shortage of 50,000 RNs by 2025.²⁴ The shortage of LPNs was projected to be 13,250 by 2025.²⁵

The Long-Term Employment projections program of the Department of Economic Opportunity identifies Registered Nurses as an occupation where employment is expected to grow from 168,885 individuals to 196,503 or 16.4 percent in the next eight years.²⁶ Nurse Practitioners, while a smaller occupational group, have a higher expected growth rate of 30.9 percent over the 8 year span growing from 7,199 individuals to 9,421.²⁷ Nursing and residential care facilities rank fifth overall in the Florida's fastest growing industries, with a minimum of 10,000 jobs.

Nursing is the eighth fastest growing occupation, with a 30.9 percent growth rate and a median hourly wage in 2015 of \$44.22 for nurse practitioners.²⁸ Registered nurses are expected to gain the fifth most jobs in the state over the next eight years, more than 52,000. These jobs have a median hourly rate in 2015 of \$29.89 and require a minimum education level of an associate's degree.²⁹

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars

²² Chapter 2001-277, L.O.F. and s. 464.0195, F.S.

²³ Florida Center for Nursing, *Technical Report: Forecasting Nurse Supply and Demand in Florida* (Oct. 2010) p. 16, available at https://www.flcenterfornursing.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=14&PortalId=0&TabId=151 (last visited Feb. 2, 2016).

²⁴ Id at 17.

²⁵ Id at 18.

²⁶ Department of Economic Opportunity, *Florida Jobs by Occupation - 2015-2013 Projections Statewide*, <http://www.floridajobs.org/labor-market-information/data-center/statistical-programs/employment-projections> (last visited Feb. 2, 2016).

²⁷ Id.

²⁸ Id at *Fastest Growing Occupations* Tab.

²⁹ Id at *Occupations Gaining the Most New Jobs* Tab.

lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state may not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$300,000.³⁰ The sovereign immunity recovery limits do not prevent a plaintiff from obtaining a judgment in excess of the limitation, but the plaintiff cannot recover the excess damages without action by the Legislature.³¹

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.³² In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.³³

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.³⁴ The court explained:

Whether CMS [Children's Medical Services] physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. . . . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS³⁵ Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility

³⁰ Section 768.28(5), F.S.

³¹ *Id.*

³² *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

³³ *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).

³⁴ *Id.* at 703.

³⁵ Florida Department of Health and Rehabilitative Services.

to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.

Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.³⁶

III. Effect of Proposed Changes:

The bill adopts the revised Nurse Licensure Compact (NLC) into state law.

Section 1 amends s. 456.073, F.S., relating to disciplinary proceedings for boards within the Department of Health (DOH's) jurisdiction. The DOH is required to report any significant investigation information relating to a nurse holding a multistate license to the coordinated licensure system pursuant to s. 464.0095, F.S. This reporting is a requirement of the NLC.

Section 2 amends s. 456.076, F.S., relating to treatment programs for impaired practitioners. The bill requires the consultant under the impaired practitioner program to disclose to the DOH, upon the DOH's request, whether an applicant for a multistate license under s. 464.0095, F.S., is participating in a treatment program and must report to the DOH when a nurse holding a multistate license under s. 464.0095, F.S., enters a treatment program. A nurse holding a multistate license under s. 464.0095, F.S., must report to the DOH within two business days after entering a treatment program pursuant to this section.

Section 3 amends s. 464.003, F.S., to modify definitions to recognize that a nurse may hold a multistate license.

Section 4 amends s. 464.004, F.S., to appoint the executive director of the Board of Nursing or his or her designee as the state administrator of the Nurse Licensure Compact, as required under the NLC.

Section 5 amends 464.008, F.S., relating to licensure by examination to incorporate the multistate licensure process. The bill authorizes an applicant who resides in this state, meets the licensure requirements, and meets the criteria for multistate licensure, to request the issuance of a multistate license from the DOH.

³⁶ *Stoll*, 694 So. 2d at 703 (Fla. 1997) (internal citations omitted).

A nurse who holds a single-state license in this state and applies to the DOH for a multistate license must meet the eligibility criteria for a multistate license under s. 464.0095, F.S., and must pay an application and licensure fee to change his or her licensure status. A person who holds an active multistate license in another state pursuant to the NLC is exempt from the licensure requirements in Florida.

The bill requires the DOH to conspicuously distinguish a multistate license from a single-state license.

Section 6 amends s. 464.009, F.S., relating to licensure by endorsement, to exempt a person who holds an active multistate license in another state from the requirements of licensure by endorsement in Florida.

Section 7 enacts the NLC under s. 464.0095, F.S., and enters Florida into the compact with all other jurisdictions legally joining the NLC. The compact includes 11 Articles and is substantially similar to the model compact language.

Article I provides the general findings and declaration of purpose for the compact. The general findings under Article I include:

- The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;
- Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;
- The expanded mobility of nurses and the use of advanced communication technologies as part of the nation's health care delivery system require greater coordination among states in the areas of nurse licensure and regulation;
- New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and
- Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

The general purposes for the compact are to:

- Facilitate the states' responsibility to protect the public's health and safety;
- Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;
- Facilitate the exchange of information among party states in the areas of nurse regulation, investigation, and adverse action;
- Promote compliance with the laws governing the practice of nursing in each jurisdiction;
- Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
- Decrease redundancies in the consideration and issuance of nurse licenses; and
- Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

Article II creates the definitions applicable to the compact.

“Adverse action” means any administrative, civil, equitable, or criminal action permitted by a state’s laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual’s license or multistate licensure privilege, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee’s practice, or any other encumbrance on licensure affecting a nurse’s authorization to practice, including issuance of a cease and desist action.

“Alternative program” means a non-disciplinary monitoring program approved by a licensing program.

“Commission” means the Interstate Commission of Nurse Licensure Administrators established by this compact.

“Compact” means the Nurse Licensure Compact recognized, established, and entered into by the state under this compact.

“Coordinated licensure information system” means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws which is administered by a nonprofit organization composed of and controlled by licensing boards.

“Current significant investigate information” means:

- (a) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
- (b) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

“Encumbrance” means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

“Home state” means the party state that is the nurse’s primary state of residence.

“Licensing board” means a party state’s regulatory body responsible for issuing nurse licenses.

“Multistate license” means a license to practice as a registered nurse (RN) or a licensed practical or vocational nurse (LPN/VN) issued by a home state licensing board which authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

“Multistate licensure privilege” means a legal authorization associated with a multistate licensure permitting the practice of nursing as either an RN or LPN/VN in a remote state.

“Nurse” means an RN or LPN/VN, as those terms are defined in each party state’s practice laws.

“Party state” means any state that has adopted this compact.

“Remote state” means a party state other than the home state.

“Single-state license” means a nurse license issued by a party state which authorizes practice only within the issuing state and does not include a multi-state licensure privilege to practice in any other party state.

“State” means a state, territory, or possession of the United States, or the District of Columbia.

“State practice laws” means a party state’s laws, rules, and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. The term does not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

Article III provides for the compact’s general provisions and jurisdiction as follows:

- Each party state will recognize a multistate license to practice registered or licensed practical or vocational nursing issued by a home state to a resident in that state as authorizing the RN or LPN/VN to practice in its state.
- The state must ensure that each applicant fulfills the following criteria to obtain or retain a multistate license in the home state:
 - Has met the home state’s qualifications for licensure or renewal;
 - Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN pre-licensure education program or other approved educational program with a comparable pre-licensure education program.
 - Demonstrates a proficiency in English, if the applicant is a graduate of a foreign pre-licensure program not taught in English;
 - Has successfully passed an NCLEX-RN or NCLEX-PN Examination or recognized predecessor, as applicable;
 - Is eligible for or holds an active, unencumbered license;
 - Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for criminal history check with the FBI and the state’s criminal records;
 - Has not been convicted or found guilty, or has entered into an agreed disposition other than a disposition that results in nolle prosequi, of a felony offense under applicable state or federal law;
 - Has not been convicted or found guilty, or entered into an agreed disposition other than a disposition that results in a nolle prosequi, of a misdemeanor offense related to the practice of nursing, as determined on a case by case basis;
 - Is not currently enrolled in an alternative program;
 - Is subject to self-disclosure requirements regarding current participation in an alternative program; and
 - Has a valid social security number.
- All party states are required, in accordance with existing state due process law, to take adverse action against a nurse’s multistate license privilege, such as revocation, suspension, probation, or cease and desist actions. If a party state takes such action, the party state is required to notify the administrator of the coordinated licensure information system (CLIS).

The administrator of the CLIS must promptly notify the home state of any such actions by a remote state.

- A nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time the service is provided. The practice of nursing is not limited to patient care but includes all nursing practice as defined by the state practice laws of the party state in which the patient is located.
- The practice of nursing in a party state under a multistate license subjects a nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the patient is located at the time the service is provided.
- A person not residing in a party state shall continue to be able to apply for a party state's single-state license. The issuance of a single-state license in a party state does not grant a nurse the privilege to practice in any other party state. The compact does not affect the requirements established by a party state for the issuance of a single-state license.
- A nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that the nurse who changes his or her primary state of residence after the effective date meets all of the multistate licensure requirements to obtain a multistate license from a new home state. A nurse who fails to satisfy the multistate licensure requirements due to a disqualifying event occurring after the effective date is ineligible to retain or renew his or her multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with the compact's rules.

Article IV of the compact creates the application process for the multistate license. The application process requires the licensing board in the issuing state to determine, through the CLIS, whether the applicant has ever held, or is the holder of, a license issued by another state, whether there are any encumbrances on any license or multistate licensure privilege, whether any adverse action has been taken against the license or multistate licensure privilege, and whether the applicant is participating in an alternative program.

A nurse may hold a multistate license, issued by a home state, in only one party state at a time. If a nurse moves and changes his or her primary state, the nurse must apply for licensure in the new home state, and the multistate licensure issued by the prior home state must be deactivated. A new license may be applied for in advance of a primary change in residence. However, a new multistate license may not be issued until the nurse provides satisfactory evidence of change in his or her primary state of residence and has satisfied all applicable requirements to obtain a new multistate license in the new home state. If the nurse has moved to a non-party state, the multistate license issued by the prior home state must convert to a single-state license valid only in the prior home state.

Article V vests additional authority in the party state licensing board relating to the multistate licensure privilege. In addition to the powers already granted to the state's Board of Nursing (board), the board may also:

- Take adverse action against a nurse's multistate licensure privilege to practice within that party state.
 - Only the home state has the power to take adverse action against a nurse's license issued by the home state.

- For purposes of adverse action, the home state licensing board or state agency shall give the same priority and effect to conduct reported by a remote state as it would if such conduct had occurred within the home state. In doing so, the home state shall apply its own state laws to determine appropriate action.
- Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.
- Complete any pending investigation of a nurse who changes his or her primary state of residence during the course of such investigation. Conclusion of such actions must be promptly reported to the administrator of the CLIS. The administrator of the CLIS shall promptly notify the new home state of any such action.
- Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses or the production of evidence. Enforcement of a subpoena to parties in another state will be enforced by courts in the latter state.
- Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the FBI for criminal background checks, receive FBI results, and use the results to make licensure decisions.
- If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.
- Take adverse action based on the factual findings of the remote state, provided that the licensing board or state agency follows its own procedures for taking such adverse action.
- If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party state shall be deactivated until all encumbrances are removed from the multistate license. All home state disciplinary orders shall impose adverse action against a nurse's multistate license and shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.
- The compact does not override a party state's decision to use an alternative program in lieu of adverse action and the home state licensing board shall deactivate the multistate licensing privilege for the duration of the nurse's participation in the alternative program.

Article VI creates the CLIS and the process for the exchange of information under the NLC. The system requires all party states to participate and to include information on the licensure and discipline history of each nurse, as submitted by the party states, to assist in the coordination of nurse licensure and enforcement efforts. Those coordination efforts include:

- Formulating necessary procedures by the commission, in consultation with the administrator of the system for the identification, collection and exchange of information under the NLC;
- Promptly reporting by all licensing boards any adverse action, any current significant investigative information, denials of applications, the reason for application denials, and nurse participation in alternative programs, regardless of whether such participation is nonpublic or confidential under state law;
- Transmitting through the system current significant investigative information and participation in nonpublic or confidential alternative programs available only to the party states;
- Notwithstanding any other provision of law, providing that all party state licensing boards contributing information to the system may designate information that may not be shared

with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state;

- Providing that any personal identifying information obtained from the system by a party state licensing board may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information;
- Allowing any information contributed to the system which is subsequently required to be expunged by the laws of the party state contributing the information to also be expunged from the system;
- Requiring the compact administrator of each party state to furnish a uniform data set to each other party state that includes, at a minimum:
 - Identifying information;
 - Licensure data;
 - Information related to alternative program participation; and
 - Other information that may facilitate the administration of the compact; and
- Requiring the compact administrator of a party state to provide all investigative documents and information requested by another party state.

Article VII establishes the Interstate Commission of Nurse Licensure Compact Administrators (commission), its authorities, duties and responsibilities. The party states establish the joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators as an instrumentality of the party states. The following provisions are included in the structure of the commission:

Venue - Judicial proceeding by or against the commission shall be brought solely and exclusively, in a court of competent jurisdiction where the commission's principal office is located.³⁷ The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

Sovereign Immunity - The compact does not waive sovereign immunity except to the extent sovereign immunity is waived in the party states. The administrators, officers, executive director, employees, and representatives of the commission are immune from suit and liability either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability cause by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities.

Sovereign immunity under these provisions does not protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.

The commission shall defend any administrator, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a

³⁷The principal office of the commission is located in Chicago, Illinois.

reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct. An individual is not prohibited from retaining his or her own counsel.

The commission shall also indemnify and hold harmless any officer, administrator, executive director, employee or representative of the commission for the amount of any judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct.

Compact Administrator - Each party state is limited to one administrator. The executive director of the state licensing board or his or her designee serves as the administrator of the compact for each party state. Any administrator may be removed or suspended from office as provided by the laws of the administrator's home state. Any vacancy occurring on the commission shall be filled in accordance with the laws of the party state in which the vacancy occurred.

Voting - Each administrator is entitled to one vote with regard to the adoption of the rules and the creation of the bylaws. The administrator shall have the opportunity to participate in the business and affairs of the commission and shall vote in person or by other means as allowed in the bylaws. The bylaws may also provide for the administrator's participation in commission meetings by telephone or other means of communication.

Meetings - The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the commission's bylaws and rules. All meetings are open to the public, and public notice of the meetings must be given in the same manner as required under Article VIII. Closed meetings are permitted if the commission is discussing:

- Failure of a party state to comply with its obligations under the compact;
- Employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices;
- Current, threatened, or reasonably anticipated litigation;
- Negotiation of contracts for the purchase or sale of goods, services or real estate;
- Accusations against any person of a crime or formal censure of any person;
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Disclosure of investigatory records compiled for law enforcement purposes;
- Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigating compliance with this compact; or
- Matters specifically exempted from disclosure by federal or state statute.

If a meeting is closed to the public under this section, the commission's legal counsel or designee shall certify that the meeting, or portion of the meeting is closed and reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed during the closed session and shall provide a full and accurate summary of the action taken and reasons for those actions, including a description of the views expressed. All documents considered during the session must also be identified in the minutes. All minutes and documents from the closed session must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

Commission Bylaws -The commission is also required, by a majority vote of the administrators, to prescribe bylaws or rules to govern its conduct, including but not limited to:

- Establishing the commission's fiscal year;
- Providing reasonable standards and procedures:
 - For the establishment and meetings of other committees.
 - Governing any general or specific delegation of any authority or function of the commission.
- Providing reasonable procedures for calling and conducting meetings, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance by interested parties, with exceptions to protect the public's interest, the privacy of individuals, and proprietary information. The commission may only meet in closed session after a majority of members vote to close the meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy vote allowed.
- Establishing the titles, duties, authority, and reasonable procedures for electing commission officers;
- Providing reasonable standards and procedures for establishing the commission's personnel policies and programs;
- Providing a mechanism for winding up the commission's operations and the equitable distribution of any surplus funds that may exist after the compact's termination upon the payment of all obligations;
- Publishing the commission bylaws and rules, its amendments thereto, in a convenient form on the commission's website;
- Maintaining the commission's financial records in accordance with the bylaws; and
- Meeting and taking action consistent with the compact and bylaws.

Adoption of Rules by the Commission - The commission may also:

- Adopt uniform rules to facilitate and coordinate implementation and administration of the compact. The rules shall have the force and effect of binding law in all party states;
- Bring and prosecute legal proceedings and actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law is not affected;
- Purchase and maintain insurance and bonds;
- Borrow, accept, or contract for services of personnel, including employees of a party state or nonprofit organizations;
- Cooperate with other organizations that administer state compacts related to the regulation of nursing, including sharing administrative staff expenses, office space, or other resources;

- Hire employees, elect or appoint officers, fix compensation, define duties, grant such authority to carry out the compact, and establish personnel policies and programs relating to conflict of interest, qualifications of personnel, and other related personnel matters;
- Accept appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services and dispose of the same while avoiding the appearance of any impropriety or conflict of interest;
- Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, or improve or use any property, whether real, personal, or mixed, provided that, at all times the commission avoids any appearance of impropriety;
- Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property whether real, personal, or mixed;
- Establish a budget and make expenditures;
- Borrow money;
- Appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other interested persons;
- Exchange information and cooperate with law enforcement agencies;
- Adopt and use an official seal; and
- Perform other functions as may be necessary to achieve the compact's purpose consistent with the state regulation of nurse licensure and practice.

Financing of the Commission - The commission:

- Shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities;
- May levy and collect an annual assessment from each party state to cover the cost of operations, activities, and staff in its annual budget, as approved. The annual assessment amount, if approved, shall be determined by the commission based on a formula determined by the commission and adopted by rule that is binding on all party states;
- May not incur obligations of any kind before securing the adequate funds to meet the obligation and the commission may not pledge the credit of any party states, except by and with the authority of such party state; and
- Shall keep accurate accounts all receipts and disbursements which shall be subject to audit and accounting procedures and audited yearly by a certified or licensed public accountant;

Article VIII establishes the commission's authority for rulemaking. The commission exercises its rulemaking authority under this article and any rules adopted thereunder. Rules and amendments become binding as of the date specified in the rule or the amendment and have the same force and effect as any provision of the compact.

Rulemaking - The commission may adopt rules or amendments to its rules at a regular or special meeting; however, before adoption of a final rule, the commission must file a notice of proposed rulemaking at least 60 days prior to the commission meeting where the rule will be considered and voted upon. Notice of the proposed rule shall be posted on the commission's website and on the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

The proposed rule notice must include:

- The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
- The text of the proposed rule or amendment and the reason for the proposed rule;
- A request for comments on the proposed rule from any interested person; and
- The manner in which an interested party may submit notice to the commission of his or her intention to attend the public hearing and his or her written comments.

Before adoption of the proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public. The commission shall also grant an opportunity for a public hearing before it adopts a rule or amendment and publish the place, time, and date of that hearing.

Hearings must allow each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings must be recorded and a copy made available upon request. Rules may be grouped together for the convenience of the commission; a separate hearing is not required for each rule. If no interested person appears at the public hearing, the commission may proceed with the adoption of the proposed rule.

Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing is not held, the commission shall consider all comments received. Action on the proposed rule will be by majority vote of the commission and the commission shall determine the effective date, if any, based on the rulemaking record and the full text of the rule.

Emergency Rulemaking - If a determination is made that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures in this compact and article are applied retroactively to this rule as soon as reasonably possible within 90 days after the effective date of the emergency rule. An emergency rule is one that must be adopted immediately to:

- Meet an imminent threat to public health, safety, or welfare;
- Prevent a loss of commission or party state funds; or
- Meet a deadline for the adoption of an administrative rule that is required by federal law or rule.

The commission may direct revisions to previously adopted rules or amendments to correct typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of these revisions shall be posted on the commission's website. These revisions are subject to challenge for 30 days after posting. Challenges may only be based on the grounds that the revisions results in a material change in the rule. The challenge must be made in writing before the end of the notice period. If there is no challenge, the rule takes effect without the commission's approval.

Article IX establishes the oversight, dispute resolution, and enforcement provisions of the compact. Oversight of the compact will be established by:

- Each party state enforcing the compact and taking all actions necessary and appropriate to effectuate the compact's purposes and intent;

- The commission being entitled to receive service of process in any proceeding that may affect the powers, responsibility, or actions of the commission and having standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such a proceeding to the commission renders a judgment or order void as to the commission, this compact, or its adopted rules;

When the commission determines that a party state has defaulted under the compact:

- The commission shall provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission or provide remedial training and specific technical assistance regarding the default.
- If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of administrators and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of the termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
- Termination of compact membership shall be imposed only after all other means of securing compliance have been exhausted. The commission shall give notice of intent to suspend or terminate to the governor of the defaulting state, the executive officer of the state's licensing board, and to all party states.
- A state whose compact membership is terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
- The commission shall not bear any costs related to a state that is found to be in default or whose membership is terminated unless agreed upon in writing between the commission and the defaulting state.
- The defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

The commission is also permitted to use a dispute resolution process in the following manner:

- Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise between party states and party and nonparty states;
- The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes, as appropriate; and
- In the event the commission cannot resolve disputes among party states arising under this compact:
 - The party states may submit issues in the dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all party states involved in the dispute.
 - The decision of a majority of the arbitrators is final and binding.

The commission is charged with, in the reasonable exercise of its discretion, enforcement of the compact and its rules. By majority vote, the commission may initiate legal action in the United

States District of Columbia or the federal court in which the commission has its principal office against a party state that is in default to enforce compliance with the compact and the adopted bylaws and rules. Relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

The remedies provided in this Article are not exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

Article X establishes the effective date, withdrawal and amendment provisions for the compact as follows:

- The compact becomes effective and binding on the date of legislative enactment of this compact by no fewer than 26 states or on December 31, 2018, whichever occurs first;
- All party states which were also parties to the prior Nurse Licensure Compact (“prior compact,”) are deemed to have withdrawn from the prior compact within 6 months after the effective date of this compact;
- Each party state to this compact shall continue to recognize a nurse’s multistate licensure privilege to practice in that party state issued under the prior compact until such party state is withdrawn from the prior compact;
- Any party state may withdraw from this compact by enacting a statute repealing the compact; however, a party state’s withdrawal does not take effect until 6 months after the enactment of the repealing statute;
- A party state’s withdrawal or termination does not affect the continuing requirement of the withdrawing or terminating state’s licensing board to report adverse actions and significant investigations occurring before the effective date of such withdrawal or termination;
- This compact does not invalidate or prevent any nurse licensure agreement or other cooperative agreement between a party state and a nonparty state that is made in accordance with the other provisions of this compact;
- This compact may be amended by the party states; however, an amendment does not become effective and binding upon the party states unless and until it is enacted into the laws of all party states; and
- Representatives of nonparty states to this compact shall be invited to participate in the activities of the commission on a nonvoting basis, before the adoption of the compact by all party states.

Article XI addresses the construction and severability of the compact. The compact may be liberally construed so as to effectuate its purposes. The provisions of the compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the compact and the applicability to any government, agency, person, or circumstance is not affected.

If this compact is declared to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable provisions.

Section 8 amends s. 464.012, F.S., relating to certification of advanced registered nurse practitioners to recognize that an applicant may hold a multistate license.

Section 9 amends s. 464.015, F.S., relating to titles and abbreviations, to recognize the alternative multistate license available under s. 464.0095, F.S., and to make grammatical changes.

Section 10 amends s. 464.018, F.S., relating to disciplinary actions, to recognize the alternative multistate license available under s. 464.0095, F.S., to align the grounds for denial of a license or disciplinary action with the reasons provided under the compact. Grammatical changes throughout the section are also made to modify “licensee” to “nurse.”

The compact modified existing statutes to provide that an individual who entered a plea of guilty to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of nursing or the ability to practice nursing becomes grounds for discipline. The bill expands the listed adjudications that constitute grounds for disciplinary action to add “convicted of” and “entering a plea of guilty or nolo contendere” to what had previously said “found guilty of the following offenses.”

The grounds for denial of a license or disciplinary action are also made applicable to multistate license applicants or multistate licensees.

The bill authorizes the board to take adverse action against a nurse’s multistate license privilege and impose any of the penalties under s. 456.072, F.S., when the nurse is found guilty of violating subsection (1) or s. 456.072(1), F.S.

Section 11 amends s. 464.0195, F.S., relating to the Florida Center for Nursing and its goals. The bill directs the Florida Nursing Center to analyze the current nursing supply and demand in the state and make future projections, including an assessment of the impact of the state’s participation in the NLC. The Florida Nursing Center may request information from the board about nurses licensed in the state or holding multistate licenses and other information reported to the board by employers of such nurses, other than personal identifying information.

Section 12 amends s. 768.28, F.S., relating to waiver of sovereign immunity, to provide that the executive director of the Board of Nursing, when serving as the state administrator of the compact, and any administrator, officer, executive director, employee, or representative of the commission, when acting within the scope of their employment, duties, or responsibilities in this state, are considered agents of the state. The bill also provides that the commission will pay any claims or judgments pursuant to s. 768.28, F.S., and may maintain insurance coverage to pay any such claim or judgments. These provisions conform state law to the terms of the compact.

Section 13 provides an effective date of December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by 26 states, whichever occurs first.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

The commission requires most of its meetings to be open to the public and that such meetings, including rulemaking hearings, be publicly noticed 60 days prior to each meeting. Proposed rules must be posted to the commission's website and to the party state's licensing board websites or the publication in which each party state would otherwise publish proposed rules. The public must also be provided a reasonable opportunity for public comment, orally or in writing, for proposed rules.

However, the compact permits the commission to meet in closed, nonpublic meetings if the commission must discuss any of the following circumstances:

- Failure of a party state to comply with its obligations under the compact;
- Employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices;
- Current, threatened, or reasonably anticipated litigation;
- Negotiation of contracts for the purchase or sale of goods, services or real estate;
- Accusations against any person of a crime or formal censure any person;
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Disclosure of investigatory records compiled for law enforcement purposes;
- Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or
- Matters specifically exempted from disclosure by federal or state statute.

Closure of a public meetings for some of these reasons may be inconsistent with Florida law.

The commission is required to keep minutes of these closed sessions that fully describe all matters discussed and provide an accurate summary of actions taken. All minutes and documents of a closed meeting shall remain under seal according to the compact's provisions, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The compact authorizes administrators to develop rules that party states must adopt, which is potentially an unlawful delegation of legislative authority. The revised compact limits the rulemaking by the commission to rules that facilitate and coordinate the implementation and administration of the Nurse Licensure Compact.

If enacted into law, the state will bind itself to rules not yet promulgated and adopted by the commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative authority to prospectively adopt federal statutes not yet enacted by Congress and rules not yet promulgated by federal administrative bodies.^{38,39} Under this holding, the constitutionality of the bill's adoption of prospective rules might be questioned, and there does not appear to be binding Florida case law that squarely addresses this issue in the context of interstate compacts.

The most recent case Florida courts have had to address this issue was in *Department of Children and Family Services v. L.G.*, involving the Interstate Compact for the Placement of Children (ICPC).⁴⁰ The First District Court of Appeal considered an argument that the regulations adopted by the Association of Administrators of the Interstate Compact were binding and that the lower court's order permitting a mother and child to relocate to another state was in violation of the ICPC. The court denied the appeal and held that the Association's regulations did not apply as they conflicted with the ICPC and the regulations did not apply to the facts of the case.

The court also references language in the ICPC that confers to its compact administrators the "power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact."⁴¹ The court states that "the precise legal effect of the ICPC compact administrators' regulations in Florida is unclear," but noted that it did not need to address the question to decide the case.⁴² However, in a footnote, the court provided:

Any regulations promulgated before Florida adopted the ICPC did not, of course, reflect the vote of a Florida compact administrator, and no such regulations were ever themselves enacted into law in Florida. When the Legislature did adopt the ICPC, it did not (and could not) enact as the law of Florida or adopt prospectively regulations then yet to be promulgated by an entity not even

³⁸ *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972) (quoting *Fla. Ind. Comm'n v. State ex rel Orange State Oil Co.*, 155 Fla. 772 (1945)).

³⁹ This prohibition is based on the separation of powers doctrine, set forth in Article II, Section 3 of the Florida Constitution, which has been construed in Florida to require the Legislature, when delegating the administration of legislative programs, to establish the minimum standards and guidelines ascertainable by reference to the enactment creating the program. See *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

⁴⁰ 801 So.2d 1047 (Fla. 1st DCA 2001).

⁴¹ *Id.* at 1052.

⁴² *Id.*

covered by the Florida Administrative Procedure Act. *See Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So.2d 599, 603 (1945) (“[I]t is within the province of the legislature to approve and adopt the provisions of federal statutes, and all of the administrative rules made by a federal administrative body, that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future.”); *Brazil v. Div. of Admin.*, 347 So.2d 755, 757–58 (Fla. 1st DCA 1977), *disapproved on other grounds by LaPointe Outdoor Adver. v. Fla. Dep’t of Transp.*, 398 So.2d 1370, 1370 (Fla.1981). The ICPC compact administrators stand on the same footing as federal government administrators in this regard.⁴³

In accordance with the discussion provided by the court in this above-cited footnote, it may be argued that the bill’s delegation of rule-making authority to the commission is similar to the delegation to the ICPC compact administrators, and thus, could constitute an unlawful delegation of legislative authority. This case, however, does not appear to be binding as precedent as the court’s footnote discussion is dicta.⁴⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under PCS/SB 1316, a Florida nurse converting his or her single-state license would be subject to a fee to convert to a multistate license.

Health care employers, such as hospitals, nursing homes, assisted living facilities and others, may benefit from the availability of additional nurses in the workforce as nurses from other party states move to Florida for employment. According to one report, the number of vacant RN positions for 2015 in Florida was 12,493, and 9,947 new RN positions are expected to be created in Florida by the end of 2016.⁴⁵ Hospitals are facing

⁴³ *Id.*

⁴⁴ Dicta are statements of a court that are not essential to the determination of the case before it and are not a part of the law of the case. Dicta has no binding legal effect and is without force as judicial precedent. 12A FLA JUR. 2D *Courts and Judges* s. 191 (2015).

⁴⁵ Kathleen McGrory, *Florida Facing a “Nursing Shortage Tsunami” Due to Increased Population, More Insured Patients*, TAMPA BAY TIMES, Feb. 1, 2016, available at <http://www.tampabay.com/news/health/florida-facing-a-nursing-shortage-tsunami-due-to-increased-population-more/2263588>.

an average turnover rate of 18.3 percent in 2015 for registered nurses in hospitals providing additional recruitment opportunities.⁴⁶

C. Government Sector Impact:

The Department of Health's (DOH) office of Medical Quality Assurance (MQA) reports an expected increase in revenues associated with the multistate application initial and renewal fees. The increase of applications in Florida is unknown; therefore, the fiscal impact for this component is indeterminate at this time.⁴⁷ There are currently 1.4 million nurses with a multistate license.

The DOH anticipates an increase in workload and recurring expenses for:

- Additional regulations for new licensure;
- Investigation of complaints and investigations related to that new licensure; and
- Processing of initial and renewal applications and related fees.⁴⁸

The DOH is unable to determine the cost of these expenses at this time, but most of these expenses can be absorbed within existing DOH resources.

The annual membership cost with the Nurse Licensure Compact is approximately \$6,000 which the DOH indicates can be absorbed within current budget authority.⁴⁹

The DOH also will incur non-recurring costs to update the Nursing application and the Licensing and Information Database System, both of which the DOH indicates can be absorbed within existing resources.⁵⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

Florida's continuing education requirements for nurses (24 hours of continuing education over two years) would not apply to compact nurses. Florida's Board of Nursing could not require or enforce these continuing education requirements on nurses from other states that practiced in Florida under a multistate license privilege. Some compact states do not require continuing education.

Florida requires applicants to submit fingerprints for state and federal criminal records checks. The grandfather clause for nurses who are currently holding or renewing a multistate license

⁴⁶ Id.

⁴⁷ *Supra* note 16, at 6.

⁴⁸ Id at 6-7.

⁴⁹ Id.

⁵⁰ Id.

privilege would exempt nurses from the criminal background screening whose home state does not require criminal background screening.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.073, 456.076, 464.003, 464.004, 464.008, 464.009, 464.012, 464.015, 464.018, and 464.0195.

This bill creates section 464.0095 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

Recommended CS by Appropriations Subcommittee on Health and Human Services on February 17, 2016:

The proposed CS amends Florida Statutes relating to sovereign immunity to conform to the terms of the compact by providing that certain individuals, when carrying out duties or responsibilities relating to the compact are deemed agents of the state and by providing that the commission will pay any claims or judgments pursuant to a waiver of sovereign immunity and may maintain insurance coverage to pay such claims or judgments.

B. Amendments:

None.



454610

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on Health and Human Services
(Grimsley) recommended the following:

Senate Amendment

Delete line 565

and insert:

(c) This compact does not waive sovereign immunity except
to the extent sovereign immunity is waived in the party states.



714384

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on Health and Human Services
(Grimsley) recommended the following:

Senate Amendment (with title amendment)

Between lines 1177 and 1178
insert:

Section 12. Paragraph (g) is added to subsection (10) of
section 768.28, Florida Statutes, to read:

768.28 Waiver of sovereign immunity in tort actions;
recovery limits; limitation on attorney fees; statute of
limitations; exclusions; indemnification; risk management
programs.—



714384

(10)

(g) For purposes of this section, the executive director of the Board of Nursing, when serving as the state administrator of the Nurse Licensure Compact pursuant to s. 464.0095, and any administrator, officer, executive director, employee, or representative of the Interstate Commission of Nurse Licensure Compact Administrators, when acting within the scope of their employment, duties, or responsibilities in this state, are considered agents of the state. The commission shall pay any claims or judgments pursuant to this section and may maintain insurance coverage to pay any such claims or judgments.

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

And the title is amended as follows:

Delete line 81

and insert:

information about licensed nurses; amending s. 768.28, F.S.; designating the state administrator of the Nurse Licensure Compact and other members, employees, or representatives of the Interstate Commission of Nurse Licensure Compact Administrators as state agents for the purpose of applying sovereign immunity and waivers of sovereign immunity; requiring the commission to pay certain claims or judgments; authorizing the commission to maintain insurance coverage to pay certain claims or judgments; providing a

By Senator Grimsley

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1 A bill to be entitled
2 An act relating to the Nurse Licensure Compact;
3 amending s. 456.073, F.S.; requiring the Department of
4 Health to report certain investigative information to
5 the coordinated licensure information system; amending
6 s. 456.076, F.S.; requiring an impaired practitioner
7 consultant to disclose certain information to the
8 department upon request; requiring a nurse holding a
9 multistate license to report participation in a
10 treatment program to the department; amending s.
11 464.003, F.S.; revising definitions to conform to
12 changes made by the compact; amending s. 464.004,
13 F.S.; requiring the executive director of the Board of
14 Nursing or his or her designee to serve as state
15 administrator of the Nurse Licensure Compact; amending
16 s. 464.008, F.S.; providing eligibility criteria for a
17 multistate license; requiring that multistate licenses
18 be distinguished from single-state licenses; exempting
19 certain persons from licensed practical nurse and
20 registered nurse licensure requirements; amending s.
21 464.009, F.S.; exempting certain persons from
22 requirements for licensure by endorsement; creating s.
23 464.0095, F.S.; creating the Nurse Licensure Compact;
24 providing findings and purpose; providing definitions;
25 providing for the recognition of nursing licenses in
26 party states; requiring party states to perform
27 criminal history checks of licensure applicants;
28 providing requirements for obtaining and retaining a
29 multistate license; authorizing party states to take
30 adverse action against a nurse's multistate licensure
31 privilege; requiring notification to the home
32 licensing state of an adverse action against a

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33 licensee; requiring nurses practicing in party states
34 to comply with state practice laws; providing
35 limitations for licensees not residing in a party
36 state; providing the effect of the act on a current
37 licensee; providing application requirements for a
38 multistate license; providing licensure requirements
39 when a licensee moves between party states or to a
40 nonparty state; providing certain authority to state
41 licensing boards of party states; requiring
42 deactivation of a nurse's multistate licensure
43 privilege under certain circumstances; authorizing
44 participation in an alternative program in lieu of
45 adverse action against a license; requiring all party
46 states to participate in a coordinated licensure
47 information system; providing for the development of
48 the system, reporting procedures, and the exchange of
49 certain information between party states; establishing
50 the Interstate Commission of Nurse Licensure Compact
51 Administrators; providing for the jurisdiction and
52 venue for court proceedings; providing membership and
53 duties; authorizing the commission to adopt rules;
54 providing rulemaking procedures; providing for state
55 enforcement of the compact; providing for the
56 termination of compact membership; providing
57 procedures for the resolution of certain disputes;
58 providing an effective date of the compact; providing
59 a procedure for membership termination; providing
60 compact amendment procedures; authorizing nonparty
61 states to participate in commission activities before

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adoption of the compact; providing construction and severability; amending s. 464.012, F.S.; authorizing a multistate licensee under the compact to be certified as an advanced registered nurse practitioner if certain eligibility criteria are met; amending s. 464.015, F.S.; authorizing registered nurses and licensed practical nurses holding a multistate license under the compact to use certain titles and abbreviations; amending s. 464.018, F.S.; revising the grounds for denial of a nursing license or disciplinary action against a nursing licensee; authorizing certain disciplinary action under the compact for certain prohibited acts; amending s. 464.0195, F.S.; revising the information required to be included in the database on nursing supply and demand; requiring the Florida Center for Nursing to analyze and make future projections of the supply and demand for nurses; authorizing the center to request, and requiring the Board of Nursing to provide, certain information about licensed nurses; providing a contingent effective date.

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

Section 1. Subsection (10) of section 456.073, Florida Statutes, is amended to read:

456.073 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department.

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(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. The department shall report any significant investigation information relating to a nurse holding a multistate license to the coordinated licensure information system pursuant to s. 464.0095. Upon completion of the investigation and a recommendation by the department to find probable cause, and pursuant to a written request by the subject or the subject's attorney, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. Notwithstanding s. 456.057, the subject may inspect or receive a copy of any expert witness report or patient record connected with the investigation if the subject agrees in writing to maintain the confidentiality of any information received under this subsection until 10 days after probable cause is found and to maintain the confidentiality of patient records pursuant to s. 456.057. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days of mailing by the department, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.

Section 2. Subsection (9) of section 456.076, Florida

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Statutes, is amended to read:

456.076 Treatment programs for impaired practitioners.—

(9) An impaired practitioner consultant is the official custodian of records relating to the referral of an impaired licensee or applicant to that consultant and any other interaction between the licensee or applicant and the consultant. The consultant may disclose to the impaired licensee or applicant or his or her designee any information that is disclosed to or obtained by the consultant or that is confidential under paragraph (6)(a), but only to the extent that it is necessary to do so to carry out the consultant's duties under this section. The department, and any other entity that enters into a contract with the consultant to receive the services of the consultant, has direct administrative control over the consultant to the extent necessary to receive disclosures from the consultant as allowed by federal law. The consultant must disclose to the department, upon the department's request, whether an applicant for a multistate license under s. 464.0095 is participating in a treatment program and must report to the department when a nurse holding a multistate license under s. 464.0095 enters a treatment program. A nurse holding a multistate license pursuant to s. 464.0095 must report to the department within 2 business days after entering a treatment program pursuant to this section. If a disciplinary proceeding is pending, an impaired licensee may obtain such information from the department under s. 456.073.

Section 3. Subsections (16) and (22) of section 464.003, Florida Statutes, are amended to read:

464.003 Definitions.—As used in this part, the term:

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(16) "Licensed practical nurse" means any person licensed in this state or holding an active multistate license under s. 464.0095 to practice practical nursing.

(22) "Registered nurse" means any person licensed in this state or holding an active multistate license under s. 464.0095 to practice professional nursing.

Section 4. Subsection (5) is added to section 464.004, Florida Statutes, to read:

464.004 Board of Nursing; membership; appointment; terms.—

(5) The executive director of the board appointed pursuant to s. 456.004(2) or his or her designee shall serve as the state administrator of the Nurse Licensure Compact as required under s. 464.0095.

Section 5. Subsection (2) of section 464.008, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

464.008 Licensure by examination.—

(2)(a) Each applicant who passes the examination and provides proof of meeting the educational requirements specified in subsection (1) shall, unless denied pursuant to s. 464.018, be entitled to licensure as a registered professional nurse or a licensed practical nurse, whichever is applicable.

(b) An applicant who resides in this state, meets the licensure requirements of this section, and meets the criteria for multistate licensure under s. 464.0095 may request the issuance of a multistate license from the department.

(c) A nurse who holds a single-state license in this state and applies to the department for a multistate license must meet the eligibility criteria for a multistate license under s.

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178 464.0095 and must pay an application and licensure fee to change
 179 the licensure status.

180 (d) The department shall conspicuously distinguish a
 181 multistate license from a single-state license.

182 (5) A person holding an active multistate license in
 183 another state pursuant to s. 464.0095 is exempt from the
 184 licensure requirements of this section.

185 Section 6. Subsection (7) is added to section 464.009,
 186 Florida Statutes, to read:

187 464.009 Licensure by endorsement.—

188 (7) A person holding an active multistate license in
 189 another state pursuant to s. 464.0095 is exempt from the
 190 requirements for licensure by endorsement in this section.

191 Section 7. Section 464.0095, Florida Statutes, is created
 192 to read:

193 464.0095 Nurse Licensure Compact.—The Nurse Licensure
 194 Compact is hereby enacted into law and entered into by this
 195 state with all other jurisdictions legally joining therein in
 196 the form substantially as follows:

197 ARTICLE I

198 FINDINGS AND DECLARATION OF PURPOSE

199 (1) The party states find that:

200 (a) The health and safety of the public are affected by the
 201 degree of compliance with and the effectiveness of enforcement
 202 activities related to state nurse licensure laws.

203 (b) Violations of nurse licensure and other laws regulating
 204 the practice of nursing may result in injury or harm to the
 205 public.

206 (c) The expanded mobility of nurses and the use of advanced

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207 communication technologies as part of the nation's health care
 208 delivery system require greater coordination and cooperation
 209 among states in the areas of nurse licensure and regulation.

210 (d) New practice modalities and technology make compliance
 211 with individual state nurse licensure laws difficult and
 212 complex.

213 (e) The current system of duplicative licensure for nurses
 214 practicing in multiple states is cumbersome and redundant for
 215 both nurses and states.

216 (f) Uniformity of nurse licensure requirements throughout
 217 the states promotes public safety and public health benefits.

218 (2) The general purposes of this compact are to:

219 (a) Facilitate the states' responsibility to protect the
 220 public's health and safety.

221 (b) Ensure and encourage the cooperation of party states in
 222 the areas of nurse licensure and regulation.

223 (c) Facilitate the exchange of information among party
 224 states in the areas of nurse regulation, investigation, and
 225 adverse actions.

226 (d) Promote compliance with the laws governing the practice
 227 of nursing in each jurisdiction.

228 (e) Invest all party states with the authority to hold a
 229 nurse accountable for meeting all state practice laws in the
 230 state in which the patient is located at the time care is
 231 rendered through the mutual recognition of party state licenses.

232 (f) Decrease redundancies in the consideration and issuance
 233 of nurse licenses.

234 (g) Provide opportunities for interstate practice by nurses
 235 who meet uniform licensure requirements.

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ARTICLE II

DEFINITIONS

As used in this compact, the term:

(1) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

(2) "Alternative program" means a nondisciplinary monitoring program approved by a licensing board.

(3) "Commission" means the Interstate Commission of Nurse Licensure Compact Administrators established by this compact.

(4) "Compact" means the Nurse Licensure Compact recognized, established, and entered into by the state under this compact.

(5) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws which is administered by a nonprofit organization composed of and controlled by licensing boards.

(6) "Current significant investigative information" means:

(a) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true,

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would indicate more than a minor infraction; or

(b) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(7) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

(8) "Home state" means the party state that is the nurse's primary state of residence.

(9) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(10) "Multistate license" means a license to practice as a registered nurse (RN) or a licensed practical or vocational nurse (LPN/VN) issued by a home state licensing board which authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

(11) "Multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either an RN or an LPN/VN in a remote state.

(12) "Nurse" means an RN or LPN/VN, as those terms are defined by each party state's practice laws.

(13) "Party state" means any state that has adopted this compact.

(14) "Remote state" means a party state other than the home state.

(15) "Single-state license" means a nurse license issued by a party state which authorizes practice only within the issuing

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294 state and does not include a multistate licensure privilege to
 295 practice in any other party state.

296 (16) "State" means a state, territory, or possession of the
 297 United States, or the District of Columbia.

298 (17) "State practice laws" means a party state's laws,
 299 rules, and regulations that govern the practice of nursing,
 300 define the scope of nursing practice, and create the methods and
 301 grounds for imposing discipline. The term does not include
 302 requirements necessary to obtain and retain a license, except
 303 for qualifications or requirements of the home state.

ARTICLE III

GENERAL PROVISIONS AND JURISDICTION

305 (1) A multistate license to practice registered or licensed
 306 practical or vocational nursing issued by a home state to a
 307 resident in that state is recognized by each party state as
 308 authorizing a nurse to practice as an RN or as an LPN/VN under a
 309 multistate licensure privilege in each party state.

311 (2) Each party state must implement procedures for
 312 considering the criminal history records of applicants for
 313 initial multistate licensure or licensure by endorsement. Such
 314 procedures shall include the submission of fingerprints or other
 315 biometric-based information by applicants for the purpose of
 316 obtaining an applicant's criminal history record information
 317 from the Federal Bureau of Investigation and the agency
 318 responsible for retaining that state's criminal records.

319 (3) In order for an applicant to obtain or retain a
 320 multistate license in the home state, each party state must
 321 require that the applicant fulfills the following criteria:

322 (a) Has met the home state's qualifications for licensure

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323 or renewal of licensure, as well as all other applicable state
 324 laws.

325 (b)1. Has graduated or is eligible to graduate from a
 326 licensing board-approved RN or LPN/VN prelicensure education
 327 program; or

328 2. Has graduated from a foreign RN or LPN/VN prelicensure
 329 education program that has been approved by the authorized
 330 accrediting body in the applicable country and has been verified
 331 by a licensing board-approved independent credentials review
 332 agency to be comparable to a licensing board-approved
 333 prelicensure education program.

334 (c) If the applicant is a graduate of a foreign
 335 prelicensure education program not taught in English, or if
 336 English is not the applicant's native language, has successfully
 337 passed a licensing board-approved English proficiency
 338 examination that includes the components of reading, speaking,
 339 writing, and listening.

340 (d) Has successfully passed an NCLEX-RN or NCLEX-PN
 341 Examination or recognized predecessor, as applicable.

342 (e) Is eligible for or holds an active, unencumbered
 343 license.

344 (f) Has submitted, in connection with an application for
 345 initial licensure or licensure by endorsement, fingerprints or
 346 other biometric data for the purpose of obtaining criminal
 347 history record information from the Federal Bureau of
 348 Investigation and the agency responsible for retaining that
 349 state's criminal records.

350 (g) Has not been convicted or found guilty, or has entered
 351 into an agreed disposition other than a disposition that results

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in nolle prosequi, of a felony offense under applicable state or federal criminal law.

(h) Has not been convicted or found guilty, or has entered into an agreed disposition other than a disposition that results in nolle prosequi, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis.

(i) Is not currently enrolled in an alternative program.

(j) Is subject to self-disclosure requirements regarding current participation in an alternative program.

(k) Has a valid social security number.

(4) All party states may, in accordance with existing state due process law, take adverse action against a nurse's multistate licensure privilege, such as revocation, suspension, probation, or any other action that affects the nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(5) A nurse practicing in a party state shall comply with the state practice laws of the state in which the patient is located at the time service is provided. The practice of nursing is not limited to patient care but includes all nursing practice as defined by the state practice laws of the party state in which the patient is located. The practice of nursing in a party state under a multistate licensure privilege subjects a nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the patient is located at the

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time service is provided.

(6) A person not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. The single-state license granted to such a person does not grant the privilege to practice nursing in any other party state. This compact does not affect the requirements established by a party state for the issuance of a single-state license.

(7) A nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that the nurse who changes his or her primary state of residence after the effective date meets all applicable requirements under subsection (3) to obtain a multistate license from a new home state. A nurse who fails to satisfy the multistate licensure requirements under subsection (3) due to a disqualifying event occurring after the effective date is ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the commission.

ARTICLE IV

APPLICATIONS FOR LICENSURE IN A PARTY STATE

(1) Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any

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license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

(2) A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

(3) If a nurse changes his or her primary state of residence by moving from one party state to another party state, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state must be deactivated in accordance with applicable rules adopted by the commission.

(a) The nurse may apply for licensure in advance of a change in his or her primary state of residence.

(b) A multistate license may not be issued by the new home state until the nurse provides satisfactory evidence of a change in his or her primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

(4) If a nurse changes his or her primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state must convert to a single-state license valid only in the former home state.

ARTICLE V

ADDITIONAL AUTHORITY VESTED IN PARTY STATE LICENSING BOARDS

(1) In addition to the other powers conferred by state law, a licensing board or state agency may:

(a) Take adverse action against a nurse's multistate licensure privilege to practice within that party state.

1. Only the home state has the power to take adverse action

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against a nurse's license issued by the home state.

2. For purposes of taking adverse action, the home state licensing board or state agency shall give the same priority and effect to conduct reported by a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

(b) Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.

(c) Complete any pending investigation of a nurse who changes his or her primary state of residence during the course of such investigation. The licensing board or state agency may also take appropriate action and shall promptly report the conclusions of such investigation to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such action.

(d) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses or the production of evidence. Subpoenas issued by a licensing board or state agency in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, and mileage and other fees required by the service statutes of the state in which the witnesses or evidence is located.

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(e) Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks, and use the results in making licensure decisions.

(f) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

(g) Take adverse action based on the factual findings of the remote state, provided that the licensing board or state agency follows its own procedures for taking such adverse action.

(2) If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances are removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

(3) This compact does not override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

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ARTICLE VI

COORDINATED LICENSURE INFORMATION SYSTEM AND EXCHANGE
INFORMATION

(1) All party states shall participate in a coordinated licensure information system relating to all licensed RNs and LPNs/VNs. This system shall include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(2) The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

(3) All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications, the reasons for application denials, and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

(4) Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(5) Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express

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526 permission of the contributing state.

527 (6) Any personal identifying information obtained from the
 528 coordinated licensure information system by a party state
 529 licensing board may not be shared with nonparty states or
 530 disclosed to other entities or individuals except to the extent
 531 permitted by the laws of the party state contributing the
 532 information.

533 (7) Any information contributed to the coordinated
 534 licensure information system which is subsequently required to
 535 be expunged by the laws of the party state contributing that
 536 information is also expunged from the coordinated licensure
 537 information system.

538 (8) The compact administrator of each party state shall
 539 furnish a uniform data set to the compact administrator of each
 540 other party state, which shall include, at a minimum:

541 (a) Identifying information.

542 (b) Licensure data.

543 (c) Information related to alternative program
 544 participation.

545 (d) Other information that may facilitate the
 546 administration of this compact, as determined by commission
 547 rules.

548 (9) The compact administrator of a party state shall
 549 provide all investigative documents and information requested by
 550 another party state.

551 ARTICLE VII

552 ESTABLISHMENT OF THE INTERSTATE COMMISSION OF NURSE LICENSURE 553 COMPACT ADMINISTRATORS

554 (1) The party states hereby create and establish a joint

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555 public entity known as the Interstate Commission of Nurse
 556 Licensure Compact Administrators.

557 (a) The commission is an instrumentality of the party
 558 states.

559 (b) Venue is proper, and judicial proceedings by or against
 560 the commission shall be brought solely and exclusively, in a
 561 court of competent jurisdiction where the commission's principal
 562 office is located. The commission may waive venue and
 563 jurisdictional defenses to the extent it adopts or consents to
 564 participate in alternative dispute resolution proceedings.

565 (c) This compact does not waive sovereign immunity.

566 (2) (a) Each party state shall have and be limited to one
 567 administrator. The executive director of the state licensing
 568 board or his or her designee shall be the administrator of this
 569 compact for each party state. Any administrator may be removed
 570 or suspended from office as provided by the law of the state
 571 from which the administrator is appointed. Any vacancy occurring
 572 on the commission shall be filled in accordance with the laws of
 573 the party state in which the vacancy exists.

574 (b) Each administrator is entitled to one vote with regard
 575 to the adoption of rules and the creation of bylaws and shall
 576 otherwise have an opportunity to participate in the business and
 577 affairs of the commission. An administrator shall vote in person
 578 or by such other means as provided in the bylaws. The bylaws may
 579 provide for an administrator's participation in meetings by
 580 telephone or other means of communication.

581 (c) The commission shall meet at least once during each
 582 calendar year. Additional meetings shall be held as set forth in
 583 the commission's bylaws or rules.

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584 (d) All meetings shall be open to the public, and public
 585 notice of meetings shall be given in the same manner as required
 586 under Article VIII of this compact.

587 (e) The commission may convene in a closed, nonpublic
 588 meeting if the commission must discuss:

589 1. Failure of a party state to comply with its obligations
 590 under this compact;

591 2. The employment, compensation, discipline, or other
 592 personnel matters, practices, or procedures related to specific
 593 employees or other matters related to the commission's internal
 594 personnel practices and procedures;

595 3. Current, threatened, or reasonably anticipated
 596 litigation;

597 4. Negotiation of contracts for the purchase or sale of
 598 goods, services, or real estate;

599 5. Accusing any person of a crime or formally censuring any
 600 person;

601 6. Disclosure of trade secrets or commercial or financial
 602 information that is privileged or confidential;

603 7. Disclosure of information of a personal nature where
 604 disclosure would constitute a clearly unwarranted invasion of
 605 personal privacy;

606 8. Disclosure of investigatory records compiled for law
 607 enforcement purposes;

608 9. Disclosure of information related to any reports
 609 prepared by or on behalf of the commission for the purpose of
 610 investigation of compliance with this compact; or

611 10. Matters specifically exempted from disclosure by
 612 federal or state statute.

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613 (f) If a meeting, or portion of a meeting, is closed
 614 pursuant to this subsection, the commission's legal counsel or
 615 designee shall certify that the meeting, or portion of the
 616 meeting, is closed and shall reference each relevant exempting
 617 provision. The commission shall keep minutes that fully and
 618 clearly describe all matters discussed in a meeting and shall
 619 provide a full and accurate summary of actions taken, and the
 620 reasons therefor, including a description of the views
 621 expressed. All documents considered in connection with an action
 622 shall be identified in such minutes. All minutes and documents
 623 of a closed meeting shall remain under seal, subject to release
 624 by a majority vote of the commission or order of a court of
 625 competent jurisdiction.

626 (3) The commission shall, by a majority vote of the
 627 administrators, prescribe bylaws or rules to govern its conduct
 628 as may be necessary or appropriate to carry out the purposes and
 629 exercise the powers of this compact, including, but not limited
 630 to:

631 (a) Establishing the commission's fiscal year.

632 (b) Providing reasonable standards and procedures:

633 1. For the establishment and meetings of other committees.

634 2. Governing any general or specific delegation of any
 635 authority or function of the commission.

636 (c) Providing reasonable procedures for calling and
 637 conducting meetings of the commission, ensuring reasonable
 638 advance notice of all meetings, and providing an opportunity for
 639 attendance of such meetings by interested parties, with
 640 enumerated exceptions designed to protect the public's interest,
 641 the privacy of individuals, and proprietary information,

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including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed.

(d) Establishing the titles, duties and authority, and reasonable procedures for the election of the commission's officers.

(e) Providing reasonable standards and procedures for the establishment of the commission's personnel policies and programs. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the commission's personnel policies and programs.

(f) Providing a mechanism for winding up the commission's operations and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.

(4) The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the commission's website.

(5) The commission shall maintain its financial records in accordance with the bylaws.

(6) The commission shall meet and take such actions as are consistent with this compact and the bylaws.

(7) The commission may:

(a) Adopt uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and are binding in all

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party states.

(b) Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law is not affected.

(c) Purchase and maintain insurance and bonds.

(d) Borrow, accept, or contract for services of personnel, including employees of a party state or nonprofit organizations.

(e) Cooperate with other organizations that administer state compacts related to the regulation of nursing, including sharing administrative or staff expenses, office space, or other resources.

(f) Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.

(g) Accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services and receive, use, and dispose of the same, provided that, at all times, the commission avoids any appearance of impropriety or conflict of interest.

(h) Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve, or use any property, whether real, personal, or mixed, provided that, at all times, the commission avoids any appearance of impropriety.

(i) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real,

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personal, or mixed.

(j) Establish a budget and make expenditures.

(k) Borrow money.

(l) Appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other interested persons.

(m) Provide information to, receive information from, and cooperate with law enforcement agencies.

(n) Adopt and use an official seal.

(o) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.

(8) Relating to the financing of the commission, the commission:

(a) Shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(b) May also levy and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based on a formula to be determined by the commission, which shall adopt a rule that is binding on all party states.

(c) May not incur obligations of any kind before securing the funds adequate to meet the same; and the commission may not pledge the credit of any of the party states, except by and with the authority of such party state.

(d) Shall keep accurate accounts of all receipts and

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disbursements. The commission's receipts and disbursements are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in, and become part of, the commission's annual report.

(9) Relating to the sovereign immunity, defense, and indemnification of the commission:

(a) The administrators, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. This paragraph does not protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of that person.

(b) The commission shall defend any administrator, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities,

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provided that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct. This paragraph does not prohibit that person from retaining his or her own counsel.

(c) The commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

ARTICLE VIII

RULEMAKING

(1) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments become binding as of the date specified in each rule or amendment and have the same force and effect as provisions of this compact.

(2) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

(3) Before adoption of a final rule or final rules by the commission, and at least 60 days before the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(a) On the commission's website.

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(b) On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

(4) The notice of proposed rulemaking shall include:

(a) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon.

(b) The text of the proposed rule or amendment and the reason for the proposed rule.

(c) A request for comments on the proposed rule from any interested person.

(d) The manner in which an interested person may submit notice to the commission of his or her intention to attend the public hearing and any written comments.

(5) Before adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(6) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

(7) The commission shall publish the place, time, and date of the scheduled public hearing.

(a) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.

(b) This article does not require a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this article.

(8) If no interested person appears at the public hearing, the commission may proceed with adoption of the proposed rule.

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816 (9) Following the scheduled hearing date, or by the close
 817 of business on the scheduled hearing date if the hearing is not
 818 held, the commission shall consider all written and oral
 819 comments received.

820 (10) The commission shall, by majority vote of all
 821 administrators, take final action on the proposed rule and shall
 822 determine the effective date of the rule, if any, based on the
 823 rulemaking record and the full text of the rule.

824 (11) Upon determination that an emergency exists, the
 825 commission may consider and adopt an emergency rule without
 826 prior notice, opportunity for comment, or hearing, provided that
 827 the usual rulemaking procedures provided in this compact and in
 828 this article are applied retroactively to the rule as soon as
 829 reasonably possible within 90 days after the effective date of
 830 the rule. For the purposes of this subsection, an emergency rule
 831 is one that must be adopted immediately in order to:

832 (a) Meet an imminent threat to public health, safety, or
 833 welfare;

834 (b) Prevent a loss of commission or party state funds; or
 835 (c) Meet a deadline for the adoption of an administrative
 836 rule that is required by federal law or rule.

837 (12) The commission may direct revisions to a previously
 838 adopted rule or amendment for purposes of correcting
 839 typographical errors, errors in format, errors in consistency,
 840 or grammatical errors. Public notice of any revisions shall be
 841 posted on the commission's website. The revision is subject to
 842 challenge by any person for 30 days after posting. The revision
 843 may be challenged only on grounds that the revision results in a
 844 material change to a rule. A challenge must be made in writing

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845 and delivered to the commission before the end of the notice
 846 period. If no challenge is made, the revision shall take effect
 847 without further action. If the revision is challenged, the
 848 revision may not take effect without the commission's approval.

ARTICLE IX

OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

851 (1) Oversight of this compact shall be accomplished by:

852 (a) Each party state, which shall enforce this compact and
 853 take all actions necessary and appropriate to effectuate this
 854 compact's purposes and intent.

855 (b) The commission, which is entitled to receive service of
 856 process in any proceeding that may affect the powers,
 857 responsibilities, or actions of the commission and has standing
 858 to intervene in such a proceeding for all purposes. Failure to
 859 provide service of process in such proceeding to the commission
 860 renders a judgment or order void as to the commission, this
 861 compact, or adopted rules.

862 (2) When the commission determines that a party state has
 863 defaulted in the performance of its obligations or
 864 responsibilities under this compact or the adopted rules, the
 865 commission shall:

866 (a) Provide written notice to the defaulting state and
 867 other party states of the nature of the default, the proposed
 868 means of curing the default, or any other action to be taken by
 869 the commission.

870 (b) Provide remedial training and specific technical
 871 assistance regarding the default.

872 (3) If a state in default fails to cure the default, the
 873 defaulting state's membership in this compact may be terminated

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874 upon an affirmative vote of a majority of the administrators,
 875 and all rights, privileges, and benefits conferred by this
 876 compact may be terminated on the effective date of termination.
 877 A cure of the default does not relieve the offending state of
 878 obligations or liabilities incurred during the period of
 879 default.

880 (4) Termination of membership in this compact shall be
 881 imposed only after all other means of securing compliance have
 882 been exhausted. Notice of intent to suspend or terminate shall
 883 be given by the commission to the governor of the defaulting
 884 state, to the executive officer of the defaulting state's
 885 licensing board, and each of the party states.

886 (5) A state whose membership in this compact is terminated
 887 is responsible for all assessments, obligations, and liabilities
 888 incurred through the effective date of termination, including
 889 obligations that extend beyond the effective date of
 890 termination.

891 (6) The commission shall not bear any costs related to a
 892 state that is found to be in default or whose membership in this
 893 compact is terminated unless agreed upon in writing between the
 894 commission and the defaulting state.

895 (7) The defaulting state may appeal the action of the
 896 commission by petitioning the United States District Court for
 897 the District of Columbia or the federal district in which the
 898 commission has its principal offices. The prevailing party shall
 899 be awarded all costs of such litigation, including reasonable
 900 attorney fees.

901 (8) Dispute resolution may be used by the commission in the
 902 following manner:

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903 (a) Upon request by a party state, the commission shall
 904 attempt to resolve disputes related to the compact that arise
 905 among party states and between party and nonparty states.

906 (b) The commission shall adopt a rule providing for both
 907 mediation and binding dispute resolution for disputes, as
 908 appropriate.

909 (c) In the event the commission cannot resolve disputes
 910 among party states arising under this compact:

911 1. The party states may submit the issues in dispute to an
 912 arbitration panel, which will be comprised of individuals
 913 appointed by the compact administrator in each of the affected
 914 party states and an individual mutually agreed upon by the
 915 compact administrators of all the party states involved in the
 916 dispute.

917 2. The decision of a majority of the arbitrators is final
 918 and binding.

919 (9) (a) The commission shall, in the reasonable exercise of
 920 its discretion, enforce the provisions and rules of this
 921 compact.

922 (b) By majority vote, the commission may initiate legal
 923 action in the United States District Court for the District of
 924 Columbia or the federal district in which the commission has its
 925 principal offices against a party state that is in default to
 926 enforce compliance with this compact and its adopted rules and
 927 bylaws. The relief sought may include both injunctive relief and
 928 damages. In the event judicial enforcement is necessary, the
 929 prevailing party shall be awarded all costs of such litigation,
 930 including reasonable attorney fees.

931 (c) The remedies provided in this subsection are not the

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exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE X

EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

(1) This compact becomes effective and binding on the date of legislative enactment of this compact into law by no fewer than 26 states or on December 31, 2018, whichever occurs first. All party states to this compact which were also parties to the prior Nurse Licensure Compact ("prior compact"), superseded by this compact, are deemed to have withdrawn from the prior compact within 6 months after the effective date of this compact.

(2) Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until such party state is withdrawn from the prior compact.

(3) Any party state may withdraw from this compact by enacting a statute repealing the compact. A party state's withdrawal does not take effect until 6 months after enactment of the repealing statute.

(4) A party state's withdrawal or termination does not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring before the effective date of such withdrawal or termination.

(5) This compact does not invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

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(6) This compact may be amended by the party states. An amendment to this compact does not become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

(7) Representatives of nonparty states to this compact shall be invited to participate in the activities of the commission, on a nonvoting basis, before the adoption of this compact by all party states.

ARTICLE XI

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance is not affected thereby. If this compact is declared to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Section 8. Subsection (1) of section 464.012, Florida Statutes, is amended to read:

464.012 Certification of advanced registered nurse practitioners; fees.—

(1) Any nurse desiring to be certified as an advanced registered nurse practitioner shall apply to the department and

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 990 submit proof that he or she holds a current license to practice
 991 professional nursing or holds an active multistate license to
 992 practice professional nursing pursuant to s. 464.0095 and that
 993 he or she meets one or more of the following requirements as
 994 determined by the board:

995 (a) Satisfactory completion of a formal postbasic
 996 educational program of at least one academic year, the primary
 997 purpose of which is to prepare nurses for advanced or
 998 specialized practice.

999 (b) Certification by an appropriate specialty board. Such
 1000 certification shall be required for initial state certification
 1001 and any recertification as a registered nurse anesthetist or
 1002 nurse midwife. The board may by rule provide for provisional
 1003 state certification of graduate nurse anesthetists and nurse
 1004 midwives for a period of time determined to be appropriate for
 1005 preparing for and passing the national certification
 1006 examination.

1007 (c) Graduation from a program leading to a master's degree
 1008 in a nursing clinical specialty area with preparation in
 1009 specialized practitioner skills. For applicants graduating on or
 1010 after October 1, 1998, graduation from a master's degree program
 1011 shall be required for initial certification as a nurse
 1012 practitioner under paragraph (4)(c). For applicants graduating
 1013 on or after October 1, 2001, graduation from a master's degree
 1014 program shall be required for initial certification as a
 1015 registered nurse anesthetist under paragraph (4)(a).

1016 Section 9. Subsections (1), (2), and (9) of section
 1017 464.015, Florida Statutes, are amended to read:

1018 464.015 Titles and abbreviations; restrictions; penalty.—

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 1019 (1) Only a person ~~persons~~ who holds a license in this state
 1020 or a multistate license pursuant to s. 464.0095 ~~hold licenses to~~
 1021 ~~practice professional nursing in this state~~ or who performs ~~are~~
 1022 ~~performing~~ nursing services pursuant to the exception set forth
 1023 in s. 464.022(8) may ~~shall have the right to~~ use the title
 1024 "Registered Nurse" and the abbreviation "R.N."

1025 (2) Only a person ~~persons~~ who holds a license in this state
 1026 or a multistate license pursuant to s. 464.0095 ~~hold licenses to~~
 1027 practice as a licensed practical nurse ~~nurses in this state~~ or
 1028 who performs ~~are performing~~ practical nursing services pursuant
 1029 to the exception set forth in s. 464.022(8) may ~~shall have the~~
 1030 ~~right to~~ use the title "Licensed Practical Nurse" and the
 1031 abbreviation "L.P.N."

1032 (9) A person may not practice or advertise as, or assume
 1033 the title of, registered nurse, licensed practical nurse,
 1034 clinical nurse specialist, certified registered nurse
 1035 anesthetist, certified nurse midwife, or advanced registered
 1036 nurse practitioner or use the abbreviation "R.N.," "L.P.N.,"
 1037 "C.N.S.," "C.R.N.A.," "C.N.M.," or "A.R.N.P." or take any other
 1038 action that would lead the public to believe that person was
 1039 authorized by law to practice ~~certified~~ as such or is performing
 1040 nursing services pursuant to the exception set forth in s.
 1041 464.022(8), unless that person is licensed, ~~or~~ certified, or
 1042 authorized pursuant to s. 464.0095 to practice as such.

1043 Section 10. Subsections (1) and (2) of section 464.018,
 1044 Florida Statutes, are amended to read:

1045 464.018 Disciplinary actions.—

1046 (1) The following acts constitute grounds for denial of a
 1047 license or disciplinary action, as specified in ss. ~~s.~~

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456.072(2) and 464.0095:

(a) Procuring, attempting to procure, or renewing a license to practice nursing or the authority to practice practical or professional nursing pursuant to s. 464.0095 by bribery, by knowing misrepresentations, or through an error of the department or the board.

(b) Having a license to practice nursing revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of nursing or to the ability to practice nursing.

(d) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, of any of the following offenses:

1. A forcible felony as defined in chapter 776.

2. A violation of chapter 812, relating to theft, robbery, and related crimes.

3. A violation of chapter 817, relating to fraudulent practices.

4. A violation of chapter 800, relating to lewdness and indecent exposure.

5. A violation of chapter 784, relating to assault, battery, and culpable negligence.

6. A violation of chapter 827, relating to child abuse.

7. A violation of chapter 415, relating to protection from abuse, neglect, and exploitation.

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8. A violation of chapter 39, relating to child abuse, abandonment, and neglect.

9. For an applicant for a multistate license or for a multistate licenseholder under s. 464.0095, a felony offense under Florida law or federal criminal law.

(e) Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.04 or similar statute of another jurisdiction; or having committed an act which constitutes domestic violence as defined in s. 741.28.

(f) Making or filing a false report or record, which the nurse licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the nurse's capacity as a licensed nurse.

(g) False, misleading, or deceptive advertising.

(h) Unprofessional conduct, as defined by board rule.

(i) Engaging or attempting to engage in the possession, sale, or distribution of controlled substances as set forth in chapter 893, for any other than legitimate purposes authorized by this part.

(j) Being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the State Surgeon General or the State Surgeon General's designee

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that probable cause exists to believe that the nurse ~~licensee~~ is unable to practice nursing because of the reasons stated in this paragraph, the authority to issue an order to compel a nurse ~~licensee~~ to submit to a mental or physical examination by physicians designated by the department. If the nurse ~~licensee~~ refuses to comply with such order, the department's order directing such examination may be enforced by filing a petition for enforcement in the circuit court where the nurse ~~licensee~~ resides or does business. The nurse ~~licensee~~ against whom the petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A nurse affected by ~~the provisions of~~ this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of nursing with reasonable skill and safety to patients.

(k) Failing to report to the department any person who the nurse ~~licensee~~ knows is in violation of this part or of the rules of the department or the board; however, if the nurse ~~licensee~~ verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the nurse ~~licensee~~ is required to report such person only to an impaired professionals consultant.

(l) Knowingly violating any provision of this part, a rule of the board or the department, or a lawful order of the board or department previously entered in a disciplinary proceeding or failing to comply with a lawfully issued subpoena of the department.

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(m) Failing to report to the department any licensee under chapter 458 or under chapter 459 who the nurse knows has violated the grounds for disciplinary action set out in the law under which that person is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part I of chapter 641, in which the nurse also provides services.

(n) Failing to meet minimal standards of acceptable and prevailing nursing practice, including engaging in acts for which the nurse ~~licensee~~ is not qualified by training or experience.

(o) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) (a) The board may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or nurse ~~licensee~~ who is found guilty of violating ~~any provision of subsection (1) of this section or who is found guilty of violating any provision of~~ s. 456.072(1).

(b) The board may take adverse action against a nurse's multistate licensure privilege and impose any of the penalties in s. 456.072(2) when the nurse is found guilty of violating subsection (1) or s. 456.072(1).

Section 11. Paragraph (a) of subsection (2) of section 464.0195, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

464.0195 Florida Center for Nursing; goals.-

(2) The primary goals for the center shall be to:

(a) Develop a strategic statewide plan for nursing manpower in this state by:

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1. Establishing and maintaining a database on nursing supply and demand in the state, to include current supply and demand, ~~and future projections; and~~

2. Analyzing the current nursing supply and demand in the state and making future projections of such, including assessing the impact of this state's participation in the Nurse Licensure Compact under s. 464.0095; and

~~3.2-~~ Selecting from the plan priorities to be addressed.

(4) The center may request from the board, and the board must provide to the center upon its request, any information held by the board regarding nurses licensed in this state or holding a multistate license pursuant to s. 464.0095 or information reported to the board by employers of such nurses, other than personal identifying information.

Section 12. This act shall take effect December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by 26 states, whichever occurs first.



The Florida Senate

Committee Agenda Request

To: Senator Rene Garcia, Chair
Appropriations Subcommittee on Health and Human Services

Subject: Committee Agenda Request

Date: February 10, 2016

I respectfully request that **Senate Bill 1370**, relating to Medicaid Provider Overpayments to be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 21

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 1370

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Medicaid Provider Overpayments

DATE: February 16, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>LLoyd</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Recommend: Favorable
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1370 authorizes the Agency for Health Care Administration (AHCA) to certify that a Medicaid provider is “out of business” and that any overpayments made to that provider cannot be collected. Such an authorization allows Florida to use a federal exemption from repayment of the mandatory Medicaid federal share for provider overpayments.

The bill removes obsolete technology references to expand the types of tools available to the AHCA to curb fraud and Medicaid overpayments.

The bill has a potentially positive fiscal impact to the state.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Florida Medicaid Program

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare & Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid is administered by the AHCA and financed with federal and state funds. Over 3.9 million Floridians are currently enrolled in Medicaid, and the program's estimated expenditures for the 2015-2016 fiscal year are over \$24.9 billion.¹

Medicaid provider agreements are voluntary contracts between the provider and the AHCA under s. 409.907, F.S., and specifies that a person or entity who enrolls in Medicaid as a provider agrees to comply with all laws, rules, and policies relating to the Medicaid program. Additionally, s. 409.907(4), F.S., specifically states:

(4) A provider agreement shall provide that, if the provider sells or transfers a business interest or practice that substantially constitutes the entity named as the provider in the provider agreement, or sells or transfers a facility that is of substantial importance to the entity named as the provider in the provider agreement, the provider is required to maintain and make available to the agency Medicaid-related records that relate to the sale or transfer of the business interest, practice, or facility in the same manner as though the sale or transaction had not taken place, unless the provider enters into an agreement with the purchaser of the business interest, practice, or facility to fulfill this requirement.

Office of Medicaid Program Integrity

The Office of Medicaid Program Integrity (MPI), a unit within the Office of the Inspector General at AHCA, audits Medicaid providers and determines if an overpayment has occurred requiring a provider to return funds to the Medicaid program. The AHCA also works jointly with the Medicaid Fraud Control Unit (MFCU) of the Department of Legal Affairs to prevent, reduce, and mitigate health care fraud, waste, and abuse. Because audits are often retrospective in nature and completed on claims data that may be two to five years old, the Medicaid provider may have gone out of business, moved, or may not otherwise be able to be located when the audit has been completed.

The MPI is statutorily required to develop statistical methodologies to identify providers who exhibit aberrant billing patterns.² The MPI uses these methods to perform comprehensive audits and analyses of Medicaid providers. Overpayments identified through these audits are referred to the AHCA's Division of Operations, Bureau of Financial Services for collection.³

Any suspected criminal violation identified by the AHCA must be referred to the MFCU of the Office of the Attorney General for investigation.⁴ The MFCU is responsible for investigating and prosecuting provider fraud within the Medicaid program which commonly involves fraud related to providers billing for services not provided, overcharging for services that are provided, or

¹ Office of Economic and Demographic Research, *Social Services Estimating Conference* (Jan. 7, 2016) available at <http://edr.state.fl.us/Content/conferences/medicaid/medltexp.pdf> (last visited Feb. 11, 2016).

² Section 409.913(2), F.S.

³ Agency for Health Care Administration and the Department of Legal Affairs, *The State's Efforts to Control Medicaid Fraud and Abuse FY 2014-2015*, p. 44 (December 15, 2015) available at https://ahca.myflorida.com/Executive/Inspector_General/docs/Medicaid_Fraud_Abuse_Annual_Reports/2014-15_MedicaidFraudandAbuseAnnualReport.pdf (last visited Feb. 5, 2016).

⁴ Section 409.913(4), F.S.

billing for services that are medically unnecessary.⁵ The AHCA and the MFCU are required to submit an annual joint report to the Legislature documenting the effectiveness of the state's efforts to control Medicaid fraud and abuse and to recover Medicaid overpayments during the previous fiscal year.⁶

When the AHCA discovers an overpayment has been made to a provider that has since gone out of business, a refund from the provider is still pursued, but, historically, less than one percent of such overpayment debts are recovered.⁷

Under federal law, the state is required to refund to federal CMS the federal share of the overpayment no later than one year after the state discovers that an overpayment has been made, regardless of whether the state has collected a refund from the provider.⁸

However, federal law provides that the requirement to refund the federal share to CMS can be waived in cases in which the state is unable to recover the overpayment because the provider has been determined bankrupt or out of business.⁹ For an out-of-business provider, in order for the federal refund requirement to be waived, the state must, within one year of discovering the overpayment:

- Document its efforts to locate the provider and its assets; and
- Make available an affidavit or certification from the appropriate state legal authority establishing that the provider is out of business and that the overpayment cannot be collected under state law and procedures.¹⁰

Currently, the AHCA is not afforded a means under state law and procedures to certify that a Medicaid provider is out of business. Therefore, the provision for the federal refund requirement to be waived cannot be triggered. During Fiscal Year 2012-13, the AHCA was required to refund to CMS approximately \$520,000, which represented the federal share of overpayments made to providers that had gone out of business. In Fiscal Year 2011-12, the sum was approximately \$2.9 million.¹¹

Home Health Care Services Monitoring Project

The Florida Medicaid program has implemented several programs to ensure its recipients do not receive unnecessary and inappropriate medical care and that providers bill for services actually provided. The AHCA manages a number of quality improvement and prior authorization projects to ensure that Medicaid recipients receive medically necessary, quality care in the most cost effective manner.¹² One of the Medicaid services subject to quality improvement or prior authorization is home health services. Sandata Technologies, LLC, currently verifies the

⁵ *Supra* note 3, at 1.

⁶ *Supra* note 3.

⁷ Email from the Agency for Health Care Administration, Sept. 23, 2015, on file with staff of the Senate Appropriations Subcommittee on Health and Human Services.

⁸ See 42 CFR 433.312(a)(2).

⁹ See 42 CFR 433.312(b).

¹⁰ See 42 CFR 433.318(d).

¹¹ *Supra*, note 7.

¹² Agency for Health Care Administration, *Utilization Review-Quality Assurance/Quality Improvement*, http://ahca.myflorida.com/Medicaid/Utilization_Review/index.shtml (last visited Feb. 9, 2016).

utilization and delivery of home health services through a telephone verification system using a technology called biometrics.¹³ The databases contain information on home health agency staff, recipients, service authorizations, visit schedules, visit verifications, and billing activity.¹⁴

III. Effect of Proposed Changes:

Section 1 amends s. 409.908, F.S., to authorize the AHCA to certify a Medicaid provider as “out of business.”

Section 2 amends s. 409.9132, F.S., to remove a reference to telephonic technology for the verification of home health service visits. This section authorizes the AHCA to use technology that is effective for identifying delivery of home health services and deterring fraudulent and abusive billing for the service. Alternate advanced technology may be available at this time.

Section 3 reenacts subsection (4) of s. 409.8132, F.S., relating to the Medikids program for the purposes of incorporating the changes to s. 409.908(25), F.S. This section is included as a cross-reference of Medicaid statutes that are also applicable to the Medikids program.

Section 4 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 1370, Florida taxpayers will benefit from the retention of the state’s federal share of Medicaid dollars.

¹³ Id.

¹⁴ Id.

Private vendors who provide technology that verify the delivery of home health visits may also benefit from the ability of the AHCA to use alternative methods of identifying and deterring fraud and abuse in the Medicaid program.

C. Government Sector Impact:

The AHCA estimates the bill would result in the anticipated average retention of \$1 million to \$3 million per state fiscal year in federal dollars to the state.¹⁵

Electronic verification for home health services was mandated to help curb fraud and abuse for these services. With the majority of Medicaid recipients receiving services through managed care plans, electronic visit verification has been reduced from being statewide to operating in eight counties where service utilization remains relatively high.¹⁶ The AHCA will be able to procure a more effective form of an electronic visit verification system upon expiration of its current system with the modification under this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.908 and 409.9132.

This bill reenacts section 409.8132 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Health Policy on February 9, 2016:

The CS removes obsolete technology language which limits the AHCA's ability to use other technology to identify the delivery of home health services and deter fraudulent or abuse billing practices for these services.

¹⁵ Id at 4.

¹⁶ Agency for Health Care Administration, *Senate Bill 1370 Analysis* (Feb. 3, 2016) (on file with the Senate Committee on Health Policy).

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 the Committee on Health Policy; and Senator Grimsley

588-03252-16

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A bill to be entitled

An act relating to Medicaid provider overpayments; amending s. 409.908, F.S.; authorizing the Agency for Health Care Administration to certify that a Medicaid provider is out of business and that overpayments made to a provider cannot be collected under state law; amending s. 409.9132, F.S.; revising the manner in which the Medicaid program verifies a vendor's visits for the delivery of home health services; reenacting s. 409.8132(4), F.S., to incorporate the amendment made to s. 409.908, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (25) is added to section 409.908, Florida Statutes, to read:

409.908 Reimbursement of Medicaid providers.—Subject to specific appropriations, the agency shall reimburse Medicaid providers, in accordance with state and federal law, according to methodologies set forth in the rules of the agency and in policy manuals and handbooks incorporated by reference therein. These methodologies may include fee schedules, reimbursement methods based on cost reporting, negotiated fees, competitive bidding pursuant to s. 287.057, and other mechanisms the agency considers efficient and effective for purchasing services or goods on behalf of recipients. If a provider is reimbursed based on cost reporting and submits a cost report late and that cost report would have been used to set a lower reimbursement rate for a rate semester, then the provider's rate for that semester shall be retroactively calculated using the new cost report, and full payment at the recalculated rate shall be effected

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retroactively. Medicare-granted extensions for filing cost reports, if applicable, shall also apply to Medicaid cost reports. Payment for Medicaid compensable services made on behalf of Medicaid eligible persons is subject to the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216. Further, nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or making any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, provided the adjustment is consistent with legislative intent.

(25) In accordance with 42 C.F.R. s. 433.318(d), the agency may certify that a Medicaid provider is out of business and that any overpayments made to the provider cannot be collected under state law and procedures.

Section 2. Section 409.9132, Florida Statutes, is amended to read:

409.9132 Pilot project to monitor home health services.—The Agency for Health Care Administration shall expand the home health agency monitoring pilot project in Miami-Dade County on a statewide basis effective July 1, 2012, except in counties in which the program is not cost-effective, as determined by the agency. The agency shall contract with a vendor to verify the utilization and delivery of home health services and provide an electronic billing interface for home health services. The contract must require the creation of a program to submit claims electronically for the delivery of home health services. The

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62 program must verify ~~telephonically~~ visits for the delivery of
63 home health services by using technology that is effective for
64 identifying delivery of the home health services and deterring
65 fraudulent or abusive billing for these services ~~voice~~
66 ~~biometrics~~. The agency may seek amendments to the Medicaid state
67 plan and waivers of federal laws, as necessary, to implement or
68 expand the pilot project. Notwithstanding s. 287.057(3)(e), the
69 agency must award the contract through the competitive
70 solicitation process and may use the current contract to expand
71 the home health agency monitoring pilot project to include
72 additional counties as authorized under this section.

73 Section 3. Subsection (4) of s. 409.8132, Florida Statutes,
74 is reenacted for the purpose of incorporating the amendment made
75 by this act to s. 409.908, Florida Statutes, in a reference
76 thereto.

77 Section 4. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Rene Garcia, Chair
Appropriations Subcommittee on Health and Human Services

Subject: Committee Agenda Request

Date: February 11, 2016

I respectfully request that **Senate Bill #1518**, relating to Cardiovascular Services to be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 21

THE FLORIDA SENATE

APPEARANCE RECORD

2-17-2015

Meeting Date

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

SB 1518

Bill Number (if applicable)

Topic Adult Cardiovascular

Amendment Barcode (if applicable)

Name Lecia Behenna

Job Title

Address 306 College Ave

Phone 222-9800

Street

Tall.

FL

32301

Email leciab@FHA.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Hospital Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 1518

INTRODUCER: Health Policy Committee and Senator Grimsley

SUBJECT: Adult Cardiovascular Services

DATE: February 16, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stovall</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Brown</u>	<u>Brown</u>	<u>AHS</u>	Recommend: Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1518 authorizes nursing and technical cardiac interventional laboratory staff to earn the required hours of training experience in a dedicated cardiac interventional laboratory at a hospital that does not have an approved adult open-heart-surgery program (a Level I adult cardiovascular services program) if, throughout the training period, the cardiac interventional laboratory meets certain volume and quality performance measures. Currently this training may only be provided in a Level II adult cardiovascular services program, which is one that provides on-site cardiac surgery.

The bill also creates the Pediatric Cardiac Advisory Council (council) within the Department of Health (DOH) for the purpose of advising the DOH on the delivery of cardiac services to children. The bill specifies the duties and composition of the council.

The DOH, in coordination with the Agency for Health Administration (AHCA), is authorized to develop rules related to pediatric cardiac facilities participating in the Children's Medical Services Network. The bill creates the "Pediatric and Congenital Centers of Excellence" designation for facilities that meet standards established by the council and approved by the director of Children's Medical Services and the State Surgeon General, utilizing state and national professional standards.

Additionally, the bill provides that rules relating to pediatric cardiac services and facilities in effect on October 1, 2015, are authorized and remain in effect until amended.

The bill further requires the council to submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General summarizing the council's activities for the preceding fiscal year, including specified data and performance measures of cardiac facilities participating in the Children's Medical Services Network, and recommending policy and procedural changes.

The bill is estimated to have an insignificant fiscal impact.

The bill's effective date is July 1, 2016.

II. Present Situation:

Percutaneous cardiac intervention (PCI), also commonly known as coronary angioplasty or angioplasty, is a nonsurgical technique for treating obstructive coronary artery disease, including unstable angina, acute myocardial infarction, and multi-vessel coronary artery disease.¹

PCI uses a catheter to insert a small structure called a stent to reopen blood vessels in the heart that have been narrowed by plaque build-up, a condition known as atherosclerosis. Using a special type of X-ray called fluoroscopy, the catheter is threaded through blood vessels into the heart where the coronary artery is narrowed. When the tip is in place, a balloon tip covered with a stent is inflated. The balloon tip compresses the plaque and expands the stent. Once the plaque is compressed and the stent is in place, the balloon is deflated and withdrawn. The stent stays in the artery, holding it open.²

Hospital Licensure and Regulation

Hospitals are regulated by the Agency for Health Care Administration (AHCA) under ch. 395, F.S., and the general licensure provisions of part II of ch. 408, F.S. Hospitals are subject to the certificate of need (CON) provisions in part I of ch. 408, F.S. A CON is a written statement issued by the AHCA evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility or health service.³

Adult cardiovascular services (ACS), including PCI, were previously regulated through the CON program.⁴ However, in 2004, the Legislature established a licensure process for adult interventional cardiology services (the predecessor terminology for ACS), dependent upon rulemaking, in lieu of the CON procedure.⁵ Among other things, that law required the rules to establish two hospital program licensure levels: a Level I program authorizing the performance of adult primary PCI for emergency patients without on-site cardiac surgery, and a Level II

¹ Medscape: Percutaneous cardiac intervention, <http://emedicine.medscape.com/article/161446-overview>, (last visited Feb. 4, 2016).

² Heart and Stroke Foundation, http://www.heartandstroke.com/site/c.ikiQLcMWJtE/b.3831925/k.4F32/Heart_disease_Percutaneous_coronary_intervention_PCI_or_angioplasty_with_stent.htm, (last visited Feb. 4, 2016).

³ Section 408.032(3), F.S.

⁴ See s. 408.036(3)(m) and (n), F.S., allowing for an exemption from the full review process for certain adult open-heart services and PCI services.

⁵ Ch. 2004-383, s. 7, Laws of Fla.

program authorizing the performance of PCI with on-site cardiac surgery.⁶ Additionally the rules must require compliance with the most recent guidelines of the American College of Cardiology and American Heart Association guidelines for staffing, physician training and experience, operating procedures, equipment, physical plant, and patient-selection criteria to ensure quality and safety.⁷

The AHCA adopted rules for Level I ACS⁸ and Level II ACS.⁹ The staffing rules within a Level I ACS require:

- Each cardiologist to be an experienced physician who has performed a minimum of 75 interventional cardiology procedures within the previous 12 months, or those physicians with less than 12 months experience, to fulfill specified training requirements;
- The nursing and technical catheterization laboratory staff must meet the following requirements:
 - Be experienced in handling acutely ill patients requiring intervention or balloon pump;
 - Have at least 500 hours of previous experience in dedicated cardiac interventional laboratories at a hospital with a Level II ACS program;¹⁰
 - Be skilled in all aspects of interventional cardiology equipment; and
 - Participate in a 24-hour-per-day, 365 day-per-year call schedule; and
- The hospital to ensure that a member of the cardiac care nursing staff who is adept in hemodynamic monitoring and Intra-aortic Balloon Pump (IABP) management be in the hospital at all times.

The staffing rules within a Level II ACS require:

- Each cardiac surgeon to be board-certified, new surgeons to be board-certified within four years after completion of their fellowship, and experienced surgeons with greater than 10 years of experience to document that their training and experience preceded the availability of board certification, if applicable;
- Each cardiologist to be an experienced physician who has performed a minimum of 75 interventional cardiology procedures within the previous 12 months;
- The nursing and technical catheterization laboratory staff must meet the following requirements:
 - Be experienced in handling acutely ill patients requiring intervention or balloon pump;
 - Have at least 500 hours of previous experience in dedicated cardiac interventional laboratories at a hospital with a Level II ACS program;
 - Be skilled in all aspects of interventional cardiology equipment; and
 - Participate in a 24-hour-per-day, 365 day-per-year call schedule; and
- The hospital to ensure that a member of the cardiac care nursing staff who is adept in hemodynamic monitoring and Intra-aortic Balloon Pump (IABP) management be in the hospital at all times.

⁶ Level I and Level II ACS programs may also perform adult diagnostic cardiac catheterization in accordance with Rule 59A-3.2085(13), F.A.C. Adult diagnostic cardiac catheterization involves the insertion of a catheter into one or more heart chambers for the purpose of diagnosing cardiovascular diseases.

⁷ See s. 408.0361(3), F.S.

⁸ Rule 59A-3.2085(16), F.A.C.

⁹ Rule 59A-3.2085(17), F.A.C.

¹⁰ The standard in the CON exemption in s. 408.036(3)(n), F.S., for providing PCI in a hospital without an approved adult open-heart-surgery program required previous experience in dedicated interventional laboratories or surgical centers.

One of the authoritative sources referenced in the AHCA's rulemaking is The American College of Cardiology/American Heart Association Task Force on Practice Guidelines' report: ACC/AHA/SCAI 2005 Guideline Update for PCI.¹¹ Table 15 in that report provides criteria for the performance of primary PCI at hospitals without on-site cardiac surgery. It states:

The nursing and technical catheterization laboratory staff must be experience in handling acutely ill patients and must be comfortable within interventional equipment. They must have acquired experience in dedicated interventional laboratories at a surgical center.

In 2014, the Society for Cardiovascular Angiography and Interventions, the American College of Cardiology Foundation, and the American Heart Association, Inc., issued the SCAI/ACC/AHA Expert Consensus Document: 2014 Update on PCI Without On-Site Surgical Backup.¹² That report acknowledged advances and best practices in PCI performed in hospitals without on-site surgery. Table IV in that report addresses personnel requirements for PCI programs without on-site surgery. It recommends the program have experienced nursing and technical laboratory staff with training in interventional laboratories. The report does not reference a requirement that the training or experience should occur in a dedicated interventional laboratory at a surgical center.

As of February 7, 2016, there are 52 Florida hospitals providing Level I ACS services and 77 Florida hospitals providing Level II ACS services.¹³

Children's Medical Services

Children's Medical Services (CMS) is a group of programs that serve children with special health care needs under the supervision of the DOH. Within CMS, individual services or programs are designed to address specific conditions or family needs such as the newborn screening program, early intervention screenings, or its Medicaid managed care plan known as the CMS Plan. CMS is created under ch. 391, F.S., which is divided into three parts: Part I (General Provisions), Part II (Children's Medical Services Councils and Panels), and Part III (Developmental Evaluation and Intervention Programs).

¹¹Smith SC Jr, Feldman TE, Hirshfeld JW Jr, Jacobs AK, Kern MJ, King SB III, Morrison DA, O'Neill WW, Schaff HV, Whitlow PL, Williams DO. ACC/AHA/SCAI 2005 guideline update for percutaneous coronary intervention: a report of the American College of Cardiology/American Heart Association Task Force on Practice Guidelines (ACC/AHA/SCAI Writing Committee to Update the 2001 Guidelines for Percutaneous Coronary Intervention). the Society for Cardiovascular Angiography and Interventions Web Site. Available at:

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUKEwizrYy2zubKAhUBfSYKHafZCiAQFggvMAI&url=http%3A%2F%2Fwww.scai.org%2Fasset.axd%3Fid%3Da1d96b40-b6c7-42e7-9b71-1090e581b58c%26t%3D634128854999430000&usq=AFQjCNF0t0334L9yMm_XLA5rl0pXoCvPDw (last visited

February 7, 2016).

¹² Gregory J. Dehmer, et.al, available at <http://circ.ahajournals.org/content/129/24/2610.full.pdf+html> (last visited Feb. 7, 2016).

¹³ See The AHCA FloridaHealthFinder.gov available at <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx>, (last visited Feb. 2, 2016).

Statewide Children's Medical Services Network Advisory Council

The State Surgeon General has the discretion under s. 391.221, F.S., to appoint a 12-member Statewide Children's Medical Services Network Advisory Council to serve as an advisory body to the Department of Health (DOH). The council's duties include, but are not limited to:

- Recommending standards and credentialing requirements for health care providers in the CMS network of providers (CMS Network);
- Making recommendations to the director of CMS concerning the selection of CMS providers;
- Providing input to the CMS program on the policies governing the CMS Network;
- Reviewing the financial reports and financial status of the CMS Network and making recommendations concerning the methods of payment and costs controls for the CMS Network;
- Reviewing and recommending the scope of benefits for the CMS Network; and
- Reviewing CMS Network performance measures and outcomes and making recommendations for improvements to the CMS Network and its maintenance and collection of data and information.

Council members represent the private health care provider sector, families of children with special health care needs, the AHCA, the state's Chief Financial Officer, the Florida Chapter of the American Academy of Pediatrics, an academic pediatric program, and the health insurance industry.¹⁴ The four-year terms were initially staggered and no member can be appointed for more than two consecutive terms. Members do not receive any compensation for their appointment except they are reimbursed for per diem and travel in accordance with s. 112.061, F.S.¹⁵

The DOH does not currently have an appointed Statewide Children's Medical Services Network Advisory Council.

Cardiac Technical Advisory Panel

The State Surgeon General also has general authority under s. 391.223, F.S., to establish technical advisory panels to assist with the development of specific policies and procedures for the CMS program. On October 21, 2013, State Surgeon General John Armstrong created the Children's Medical Services Cardiac Technical Advisory Panel (CTAP) to provide both programmatic and technical advice to the DOH and its CMS program.¹⁶ The enabling document charges the panel with:

- Developing recommended standards for personnel and facilities rendering pediatric congenital cardiac services as well as heart disease;
- Developing recommendations for legislative initiatives, including appropriation items, related to the cardiac program and developing rules;
- Developing recommendations for statewide cardiac initiatives, including identifying panel members who will collaborate with other DOH councils or committees or state agencies;

¹⁴ Section 391.221(2), F.S.

¹⁵ Section 391.221 (3), F.S.

¹⁶ Florida Dep't of Health, *Creation of the Children's Medical Services Cardiac Technical Advisory Panel*, (October 2013) <http://www.cmsctap.com/files/documents/CTAP-Creation.pdf> (Last visited Oct. 6, 2015).

- Assisting the AHCA, or as requested by individual hospitals, or as outlined in their individual contract with CMS, with the ongoing evaluation and development of congenital cardiovascular programs;
- Giving priority status to weight control programs and their implementation in all pediatric cardiovascular centers and clinics; and
- Developing recommendations to the DOH and the AHCA for congenital heart disease quality improvement to improve patient care and health and decrease the cost of care.¹⁷

The CTAP membership is appointed by the State Surgeon General, in consultation with the Deputy Secretary of CMS and the Director of the Division of CMS. Eleven members are designated in the creation document. They represent pediatric cardiologists or cardiovascular surgeons from specific pediatric cardiovascular children's hospitals across the state and include two at-large physicians and a community physician who are not affiliated with one of the named facilities. Non-voting advisory members may also be named by the State Surgeon General who may deliberate, but not vote, with the panel. Alternate members for each representative of the cardiovascular children's hospitals must also be named.

Pursuant to the enabling document, CTAP members select their chairperson and vice chairperson through majority vote every two years. Meetings of the CMS CTAP are upon the call of the chairperson, at the request of the State Surgeon General, the Deputy Secretary of CMS, the Director of the Division of CMS, or the majority of the voting members.¹⁸

Members are reimbursed for per diem and travel expenses for required attendance at in-person or video conference committee meetings or CMS site visits in accordance with s. 112.061, F.S.¹⁹

Department of Health's Proposed Repeal of Rule 64C-4.003, F.A.C.

Rule 64C-4.003, F.A.C., established and incorporated by reference quality assurance standards and criteria for the approval and operation of CMS pediatric cardiac facilities.

On October 12, 2015, the DOH held a rule hearing regarding the proposed repeal of the standards for pediatric cardiac facilities, Rule 64C-4.003, F.A.C. The DOH determined there was no statutory authority for it to establish standards, inspect facilities, or prepare inspection reports for the technical advisory panel to review.²⁰ A Petition for Determination of Invalidity of Proposed Rule regarding the proposed repeal of Rule 64C-4.003, F.A.C., was filed with the Division of Administrative Hearings (DOAH). The DOAH administrative law judge issued a final order on December 16, 2015, ruling that the petitioners did not have standing to challenge the proposed rule, and therefore he was without jurisdiction to rule on the merits of the rule challenge.²¹ An appeal to that order was filed in the First District Court of Appeal on December 31, 2015.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Fla. Department of Health, *2016 Agency Bill Analysis - SB 378*, p. 2, (Sept. 29, 2015) (on file with the Senate Committee on Health Policy)

²¹ *W.D., C.V., K.E. and K.M., vs. Department of Health, Florida Division of Administrative Hearing*, Case no. 15-6009RP, available at: <https://www.doah.state.fl.us/ROS/2015/15006009.pdf> (last visited on Feb. 8, 2016).

Cardiac Advisory Council

Prior to the 2001 Regular Session, a Cardiac Advisory Council in the Division of CMS existed.²² The council was appointed by the secretary of the DOH and included eight members with technical expertise in cardiac medicine who were charged with:

- Recommending standards for personnel and facilities rendering cardiac services;
- Receiving reports of the periodic review of cardiac personnel and facilities to determine if established standards for cardiac care are met;
- Making recommendations to the director as to the approval or disapproval of reviewed personnel and facilities; and
- Providing input on all aspects of the CMS cardiac program, including the rulemaking process.²³

The statute which created that council was repealed effective June 30, 2001, as part of an exhaustive review of more than three dozen boards, committees, commissions, and councils to determine whether to continue or abolish each entity.²⁴ The DOH recommended the repeal of the council and indicated it would absorb the functions of the council in 2001.²⁵

Statutory Organization: Advisory Councils

Chapter 20, F.S., authorizes the creation of a number of different types of entities to assist state government in the efficient performance of its duties and functions. Under s. 20.03(7), F.S., a “council” or “advisory council” is defined as:

an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Advisory bodies, commissions, and boards may only be created by statute in furtherance of a public purpose²⁶ and meet a statutorily defined purpose.²⁷ Such advisory bodies, commissions, and boards must be terminated by the Legislature once the body, commission, or board notifies the Legislature that it is no longer necessary or beneficial to the furtherance of a public purpose.²⁸ The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of advisory bodies, commissions, and boards.²⁹ Members of such bodies are appointed for staggered, four-year terms and unless otherwise provided in the

²² See s. 391.222, F.S. (2000).

²³ *Id.*

²⁴ Chapter 2001-89, s. 27, Laws of Fla.

²⁵ Senate Committee on Governmental Oversight and Productivity, *CS/SB 1410 Staff Analysis and Economic Impact Statement* (March 28, 2001) p. 9, <http://archive.flsenate.gov/data/session/2001/Senate/bills/analysis/pdf/2001s1410.go.pdf> (Last visited Oct. 6, 2015).

²⁶ Section 20.052(1), F.S.

²⁷ Section 20.052(4)(a), F.S.

²⁸ Section 20.052(2), F.S.

²⁹ Section 20.052(3), F.S.

State Constitution,³⁰ serve without compensation, but are authorized to receive reimbursement for per diem and travel as provided in s. 112.061, F.S.³¹

Private citizen appointees to an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of a department, or a Cabinet officer.³² Private citizen appointees to a board or commission that is adjunct to an executive agency must be appointed by the Governor, unless otherwise provided by law, confirmed by the Senate, and are subject to dual office holding provisions of s. 5(a), Art. II of the State Constitution.³³

Unless exempted, all meetings of advisory bodies, boards, and commissions are subject to public meetings requirements under s. 286.011, F.S., and minutes must be maintained for all meetings.³⁴

Technical advisory panels are not separately defined in statute.

Rulemaking

Rulemaking is required by Florida's Administrative Procedure Act (APA) whenever a government agency has express authority to make rules; an agency must undertake rulemaking to implement, interpret, or prescribe law, policy, or requirements, including mandatory forms.³⁵ Rulemaking is not discretionary under the APA.³⁶

III. Effect of Proposed Changes:

Section 1 creates s. 391.224, F.S., and the Pediatric Cardiac Advisory Council (council) under the Department of Health (DOH) for the purpose of coordinating pediatric cardiac care in this state and advising the DOH and the Agency for Health Care Administration (AHCA) on the delivery of cardiac services to children.

The advisory council will be composed of no more than 13 voting members with expertise in cardiac medicine appointed by the State Surgeon General, and members will serve staggered four-year terms. Eight of the members who are either pediatric cardiologists or pediatric cardiovascular surgeons must be nominated by the chief executive officers of designated health care systems with pediatric cardiac certificates of need. A hospital with a CON for a pediatric cardiac program that meets state and national standards as determined by the council following an on-site visit by a panel from the council, shall have one of its pediatric cardiologists or pediatric cardiovascular surgeons who has been nominated by its chief executive officer and approved by the State Surgeon General appointed to the council as a new voting member.

³⁰ Section 20.052(4)(c), F.S.

³¹ Section 20.052(4)(d), F.S.

³² Section 20.052(5)(a), F.S.

³³ Section 20.052(5)(b), F.S.

³⁴ Section 20.052(5)(c), F.S.

³⁵ *Dep't of Bus. Reg., Div. of Alcoholic Bev. & Tobacco v. Martin County Liquors, Inc.*, 574 So.2d 170 (Fla. 1st DCA 1991).

³⁶ Section 120.54(1)(a), F.S.

The State Surgeon General is also authorized to select additional at-large members, with expertise in pediatric cardiology or adults with congenital heart disease who are not associated with one of the designated facilities. Additional advisory, non-voting members may also be appointed to the council by the State Surgeon General, one of whom must be a representative from a pediatric health advocacy group.

The voting privilege of a voting member of the advisory council must be suspended if the facility he or she represents no longer meets state and national standards as adopted by the council. Such individual may remain a member of the council in an advisory capacity but shall relinquish voting privileges until his or her facility meets required standards.

The bill requires the Council to meet at least quarterly. Meetings may also be called by the chairperson, two or more voting members, or the State Surgeon General. An employee of the DOH or a contracted consultant paid by the DOH is not eligible to serve as a member or ex-officio member and no member may serve more than two consecutive terms.

Council members do not receive compensation; however, they are entitled to reimbursement in accordance with s. 112.061, F.S., for per diem and travel. Council meetings must be conducted via teleconference where that capability is available.

The council's duties include, but are not limited to:

- Recommending standards for personnel and facilities rendering cardiac services;
- Analyzing reports on the periodic review of cardiac personnel and facilities to determine if established standards for the cardiac services are met;
- Making recommendations to the Children's Medical Services (CMS) director as to the approval or disapproval of personnel and facilities;
- Making recommendations as to the intervals for re-inspection of approved personnel and facilities;
- Reviewing and inspecting hospitals upon the request of the hospital, the DOH, or the AHCA to determine if established state and national standards for cardiac services are met;
- Providing input on all aspects of the state's Children's Medical Services cardiac programs, including rulemaking;
- Addressing all components of the care of adults and children with congenital heart disease and children with acquired heart disease, as indicated and appropriate;
- Abiding by the recognized state and national professional standards of care for children with heart disease;
- Making recommendations to the State Surgeon General for legislation and appropriations for children's cardiac services; and
- Providing advisory opinions to the AHCA before the AHCA approves a CON for children's cardiac services.

The bill also authorizes the creation of the "Pediatric and Congenital Centers of Excellence" designation. The designation may be awarded to facilities at the recommendation of the council with the approval of the director of CMS and the State Surgeon General utilizing state and national professional standards approved by the council. The designation shall be withdrawn automatically if a facility no longer meets those standards.

The council shall also develop and recommend to the State Surgeon General evaluation tools for measuring the goals and performance standards for the facilities seeking and receiving the designation.

The council must submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General by each January 1, beginning in 2017. This report must summarize the council's activities for the preceding fiscal year and include data and performance measures for all pediatric cardiac facilities that participate in the CMS Network relating to surgical morbidity and mortality. The annual report must also recommend any policy or procedural changes that would increase the council's effectiveness in monitoring pediatric cardiovascular programs in the state.

The DOH, in coordination with the AHCA, shall develop rules related to pediatric cardiac facilities that participate in the CMS Network. These rules may establish standards relating to the training and credentialing of medical and surgical personnel, facility and physician minimum case volumes, and data reporting requirements for monitoring and enhancing quality assurance. Also, the DOH is authorized to develop rules related to the establishment, operations, and authority of the council, and the establishment, goals, performance standards, and evaluation tools for designating facilities as "Pediatric and Congenital Cardiovascular Centers of Excellence."

The bill ratifies rules relating to pediatric services and facilities in effect on October 1, 2015, by providing these rules are authorized and shall remain in effect until amended.³⁷

Section 2 amends s. 408.0361(3)(b), to require the AHCA to adopt or update rules relating to nursing and technical staff experience in dedicated cardiac interventional laboratories or surgical centers. The bill specifies that if a nurse's or technical staff member's prior experience is in a dedicated cardiac interventional laboratory at a hospital that does not have an approved adult open-heart-surgery program (Level I hospital), the previous experience qualifies only if, while the staff member acquires his or her experience, the dedicated cardiac interventional laboratory:

- Had an annual volume of 500 or more PCI procedures;
- Achieved a demonstrated PCI success rate of 95 percent or greater;
- Experienced a complication rate of less than 5 percent for PCI procedures; and
- Performed varied cardiac procedures, including, but not limited to balloon angioplasty and stenting, rotational atherectomy, cutting balloon atheroma remodeling, and procedures relating to left ventricular support capability.

The effective date of the bill is July 1, 2016.

³⁷ Rule 64C-4.003, F.A.C., Diagnostic and Treatment Facilities or Services – Specifically incorporates by reference the CMS Pediatric Cardiac Facilities Standards, October 2012, and requires CMS approved pediatric cardiac facilities to collect and submit quality assurance data annually relating to pediatric cardiology clinic laboratory procedures, cardiac catheterization procedures, cardiac catheterization cases-primary cardiac diagnoses, and patients with fetal diagnosis of heart conditions. The rule also provides for the approval of regional and satellite cardiac clinics for the CMS Network on a statewide basis and requires these clinics to comply with the CMS cardiac regional and satellite clinic standards, October 2012.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Under CS/SB 1518, facilities will have the opportunity to earn a designation as a “Pediatric and Congenital Center of Excellence.” This designation may distinguish one facility over another in the marketplace for the quality of care in the delivery of cardiac services to children and may impact the number of services delivered in a particular facility.

Level I hospitals may find it easier to maintain sufficient competent nursing and technical catheterization laboratory staff by allowing additional qualified programs to provide the pre-requisite training.

C. Government Sector Impact:

The council is housed in the Department of Health (DOH) and makes recommendations to the State Surgeon General and the Children’s Medical Services program. Since October 2013, the DOH has been supporting a similar technical advisory panel, the Children’s Medical Services Cardiac Technical Advisory Panel, and the bill includes similar duties and responsibilities of that technical advisory panel. With passage of this bill, the technical advisory panel will no longer be necessary.

The DOH estimates minimal costs for the council for conference calls at \$336 annually. The estimate is based on four calls per year, 40 persons per call for one hour at 3.5 cents per minute.³⁸

³⁸ *Supra* note 7, at 4.

VI. Technical Deficiencies:

None.

VII. Related Issues:

To the extent that the bill seeks to enforce any standards on cardiac facilities, the DOH's authority is limited to its ability to credential facilities and providers that participate in the Children's Medical Services (CMS) program.³⁹ Enforcement of facility standards related to licensure resides with the Agency for Health Care Administration (AHCA), which is directed to work in coordination with the council under the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 408.0361 and 408.036.

This bill creates section 391.224 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on February 9, 2016:

The committee substitute:

- Creates the Pediatric Cardiac Advisory Council within the Department of Health (DOH) and requires the council to submit an annual report summarizing the council's activities and data and performance measures for all pediatric cardiac facilities that participate in the Children's Medical Services Network;
- Requires the DOH, in coordination with the Agency for Health Care Administration (AHCA), to develop rules related to pediatric cardiac facilities that participate in the Children's Medical Services Network and provides that rules relating to pediatric cardiac services and facilities in effect on October 1, 2015, are authorized and remain in effect until amended;
- Authorizes the DOH to create the "Pediatric and Congenital Centers of Excellence" designation for facilities that meet certain standards; and
- Removes the repeal of certificate of need (CON) provisions and only addresses rulemaking to authorize certain Level I dedicated interventional cardiac laboratories to provide the prerequisite experience for nursing and technical staff.

B. Amendments:

None.

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

³⁹ *Supra* note 7, at 5.

By the Committee on Health Policy; and Senator Grimsley

588-03240-16

20161518c1

A bill to be entitled

An act relating to cardiovascular services; creating s. 391.224, F.S.; providing legislative findings and intent; creating the Pediatric Cardiac Advisory Council; determining the chair of the advisory council; establishing the membership of the advisory council; identifying the duties of the advisory council; setting the minimum qualifications for the designation of a facility as a Pediatric and Congenital Cardiovascular Center of Excellence; requiring a report to the Governor, the Legislature, and the State Surgeon General; requiring the Department of Health to develop rules relating to pediatric cardiac services and facilities in the Children's Medical Services Network; authorizing the department to adopt rules relating to the council and the designation of facilities as Pediatric and Congenital Cardiovascular Centers of Excellence; authorizing and preserving until amended specified rules relating to pediatric cardiac services and facilities; amending s. 408.0361, F.S.; expanding rulemaking criteria for the Agency for Health Care Administration for licensure of hospitals performing percutaneous cardiac intervention procedures; providing an effective date.

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

Section 1. Section 391.224, Florida Statutes, is created to read:

391.224 Pediatric Cardiac Advisory Council.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

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(a) The Legislature finds significant benefits in the continued coordination of activities by several state agencies regarding access to pediatric cardiac care in this state. It is the intent of the Legislature that the Department of Health, the department's cardiac consultants, and the Agency for Health Care Administration maintain their long-standing interagency teams and agreements for the development and adoption of guidelines, standards, and rules for those portions of the state cardiac care system within the statutory authority of each agency. This coordinated approach will continue to ensure the necessary continuum of care for the pediatric cardiac patient. The department has the leadership responsibility for this activity.

(b) It is further the intent of the Legislature to establish the Pediatric Cardiac Advisory Council, a statewide, inclusive council within the department.

(2) PEDIATRIC CARDIAC ADVISORY COUNCIL.—

(a) The State Surgeon General shall appoint the Pediatric Cardiac Advisory Council for the purpose of advising the department on the delivery of cardiac services to children.

(b) The chair of the council shall be elected from among the council members every 2 years and may not serve more than two consecutive terms.

(c) The council shall meet upon the call of the chair or two or more voting members or upon the call of the State Surgeon General, but must meet at least quarterly. Council meetings must be conducted by teleconference or through other electronic means when feasible.

(d) The council shall be composed of no more than 13 voting members with technical expertise in cardiac medicine. Members

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shall be appointed by the State Surgeon General for staggered terms of 4 years. An employee of the department or a contracted consultant paid by the department may not serve as an appointed member or ex officio member of the council. Council members shall include the following voting members:

1. Pediatric cardiologists or pediatric cardiovascular surgeons who have been nominated by their respective chief executive officers and approved by the State Surgeon General from the following facilities for as long as such facilities maintain their pediatric certificates of need:

a. All Children's Hospital in St. Petersburg;

b. Arnold Palmer Hospital for Children in Orlando;

c. Joe DiMaggio Children's Hospital in Hollywood;

d. Nicklaus Children's Hospital in Miami;

e. St. Joseph's Children's Hospital in Tampa;

f. University of Florida Health Shands Hospital in Gainesville;

g. University of Miami Holtz Children's Hospital in Miami;
and

h. Wolfson Children's Hospital in Jacksonville.

A hospital with a certificate of need for a pediatric cardiac program that meets state and national standards as determined by the council following an onsite visit by a panel from the council shall have one of its pediatric cardiologists or pediatric cardiovascular surgeons who has been nominated by its chief executive officer and approved by the State Surgeon General appointed to the council as a new voting member. The voting privilege of a voting member of the council appointed

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pursuant to this subparagraph shall be suspended if the facility he or she represents no longer meets state and national standards as adopted by the council. Such individual may remain a member of the council in an advisory capacity but shall relinquish voting privileges until his or her facility meets such standards.

2. Two physicians at large, not associated with a facility that has a representative appointed as a voting member of the council, who are pediatric cardiologists or subspecialists with special expertise or experience in dealing with children or adults with congenital heart disease. These physicians shall be selected by the State Surgeon General in consultation with the Deputy Secretary for Children's Medical Services and the Director of Children's Medical Services.

3. One community physician who has ongoing involvement with and special interest in children with heart disease and who is not associated with a facility represented in subparagraph 1. or one community-based medical internist having experience with adults with congenital heart disease. The community physician shall be selected by the State Surgeon General in consultation with the Deputy Secretary of Children's Medical Services and the Director of the Division of Children's Medical Services.

(e) The State Surgeon General may appoint nonvoting advisory members to the council in consultation with the Deputy Secretary for Children's Medical Services and the Director of Children's Medical Services. Among such nonvoting advisory members appointed to the council shall be one representative from a pediatric health advocacy group. Such members may participate in council discussions and subcommittees created by

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the council, but may not vote.

(f) The duties of the council include, but are not limited to:

1. Recommending standards for personnel, diagnoses, clinics, and facilities rendering cardiac services to the department and the Division of Children's Medical Services.

2. Analyzing reports on the periodic review of cardiac personnel, diagnoses, clinics, and facilities to determine if established state and national standards for cardiac services are met.

3. Making recommendations to the Director of Children's Medical Services as to the approval or disapproval of reviewed cardiac care personnel, diagnoses, clinics, and facilities.

4. Making recommendations as to the intervals for reinspection of approved personnel, diagnoses, clinics, and facilities for cardiac care.

5. Reviewing and inspecting hospitals upon the request of the hospitals, the department, or the Agency for Health Care Administration to determine if established state and national standards for cardiac services are met.

6. Providing input on all aspects of the state's Children's Medical Services cardiac programs, including rulemaking.

7. Addressing all components of the care of adults and children with congenital heart disease and children with acquired heart disease, as indicated and appropriate.

8. Abiding by the recognized state and national professional standards of care for children with heart disease.

9. Making recommendations to the State Surgeon General for legislation and appropriations for children's cardiac services.

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10. Providing advisory opinions to the Agency for Health Care Administration before the agency approves a certificate of need for children's cardiac services.

(g) A council member shall serve without compensation, but is entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061.

(h) At the recommendation of the Pediatric Cardiac Advisory Council and with the approval of the Director of Children's Medical Services, the State Surgeon General shall designate facilities meeting the council's approved state and national professional standards of care for children with heart disease as "Pediatric and Congenital Cardiovascular Centers of Excellence." The designation is withdrawn automatically if a particular center no longer meets such standards.

1. The council shall develop and recommend to the State Surgeon General measurable performance standards and goals for determining whether a facility meets the requirements for designation as a "Pediatric and Congenital Cardiovascular Center of Excellence."

2. The council shall develop and recommend to the State Surgeon General evaluation tools for measuring the goals and performance standards of the facilities seeking and receiving the "Pediatric and Congenital Cardiovascular Center of Excellence" designation.

(3) ANNUAL REPORT.—The council shall submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General by January 1 of each year, beginning in 2017. The report must summarize the council's activities for the preceding fiscal year

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and include data and performance measures for all pediatric cardiac facilities that participate in the Children's Medical Services Network relating to surgical morbidity and mortality. The report must also recommend any policy or procedural changes that would increase the council's effectiveness in monitoring the pediatric cardiovascular programs in the state.

(4) RULEMAKING.—The department, in coordination with the Agency for Health Care Administration, shall develop rules related to pediatric cardiac facilities that participate in the Children's Medical Services Network. The rules may establish standards relating to the training and credentialing of medical and surgical personnel, facility and physician minimum case volumes, and data reporting requirements for monitoring and enhancing quality assurance. The department may adopt rules relating to the establishment, operations, and authority of the Pediatric Cardiac Advisory Council and the establishment, goals, performance standards, and evaluation tools for designating facilities as Pediatric and Congenital Cardiovascular Centers of Excellence. The rules relating to pediatric cardiac services and facilities in effect on October 1, 2015, are authorized pursuant to this subsection and shall remain in effect until amended pursuant to this subsection.

Section 2. Paragraph (b) of subsection (3) of section 408.0361, Florida Statutes, is amended to read:

408.0361 Cardiovascular services and burn unit licensure.—

(3) In establishing rules for adult cardiovascular services, the agency shall include provisions that allow for:

(b) For a hospital seeking a Level I program, demonstration that, for the most recent 12-month period as reported to the

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agency, it has provided a minimum of 300 adult inpatient and outpatient diagnostic cardiac catheterizations or, for the most recent 12-month period, has discharged or transferred at least 300 inpatients with the principal diagnosis of ischemic heart disease and that it has a formalized, written transfer agreement with a hospital that has a Level II program, including written transport protocols to ensure safe and efficient transfer of a patient within 60 minutes. However, a hospital located more than 100 road miles from the closest Level II adult cardiovascular services program does not need to meet the 60-minute transfer time protocol if the hospital demonstrates that it has a formalized, written transfer agreement with a hospital that has a Level II program. The agreement must include written transport protocols to ensure the safe and efficient transfer of a patient, taking into consideration the patient's clinical and physical characteristics, road and weather conditions, and viability of ground and air ambulance service to transfer the patient. At a minimum, the rules for adult cardiovascular services must require nursing and technical staff to have demonstrated experience in handling acutely ill patients requiring intervention based on the staff members' previous experience in dedicated cardiac interventional laboratories or surgical centers. If a staff member's previous experience is in a dedicated cardiac interventional laboratory at a hospital that does not have an approved adult open-heart-surgery program, the staff member's previous experience qualifies only if, at the time the staff member acquired his or her experience, the dedicated cardiac interventional laboratory:

1. Had an annual volume of 500 or more percutaneous cardiac

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236 intervention procedures;

237 2. Achieved a demonstrated success rate of 95 percent or
238 greater for percutaneous cardiac intervention procedures;

239 3. Experienced a complication rate of less than 5 percent
240 for percutaneous cardiac intervention procedures; and

241 4. Performed diverse cardiac procedures, including, but not
242 limited to, balloon angioplasty and stenting, rotational
243 atherectomy, cutting balloon atheroma remodeling, and procedures
244 relating to left ventricular support capability.

245 Section 3. This act shall take effect July 1, 2016.

CourtSmart Tag Report

Room: SB 401

Case:

Caption: Senate Appropriations Subcommittee on Health and Human Services

Type:

Judge:

Started: 2/17/2016 10:02:33 AM

Ends: 2/17/2016 11:59:25 AM

Length: 01:56:53

10:02:32 AM Call to order and roll call
10:02:59 AM Opening remarks - Chair Garcia
10:03:27 AM TAB 1: SB 1144 (Gaetz)
10:08:12 AM 223842 - Adopted
10:08:26 AM 492782 - Adopted
10:08:41 AM Adopted
10:08:55 AM Back on the bill as amended
10:08:56 AM Public Testimony
10:09:02 AM Erwin Bodo, Reimbursement Specialist, Leading Age Florida
10:09:53 AM Paul Ledford, President/CEO, Florida Hospice and Palliative Care Association, waives against
10:09:59 AM Charles Lee, President/CEO, Cornerstone Hospice/FHPCA, speaks against
10:10:04 AM Chair Garcia calls next person to be on deck
10:13:09 AM Susan Ponder-Stansel, President/CEO, Community Hospice of N. E. Florida, speaks against
10:16:39 AM Mike Anway, Safety Net Hospital Alliance, waives against
10:16:47 AM Todd Truax, Executive Director, Consulate Health Care & Coral Trace Health Care, waives against
10:16:52 AM Brent Montgomery, Administrator, Signature Health Care of Jacksonville, waives against
10:16:59 AM Andrew McKillop, Administrator, Okeechobee Health Care Facility, waives against
10:17:15 AM Kathy Gallin, V. Chair of Legislative Committee, Florida Healthcare Association, speaks against
10:20:42 AM Keith Arnold, Gov't Representative, Lee Mem. Hospital, Hope Hospice, Government Hospice, Cornerstone Hospice, waives against
10:20:46 AM Jeffrey Markulik, Executive Director, Consulate Healthcare of Jacksonville, waives against
10:20:54 AM Dr. Natalie de Fabrique, Director of Clinical Services, Cotler Healthcare and Development, waives against
10:21:16 AM Tom Parker, Director of Reimbursement, Florida Health Care Associates, waives against
10:21:21 AM Debbie Montenaro, Executive Director, Consulate Health Care, Shoal Creek Rehab, Crestview, waives against
10:21:29 AM Sal Nuzzo, VP Policy, The James Madison Institute, speaks in support
10:23:25 AM Senator Bean Question
10:24:24 AM Sal Nuzzo Responds
10:25:34 AM Senator Sobel Question
10:25:59 AM Sal Nuzzo Responds
10:26:55 AM Heidi Smith, Executive Director, Destin Health Care and Rehab, waives against
10:27:06 AM Senator Bean Comments
10:28:42 AM Senator Sobel Comments
10:30:13 AM Senator Richter Comments
10:32:11 AM Chair Garcia Comments
10:34:00 AM Senator Gaetz Closing Comments
10:37:24 AM SB 1144 - Unfavorably
10:37:59 AM TAB 2: SB 26 (Negron)
10:38:29 AM SB 26 - Favorable
10:38:42 AM TAB 4: CS/SB 48 (Flores) (Presented by Tiffany Lorente, Legislative Aide)
10:40:04 AM CS/SB 48 - Favorable
10:40:28 AM TAB 6: SB 1082 (Latvala) (Presented by Lizbeth Mabry, Legislative Aide)
10:42:28 AM SB 1082 - Favorable
10:42:40 AM TAB 3: SB 38 (Soto) (Presented by Martin Rivera, Legislative Aide)
10:44:04 AM SB 38 - Favorable
10:44:07 AM TAB 7: SB 858 (Legg) (Presented Jim Browne by Legislative Assistant)
10:44:48 AM Public Testimony
10:44:53 AM Corinne Mixon, Lobbyist, Florida Mental Health Counselors Association, waives in support
10:45:04 AM Richard Chapmann, Florida Mental Health Counseling Association, waives in support
10:45:28 AM Greg Pound, Pinellas County Florida Government Corruption
10:46:39 AM SB 858 - Favorable

10:47:15 AM Senator Bean makes motion on voting for CS/SB 48, SB 1082, and SB 38
10:47:25 AM Chair Garcia without objection show motion adopted
10:47:28 AM Senator Richter makes a motion on voting for CS/SB 48, SB 1082, SB 38
10:47:37 AM Chair Garcia without objection show motion adopted
10:47:40 AM TAB 11: SB 1316 (Grimsley)
10:49:20 AM 714384 - Adopted
10:50:01 AM Paul Jess, Florida Justice Association, waives in support
10:50:17 AM 454610 - Adopted
10:50:55 AM Paul Jess, Florida Justice Association, waives in support
10:51:19 AM Back on the bill as amended
10:51:23 AM Public Testimony
10:51:29 AM Tom Parker, Director of Reimbursement, Florida Health Care Association, waives in support
10:51:33 AM Martha DeCastro, VP for Nursing, Florida Hospital Association, waives in support
10:51:37 AM Layne Smith, Director, State Government Relations, Mayo Clinic, waives in support
10:51:41 AM Laura Cantwell, ASD, AARP, waives in support
10:51:46 AM Alisa LaPolt, Lobbyist, Florida Nurses Association, waives in support
10:52:14 AM SB 1316 - Favorable
10:52:36 AM TAB 10: CS/SB 946 (Grimsley)
10:53:06 AM Public Testimony
10:53:10 AM Mike Anway, Florida Chamber of Commerce, waives in support
10:53:14 AM Alisa LaPolt, Lobbyist, Florida Nurses Association, waives in support
10:53:25 AM Laura Cantwell, ASD, AARP, waives in support
10:53:28 AM Susan Langston, VP of Advocacy, Leading Age Florida, waives in support
10:53:35 AM Martha DeCastro, VP for Nursing, Florida Hospital Association, waives in support
10:53:38 AM Corinne Mixon, Lobbyist, Florida Mental Health Counselors Association, waives in support
10:53:43 AM Tom Parker, Director of Reimbursement, Florida Health Care Associates, waives against
10:53:46 AM Chris Floyd, Consultant, Florida Association of Nurse Practitioners, waives in support
10:53:52 AM Stan Whitaker, Nurse Practitioner, Florida Association of Nurse Practitioners, waives in support
10:54:17 AM CS/SB 946 - Favorable
10:54:31 AM TAB 12: CS/SB 1370 (Grimsley)
10:55:41 AM CS/SB 1370 - Favorable
10:55:45 AM TAB 13: CS/SB 1518 (Grimsley)
10:56:34 AM Public Testimony
10:56:49 AM Lecia Behenna, Florida Hospital Association, waives in support
10:57:18 AM CS/SB 1518 - Favorable
10:57:21 AM Chair Garcia passes gavel to Senator Smith
10:57:38 AM TAB 5: CS/SB 30 (Garcia)
10:57:56 AM CS/SB 30 - Favorable
10:58:20 AM Senator Smith passes gavel back to Chair Garcia
10:58:32 AM TAB 9: SB 1722 (Stargel)
10:59:56 AM 466546 - Adopted
11:00:31 AM Amber Kelly, Legislative Affairs, Florida Family Action, waives in support
11:00:38 AM Ingrid Delgado, Associate for Social Concerns and Respect Life, Florida Conference of Catholic Bishops, waives in support
11:00:48 AM Back on the bill as amended
11:00:56 AM Senator Abruzzo Series of Questions
11:03:36 AM Chair Garcia Question
11:04:41 AM Senator Abruzzo Question
11:06:05 AM Senator Sobel Question
11:11:29 AM Senator Abruzzo Question
11:14:41 AM Public Testimony
11:14:59 AM Amber Kelly, Legislative Affairs, Florida Family Action, speaks in support
11:16:36 AM Senator Grimsley Question
11:17:01 AM Barbara DeVane, Lobbyist, Florida NOW
11:18:47 AM Chair Garcia
11:18:57 AM Debra Maurer, Realtor
11:21:22 AM Greg Pound
11:23:03 AM Jana McKinnon, waives against
11:23:10 AM Sarah Bardolph, Executive Assistant, Monticello Opera House, waives against
11:23:37 AM Roxanne Finch, waives against
11:23:42 AM Maria Gualtieri, waives against
11:23:52 AM Juanita Alvarez, Activist, National Latina Institute & Planned Parenthood, speaks against

11:25:35 AM Evelyn Pugh Richard, Retired Nurse, National Latina Institute for Reproductive Health & Planned Parenthood, speaks against
11:26:35 AM Alex Bradburt, Editor, waives against
11:26:42 AM Norma Aquino, National Latina Institute for Reproductive Health, speaks against
11:27:58 AM Cherilyn Bean, speaks against
11:28:52 AM Laura Hernandez, speaks against
11:30:51 AM Haydee Gomez, speaks against
11:33:59 AM Dian Alarcon, Florida Field Coordinator, National Latina Institute for Reproductive Health, speaks against
11:37:06 AM Patricia Gonzalez, speaks against
11:38:10 AM Carlos Gonzales, waives against
11:38:13 AM Gabriel Garcia-Vera, National Latina Institute for Reproductive Health, waives against
11:38:27 AM Carolina Cuevas, waives against
11:38:33 AM Omilani Alarcon, waives against
11:38:37 AM Medino Maria Patricio, waives against
11:38:40 AM Concerned Women for America of Florida, waives in support
11:38:46 AM Bill Bunkley, President, Florida Ethics and Religious Liberty Commission, waives in support
11:38:52 AM Missy Wesolowski, Director of Governmental Affairs, Florida Alliance of Planned Parenthood Affiliates, waives against
11:38:55 AM Lissette Varfia, waives against
11:39:05 AM Hannah Willard, Equality Florida, waives against
11:39:10 AM Kimberly Kent, waives in support
11:39:17 AM Amber Kelly, Legislative Affairs, Florida Family Action, waives in support
11:39:19 AM Chair Garcia any questions or debate
11:39:29 AM Senator Abruzzo Comments
11:39:50 AM Senator Sobel Comments
11:42:43 AM Senator Abruzzo Comments
11:45:30 AM Senator Smith Comments
11:46:42 AM Senator Grimsley Comments
11:49:08 AM Senator Bean Comments
11:51:03 AM Senator Benacquisto Comments
11:52:33 AM Chair Garcia Comments
11:54:00 AM Senator Stargel Closing
11:55:43 AM SB 1722 - Favorable
11:56:06 AM TAB 8: CS/SB 604 Diaz de la Portilla
11:56:33 AM 525910 - Adopted
11:57:49 AM 350560 - Adopted
11:58:03 AM Back on the bill as amended
11:58:26 AM CS/SB 604 - Favorable
11:59:01 AM The following are the public who wanted to speak on behalf of SB 604
11:59:02 AM Sarah Naf, Director, Task Force on Substance Abuse & Mental Health Issues in the Courts, waives in support
11:59:06 AM Jill Gran, Legislative Affairs, Florida Alcohol & Drug Abuse Associates, waives in support
11:59:07 AM Antonio Davis, Homeless Veteran, waives against
11:59:14 AM Meeting Adjourned