

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2134

SPONSOR: Health, Aging and Long-Term Committee and Senator Saunders

SUBJECT: Standardized Credentialing for Health Care Practitioners

DATE: April 13, 1999 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 2134 revises the Department of Health’s responsibilities for implementing a standardized credentialing program so that it will no longer serve as a credentials verification organization for all health care practitioners in Florida. The department will maintain a depository for core credentials data for those health care entities authorized by the health care practitioner to receive the data. The bill requires the Department of Health to establish by rule, procedures, guidelines, and fees for credentialing in consultation with the Credentials Advisory Council. Beginning July 1, 2002, the bill prohibits state agencies that credential health care practitioners from collecting duplicate core credentials data from individual health care practitioners. Any credentials verification organization that does business in Florida must be fully accredited or certified as a credentials verification organization by a national accrediting organization as specified in the bill, rather than having to meet national standards for its credentialing procedures. The bill provides that the core credentials data maintained by the Department of Health that is otherwise confidential or exempt from the Public Records Law will be released to any person authorized by the health care practitioner to receive the data.

Each credentials verification organization doing business in Florida must maintain liability insurance appropriate to meet the certification or accreditation requirements established in the bill for credentials verification organizations doing business in Florida. Under the bill, credentials verification organizations that do business in Florida must still register with the Department of Health and pay a reasonable registration fee that is set by the department in consultation with the Credentials Advisory Council. The Department of Health must establish by rule procedures for the biennial renewal of the registration of credentials verification organizations.

Under the bill, a health care entity is only immune from liability based on civil, criminal, or administrative actions for its reliance on data obtained directly from the department. The bill abolishes the Credentials Advisory Council on October 1, 1999, and on that date all duties shared between the Department of Health and the council must be performed by the Department of

Health. The bill revises definitions for purposes of credentialing and makes other substantive changes to correct glitches in the current law.

This bill substantially amends section 455.557, Florida Statutes, 1998 Supplement.

II. Present Situation:

Effective July 1, 1999, s. 455.557, F.S., provides a mechanism for standardized credentialing of health care practitioners licensed as medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians. The section provides legislative intent that a mandatory credentials verification program be established which provides that, once a health care practitioner's core credentials data are collected, validated, maintained, and stored, they need not be collected again. The section provides definitions for use with the standardized system of verifying health care professionals' credentials. "Certified" or "accredited" is defined as approval by a quality assessment program, from the National Committee for Quality Assurance, the Joint Commission on Accreditation of Healthcare Organizations, the Utilization Review Accreditation Commission, or any other nationally recognized and accepted organization authorized by the Department of Health, that is used to assess and certify any credentials verification program, entity, or organization that verifies the credentials of any health care practitioner. "Core credentials data" is defined as any professional education, professional training, peer references, licensure, Drug Enforcement Administration certification, social security number, board certification, Educational Commission for Foreign Medical Graduates information, hospital affiliations, managed care organization affiliations, other institutional affiliations, professional society memberships, professional liability insurance, claims, suits, judgments, or settlements, and Medicare and Medicaid sanctions, civil and criminal law violations, practitioner profiling data, special conditions of impairment, or regulatory exemptions not previously reported to the Department of Health. "Credentialing" is defined as the process of assessing and validating the qualifications of a licensed health care practitioner. "Recredentialing" means the process by which a credentials verification entity verifies the credentials of a health care practitioner whose core credentials data, including all corrections, updates, and modifications thereto, are currently on file.

The Department of Health must develop guidelines for the creation of a standardized system for collecting, verifying, maintaining, storing, and providing core credentials data on health care practitioners through credentials verification entities in order to eliminate duplication. "Credentials verification entity" means any program, entity, or organization that is organized and certified for the express purpose of collecting, verifying, maintaining, and providing, to health care entities a health care practitioner's total core credentials data, as authorized by the health care practitioner in accordance with the provisions of this section. Once the core credentials data are submitted, the health care practitioner is not required to resubmit this initial data when applying for practice privileges with health care entities. A 13-member Credentials Verification Advisory Council is established to assist with the development of guidelines for establishment of the standardized credentials verification program. The department, in consultation with the advisory council, must develop standard forms for the initial reporting of core credentials data for credentialing and recredentialing.

Each health care practitioner licensed under the medical practice act, osteopathic medical practice act, chiropractic practice act, or podiatric practice act, or any person licensed under a chapter

subsequently made subject to credentialing requirements, must report to the Department of Health any action or information for the core credentials data and any corrections or updates no later than 30 days after the action occurs or such information is known. In addition, a licensee must update, at least quarterly, his or her data on a form prescribed by the department.

Any person applying for licensure under the medical practice act, osteopathic medical practice act, chiropractic practice act, or podiatric practice act, must submit initial core credentials data to a credentials verification entity, if such information has not already been submitted to the department or the appropriate licensing board or to any other credentials verification entity. Applicants may decide which credentials verification entity through which they want to process and store their core credentials data; however, such data must at all times be maintained by the Department of Health.

Any health care entity that employs, contracts with, or allows health care practitioners to treat patients must use the designated credentials verification entity to obtain core credentials data on health care practitioners applying for privileges with that entity. Any additional information required by the health care entity's credentialing process may be collected from the primary source of that information either by the health care entity or its contractee or by the designated credentials verification entity. "Health care entity" means any health care facility or other health care organization licensed or certified to provide approved medical and allied health services in Florida or an entity licensed by the Department of Insurance as a prepaid health care plan or health maintenance organization or as an insurer to provide coverage for health care services through a network of providers. The bill authorizes health care entities to contract with other entities to collect and verify core credentials data on health care practitioners applying for privileges. The submission of an application for health care privileges with a health care entity constitutes authorization for the health care entity to access the applicant's core credentials data with the Department of Health or the applicant's designated credentials verification entity, if the applicant has made such designation.

The Department of Health must make available to a health care entity or credentials verification entity all core credentials data it collects on any licensee that is otherwise confidential and exempt from the public records law, including corrections, updates, and modifications thereto, if a health care entity submits proof of the licensee's current pending application for purposes of credentialing the applicant based on the core credentials data maintained by the department. Each credentials verification entity must make available to a health care entity the licensee has authorized to receive data, and to the Department of Health, at the credentials verification entity's actual cost of providing the data, all core credentials data it collects on any licensee. The department must charge a fee pursuant to the requirements of the public records law for accessing the credentialing data that it maintains on applicants and licensees. The fee must be set in consultation with the advisory council and must not exceed the actual cost of providing the data.

A health care entity may not collect or attempt to collect duplicate core credentials data from any health care practitioner or from any primary sources, if the information is already maintained by the Department of Health, any credentials verification entity or the licensing board of another state. The licensing board of another state must meet national standards and be certified or accredited by a national accrediting organization and agree to provide all data collected on that health care practitioner. The credentials verification entity may rely upon core credentials data

from the department, if the department certifies that the information was obtained in accordance with the department's primary source verification procedures. "Primary source verification" means verification of professional qualifications based on evidence obtained directly from the issuing source of the qualification.

The department must meet national standards as outlined by the Joint Commission on the Accreditation of Health Care Organizations, the National Committee for Quality Assurance, or other national organization, for the department's credentials verification procedures. Any credentials verification entity that does business in Florida must meet national standards for its credentialing procedures and must register with the Department of Health. The department may charge a reasonable registration fee which does not exceed an amount sufficient to cover its actual expenses in providing for the registration.

The bill holds harmless any health care entity, and provides that the entity will not be liable, if it relies on data obtained from a credentials verification entity. Health care practitioners must have up to 30 days to review the core credentials data before it is released from the data bank of a credentials verification entity. The department must establish validation procedures and the minimum liability insurance requirements for each credentials verification entity doing business in Florida. The department must adopt rules necessary to develop and implement a standardized credentials verification program. Since July 1, 1998, the Department of Health has been working on a program design to implement the credentials verification requirements and has held numerous meetings with the Credentials Verification Advisory Council and other groups involved with credentialing health care practitioners.

Part II, chapter 455, F.S., provides for the general regulatory powers and duties of the Department of Health over licensed health care practitioners. Section 455.647, F.S., provides that all information required by the Department of Health of an applicant shall be a public record and shall be open to public inspection pursuant to s. 119.07, F.S., relating to the Public Records Law, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and may not be discussed with or made accessible to anyone except members of the board, department, and staff thereof, who have a bona fide need to know such information. Any information supplied to the department by any other agency which is exempt from the provisions of the Public Records Law, or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the Department of Health or the Agency for Health Care Administration.

III. Effect of Proposed Changes:

The bill revises the Department of Health's responsibilities for implementing a standardized credentialing program. The Department of Health will no longer serve as a credentials verification entity for all health care practitioners in Florida. The department will maintain a complete, current file of core credentials data for each health care practitioner.

The bill revises definitions for purposes of the standardized credentialing process. Definitions are provided for "core credentials data," "department," "Drug Enforcement Administration certification," "hospital or other institutional affiliations," "professional training," and "specialty board certification." "Core credentials data" is defined to mean the following data: current name

and any former name and any alias; any professional education; professional training; licensure; current Drug Enforcement Administration certification; social security number; specialty board certification; Educational Commission for Foreign Medical Graduates certification; hospital or other institutional affiliations; evidence of professional liability coverage or evidence of financial responsibility as required by s. 458.320, F.S., or s. 459.0085, F.S.; history of claims, suits, judgments, or settlements; final disciplinary action reported pursuant to s. 455.565(1)(a) 8.; and Medicare or Medicaid sanctions. “Credential or credentialing” is defined to mean the process of assessing and verifying the qualifications of a licensed health care practitioner or applicant for licensure as a health care practitioner. “Health care entity” is defined to mean: any health care facility or other health care organization licensed or certified to provide approved medical and allied health services in Florida; any entity licensed by the Department of Insurance as a prepaid health care plan, health maintenance organization, or an insurer to provide coverage for health care services through a network of providers; or any accredited medical school in Florida.

The bill defines “health care practitioner,” for purposes of the standardized credentials verification program, as a person licensed or applying for licensure under ch. 458 (Medical practice), ch. 459 (Osteopathic medicine), ch. 460 (Chiropractic), or ch. 461 (Podiatry), F.S., or any person licensed under another chapter of the Florida Statutes subsequently made subject to credentialing by the department with the approval of the applicable board. Under the bill, every health care practitioner must: report all core credentials data to the Department of Health which is not already on file with the department, either by designating a credentials verification organization to submit the data or by submitting the data directly; and notify the department within 45 days of any corrections, updates, or modifications to the core credentials data either through his or her designated credentials verification organization or by submitting the data directly. Any corrections, updates, or modifications to the core credential data provided must comply with the procedures required in s. 455.565(3), F.S., relating to profiling.

Under the bill, the Department of Health must: maintain a complete, current file of core credentials data on each health care practitioner; release the core credentials data that is otherwise confidential or exempt from the provisions of the Public Records Law and s. 24, Art. I of the Florida Constitution, and any corrections, updates, or modifications to that data, if authorized by the health care practitioner; charge a fee to access the core credentials data, which may not exceed the actual cost which shall be set in consultation with the Credentials Advisory Council, including prorated setup and operating costs, pursuant to the requirements of chapter 119, F.S., relating to the Public Records Law; develop, in consultation with the Credentials Advisory Council, standardized forms to be used by the health care practitioner or designated credentials verification organization for initial reporting of core credentials data, for the health care practitioner to authorize the release of core credentials data that is otherwise confidential and exempt from the Public Records Law, and for subsequent reporting of corrections, updates, and modifications to the core credentials data; and establish a 13-member Credentials Advisory Council, to assist the department with the administration of the standardized credentials verification program.

A health care practitioner may designate a registered credentials verification organization to assist his or her compliance with the obligations of the standardized credentials verification program. Each credentials verification organization that has been designated by a health care practitioner must timely comply with the obligations of the standardized credentials verification program

pursuant to administrative rules adopted by the Department of Health and shall *not* provide the health care practitioner's core data, including all corrections, updates, and modifications, without the authorization of the practitioner.

The bill provides that it shall not be interpreted to restrict the authority of the health care entity to credential and to approve or deny an application for hospital staff membership, clinical privileges, or managed care network participation. The bill prohibits a health care entity or credentials verification organization from collecting or attempting to collect duplicate core credentials data from any health care practitioner, if the information is available from the Department of Health. The bill shall not be construed to restrict the right of any health care entity or credentials verification organization to collect additional information from the health care practitioner which is not included in the core credentials data file or to prohibit a health care entity or credentials verification organization from obtaining all necessary attestation and release form signatures and dates.

Beginning July 1, 2002, the bill prohibits any state agency that credentials health care practitioners from collecting or attempting to collect duplicate core credentials data from any individual health care practitioner, if the information is already available from the Department of Health. The bill does not restrict the right of any state agency to request additional information that is not included in the core credentials data file but that the agency considers necessary for the agency's specific credentialing purposes.

Any credentials verification organization that does business in Florida must be fully accredited or certified as a credentials verification organization by a national accrediting organization as specified in the bill, rather than having to meet national standards for its credentialing procedures. The bill revises the definition for "national accrediting organization" to include an organization that awards accreditation or certification to credentials verification organizations in addition to hospitals, managed care organizations, or other health care organizations. Under the bill, credentials verification organizations that do business in Florida must still register with the Department of Health and pay a reasonable registration fee that is set by the department in consultation with the Credentials Advisory Council. The department must establish by rule procedures for the biennial renewal of the registration of credentials verification organizations. A credentials verification organization that fails to maintain full accreditation or certification, to provide data as authorized by the health care practitioner, to report to the department changes, updates, and modifications to a health care practitioner's records within the time period specified in the bill, or to comply with the prohibition against collection of duplicate core credentials data from a practitioner may have its registration application as a credentials verification organization denied or have its registration revoked or suspended.

Each credentials verification organization doing business in Florida must maintain liability insurance appropriate to meet the certification or accreditation requirements established in the bill for credentials verification organizations doing business in Florida. The department, in consultation with the Credentials Advisory Council, must adopt rules necessary to develop and implement a standardized credentials verification program. Under the bill, a health care entity is only immune from liability based on civil, criminal, or administrative actions for its reliance on data obtained directly from the department. The bill abolishes the Credentials Advisory Council on

October 1, 1999, and on that date all duties shared between the Department of Health and the council must be performed by the Department of Health.

The bill provides that it shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

D. Other Constitutional Issues:

Applicable case law has held that, as long as commercial speech describes lawful activity and is truthful and not fraudulent or misleading, it is entitled to the protections of the First Amendment of the United States Constitution. To regulate or ban commercial speech, the government must have substantial governmental interest which is directly advanced by the restriction, and must demonstrate that there is a reasonable fit between the legislature's ends and narrowly tailored means chosen to accomplish those ends. In enacting or enforcing a restriction on commercial speech, the government need not select the least restrictive means, but rather must tailor its restriction to meet the desired objective. See *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 100 S.Ct. 2243, 65 L.Ed.2d 341 (1980). Applicable caselaw describes various regulatory safeguards which the state may impose in place of the total ban on commercial speech, such as requiring a disclaimer to ensure that the consumer is not misled. See *Abramson v. Gonzalez* 949 F.2d 1567 (11th Cir. 1992).

The bill defines "credential" or "credentialing" to mean the process of assessing and verifying the qualifications of a licensed health care practitioner or applicant for licensure as a health care practitioner. The bill prohibits a health care entity or credentials verification organization from collecting or attempting to collect duplicate core credentials data from any health care practitioner if the information is available from the Department of Health. Core credentials data includes the current name and any former name and any alias; any professional education; professional training; licensure; current Drug Enforcement Administration certification; social security number; specialty board certification; Educational Commission for Foreign Medical Graduates certification; hospital or other institutional affiliations;

evidence of professional liability coverage or evidence of financial responsibility as required by s. 458.320, F.S., or s. 459.0085, F.S.; history of claims, suits, judgments, or settlements; final disciplinary action reported pursuant to s. 455.565(1)(a) 8.; and Medicare or Medicaid sanctions. To obtain such data, the health care entity or credentials verification organization must pay a fee which may not exceed the actual cost of the Department of Health's prorated setup and operating costs. The bill does not provide a mechanism to enforce the prohibition against collection of duplicate core credentials data against a health care entity, but provides that a credentials verification organization's failure to comply with the prohibition may result in denial of its application for renewal of registration or in revocation or suspension of its registration.

On page 9, lines 16-18, the bill prohibits a registered credentials verification organization that is designated by a health care practitioner from providing the health care practitioner's data, including all corrections, updates, and modifications, without the authorization of the practitioner.

To the extent the collection of core credentials data may be characterized as commercial free speech which is not inaccurate or relates to a lawful activity, applicable caselaw provides that the restrictions imposed by the bill must have a substantial governmental interest which is directly advanced by the restriction, and must demonstrate that there is a reasonable fit between the legislature's ends and narrowly tailored means chosen to accomplish those ends.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Section 455.557, F.S., authorizes the Department of Health to charge a fee for access to the core credentials data it maintains on health care practitioners which may not exceed the actual cost of providing the data, including the Department of Health's setup and operating costs, pursuant to the requirements of the Public Records Law. The bill requires this fee to be set in consultation with the Credentials Advisory Council. Health care entities or credentials verification organizations may incur additional costs to the extent that their collection of the data is more efficient than the procedures used by the Department of Health.

Credentials verification organizations will be subject to an unspecified registration fee to be set by the Department of Health in consultation with the Credentials Advisory Council which may not exceed an amount sufficient to cover its actual expenses in providing and enforcing the registration.

B. Private Sector Impact:

To the extent the bill may decrease duplication in existing credentials verification processes, health care practitioners subject to these processes may eventually save time and costs.

Each credentials verification organization doing business in Florida must pay any applicable costs to maintain liability insurance appropriate to meet the certification or accreditation requirements established in the bill for credentials verification organizations.

C. Government Sector Impact:

Beginning July 1, 2002, state agencies are prohibited from collecting or attempting to collect duplicate core credentials data from individual health care practitioners, if the information is available from the Department of Health. The core credentials data are to be provided by the Department of Health at an unspecified cost, which may not exceed the actual cost of providing the data including the Department of Health's setup and operating costs, pursuant to the requirements of the Public Records Law. Such agencies may incur additional costs to the extent that agency's collection of the data is more efficient than the procedures used by the Department of Health.

The Department of Health has indicated that it was appropriated \$5.56 million and 7 positions to implement the credentialing system in 1998, and has made an additional budget request of \$4.4 million for fiscal year 1999-2000 for operation, maintenance, and continuation of staffing to support the credentialing system. The Department of Health estimates that 55,000 practitioner questionnaires will be processed at \$75 each. The department has outsourced this project to a vendor through a contract that was executed on April 1, 1999, and is requesting a lump sum of \$4.125 million to cover the cost of the contract. The Department of Health estimates that it will hire approximately 20 Other Personnel Services employees at an average hourly rate of \$7.50 - \$9.00 hourly and anticipates approximately 37,179 hours will be used during fiscal year 1999-2000 to handle incoming telephone calls regarding credentialing and additional workload generated with the credentialing project. According to the Department of Health, the cost of the system may be recovered from the assessment of unspecified user fees which must cover the actual costs incurred by the department.

VI. Technical Deficiencies:

On page 5, line 14, the term "accredited medical school" is used. The term "accredited" is defined on page 2, line 27, in the context of credentials verification organizations in a way that would not apply to medical schools. The word "accredited" should be deleted on page 5, line 14.

VII. Related Issues:

Beginning July 1, 2002, the bill prohibits any state agency that credentials health care practitioners from collecting or attempting to collect duplicate core credentials data from any individual health care practitioner, if the information is already available from the Department of Health. The bill defines "credential" or "credentialing" to mean the process of assessing and verifying the qualifications of a licensed health care practitioner or applicant for licensure as a health care practitioner. The bill does not restrict the right of any state agency to request additional information, that is not included in the core credentials data file, that the agency considers necessary for the agency's specific credentialing purposes.

The impact of this requirement on state agencies is difficult to fully assess without knowing exactly what information each state agency collects from health care practitioners in the normal course of its statutory duties that *verify or assess the qualifications* of licensed health care

practitioners or applicants for licensure as health care practitioners; however, at a minimum it would substantially affect any law enforcement or regulatory enforcement that requires any verification of a subset of the data defined as “core credentials data.” For example, in an investigation of an allegation of drug diversion, to determine and verify the identity of a health care practitioner, the Florida Department of Law Enforcement would be prohibited from collecting needed information to perform its statutory duties.

The bill does not provide a mechanism to enforce the prohibition against state agencies or health care entities collecting duplicate core credentials data.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
