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**DATE:** April 12, 2001

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY THE COMMITTEE ON  
STATE ADMINISTRATION  
ANALYSIS**

**BILL #:** HB 475  
**RELATING TO:** Public Health  
**SPONSOR(S):** Representative Hogan and others  
**TIED BILL(S):** HB 477

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) HEALTH PROMOTION YEAS 11 NAYS 0
  - (2) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
  - (3) STATE ADMINISTRATION YEAS 4 NAYS 0
  - (4) COUNCIL FOR HEALTHY COMMUNITIES
  - (5)
- 

I. SUMMARY:

HB 475 revises various provisions relating to public health. The bill:

- Authorizes acceptance of abandoned newborn infants at emergency medical services stations;
- Authorizes supervision of nonmedical school district personnel by a licensed advanced registered nurse practitioner;
- Revises background screening requirements for school health services personnel;
- Modifies provisions relating to vital records;
- Changes the date for the annual report for child abuse death review;
- Removes the requirement for data review under the hematology-oncology care program;
- Provides for appointment of a guardian advocate for certain tuberculosis patients; and specifies qualifications, training, and responsibilities for guardian advocates;
- Provides for use of funds in the Emergency Medical Services Trust Fund for injury prevention programs;
- Exempts emergency medical services examination questions and answers from discovery and provides conditions for introduction in an administrative proceeding
- Repeals provisions which establish and provide duties of the Florida Coordinating Council on Radon Protection;
- Removes a requirement for soil testing for environmental radiation prior to certain construction;
- Requires school health programs of the Health Care District of Palm Beach County to be consistent with all provisions relating to state school health services; and
- Repeals a provision that requires establishment of programs in kidney disease control.

This bill does not appear to have a fiscal impact on local governments. This bill, as amended, appears to have an insignificant fiscal impact on state expenditures. See "Fiscal Analysis & Economic Impact Statement".

On April 12, 2001, the Committee on State Administration reported HB 475 favorably with one strike-everything amendment. This strike-everything amendment is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |                                         |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Abandoned Newborns**

Chapter 2000-188, Laws of Florida, provided a process for the abandonment of newborns at designated locations under certain circumstances.

Section 39.201, F.S., provides procedures and requirements for reporting calls to the central abuse hotline related to abandoned newborns. Section 63.0423, F.S., relating to abandoned newborns, provides a process by which a person can anonymously, and with limited amnesty from criminal prosecution, abandon a newborn infant at a fire station or hospital. This law provides a streamlined process for the acceptance, emergency treatment, transfer of custody, termination of parental rights and adoption in cases of unclaimed abandoned newborn infants which bypasses involvement by the Department of Children and Family Services unless there is evidence of actual or suspected child abuse or neglect. This section also established the responsibilities and duties for fire stations, hospitals, licensed child-placing agencies, and the Department of Children and Family Services in the process for handling an abandoned newborn infant.

Subsections 383.50(1), (3), (5), (6), and (9), F.S., provide for the treatment of abandoned newborns left at hospitals and fire stations. These sections authorize acceptance of abandoned newborns by firefighters or emergency medical technicians.

Section 827.035, F.S. provides that if a parent leaves a newborn infant at a hospital or fire station or brings the infant to an emergency room and expresses an intent to leave the infant and not return the act shall not constitute neglect of a child or contributing to the dependency of a child.

In many rural counties of Florida, there are no hospitals, and volunteers staff the county fire departments. By contrast, each county has at least one full-time emergency medical service provider, which has at least one station staffed 24 hours a day. Paramedics often operate these stations. Paramedics have a higher level of medical training than emergency medical technicians and firefighters but are not currently included in the statute as personnel authorized to accept the abandoned newborns.

### **Provision of Medical Services by Nonmedical Assistive Personnel in Schools**

Subsection 232.465(2), F.S., authorizes nonmedical assistive personnel to perform health-related services upon successful completion of child-specific training by a registered nurse, a licensed practical nurse, a physician licensed pursuant to chapter 458 or chapter 459, or a physician assistant licensed pursuant to chapter 458 or chapter 459. Non-invasive procedures are specified. The nurse must monitor all procedures periodically. For all other invasive medical procedures not listed, a registered nurse, a licensed practical nurse, a physician licensed pursuant to chapter 458 or chapter 459 must determine if nonmedical school district personnel must be allowed to perform such service.

### **Background Screening Requirements for School Health Services Personnel**

Section 381.0059, F.S., provides background screening requirements for any person who provides services under a school health services plan as follows:

Paragraph (1)(a) requires any person who provides services under certain school health plans to complete level 2 screening as provided in chapter 435, F.S. Authorizes an alternate screening approval pursuant to s. 435.04, F.S., if conducted within the previous 12 months. Provides for probationary period pending level 2 screening results.

Paragraph (1)(b) establishes the requirements for conducting a level 2 screening.

Paragraph (1)(c) relates to the payment of fees for level 2 screening.

Paragraph (2)(a) relates to disqualification of persons providing services.

Paragraph (2)(b) authorizes the Department of Health to grant an exemption from disqualification to individuals who have not received a professional license or certification from the Department of Health.

Paragraph (2)(c) provides additional authorization to the Department of Health to grant exemptions from disqualification to individuals who have received a professional license or certification from the Department of Health.

Subsection (3) provides for disqualification of an individual who refuses to cooperate in such screening or refuses to submit information necessary to complete the screening.

Subsection (4) establishes that under the penalty of perjury, each person who provides such services must attest to meeting the level 2 screening requirements and must agree to inform the Department of Health immediately if convicted of any disqualifying offense while providing such services.

Subsection (5) specifies that a "person who provides such services under a school health services plan" does not include an unpaid volunteer who lectures students in group settings on health education topics.

### **Vital Statistics**

Subsection 382.003(6), F.S., authorizes the Department of Health to investigate cases of irregularity or violation of law and requires all local registrars of Vital Statistics to assist the department in such investigations. Requires the department, when necessary, to report such cases to the appropriate state attorney's office.

The Office of Vital Statistics receives reports from hospitals, physicians, funeral homes, Clerks of Court, and the general public. Over time due to statutory changes and changes in technology some of the provisions of subsection 382.003(10), F.S., relating to receipt and processing of records, have become outdated or need clarification.

Subsection 382.003(10), F.S., also authorizes the department to adopt, promulgate, and enforce rules necessary for the issuance, recording, maintenance, and processing of vital records and for carrying out the provisions of specified statutes.

Subsection 382.004(1), F.S., requires the department to photograph, microphotograph, reproduce on film, or by electronic means vital records in exact conformity to the original record.

Subsection 382.004(2), F.S., authorizes the department to destroy original vital records after they have been photographed or reproduced in exact conformity with the original record.

Subsection 382.013(1), F.S., provides procedures for amendment of records upon the receipt of fees, for records amended on the basis of specified documentary evidence. Provides for exemption from the necessity of a court order for amendment to death certificate for specified reasons.

Paragraph 382.013(2)(c), F.S., provides that if the mother is not married at the time of birth the name of the father may not be entered on the birth certificate without the execution of a consenting affidavit signed by both the mother and the father. Provides that the facility must give notice to the mother and the person to be named as the father as to the benefits of voluntarily establishing paternity and information provided by the Title IV-D agency. Provides that the notice must include certain specified information. Requires that, upon request of the mother and the person to be named as the father, the facility must provide assistance in executing the affidavit.

Subsections 382.016(2) and (3), F.S., establishes the requirements related to certificate of live birth amendments. These paragraphs contain outdated language. The Child Support Enforcement Office in the Department of Revenue no longer requires an affidavit (which must be notarized) for such acknowledgements.

Subsection 382.016(4), F.S., provides the procedure for the issuance of a substitute new certificate of birth for an original certificate.

Paragraph 382.0255(1)(h), F.S., authorizes departmental fees relating to vital records as determined by rule.

### **Establishment of Paternity**

Section 742.10(1) and (3), FS., provide for the establishment of paternity for children born out of wedlock.

### **Child Abuse Death Review**

Paragraph 383.402(3)(c), F.S., requires the State Child Abuse Death Review Committee to prepare an annual statistical report on the incidence and cause of death resulting from child abuse in the state during the previous calendar year. The report is required to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by September 30 of each year.

## **Pediatric Tumor Data Collection**

Section 385.206(5), F.S., authorizes the Department of Health to annually evaluate data from the Florida Association of Pediatric Tumor Programs, Inc. According to the department, this language is outdated as the department is able to obtain this data through other means.

## **Tuberculosis Control**

The A. G. Holley Tuberculosis Hospital is administered by the Department of Health and authorized by section 393.62, F.S., to treat patients with active tuberculosis. The patients referred to the hospital have proven difficult to treat in the community and are frequently suffering from a variety of other health related problems. Half of the patients admitted to the hospital are functionally incompetent to consent to treatment and require a guardian.

As provided in chapter 744, F.S., a guardianship is a legal proceeding in the courts in which a guardian is appointed by the court to exercise the legal rights of an incapacitated person. A guardian of the person makes decisions and takes action regarding the well being of the incapacitated. The guardian of the property is responsible for managing the property/assets of the incapacitated person. At times, treatment at A. G. Holley must be delayed until a guardian can be appointed through the process provided in chapter 744, F.S.

Appointment of an emergency temporary guardian typically must occur before treatment can begin; however, it requires 5 to 10 days to complete and only remains in effect for 60 days. The authority of an emergency temporary guardian expires 60 days after the appointment, but may be extended for an additional 30 days upon a showing that the emergency condition still exists.

If the need for guardianship extends beyond the 90 days, the court to examine the patient and make a determination on the patient's competency must convene an examining committee from the medical community. If the committee recommends a limited or full guardianship, the process takes approximately 6 to 8 weeks and the hospital must return to court for a hearing on the appointment of that guardian.

Currently, the vast majority of A. G. Holley patients are recommended for a limited guardianship over decisions related to medical treatment, financial matters, and discharge planning. The appointment of the guardian remains in effect even after the patient is released to the home community, unless the patient has returned to full capacity as determined by a physician. Discharge of a guardian requires approval of the court.

## **Florida Emergency Medical Services Grant Act**

Paragraph 401.113(2)(b), F.S., authorizes 40 percent of the moneys appropriated to the Emergency Medical Trust fund be used by the department to make matching grants to local agencies, municipalities, and emergency medical services organizations for the purposes of conducting research, increasing existing levels of emergency medical services, evaluation, community education, and training in cardiopulmonary resuscitation and other lifesavings and first aid techniques.

## **Emergency Medical Services Personnel**

Subsection 401.27(5), F.S., establishes the requirements for the department to offer monthly certification examinations for emergency medical technicians and paramedics. Creation of new exams typically cost approximately \$500 per question. Currently, when a lawsuit is filed the certification examinations can become part of the court record during the lawsuit. Typically,

profession and certification examinations are exempt from discovery in a law suit, including the following: subsection 445.229(2), F.S., relating to Business and Professional Regulations; and subsection 456.041(2), F.S., relating to Health Professions.

### **Environmental Radiation Standards and Programs**

Subsection 404.056(2), F.S., establishes the Florida Coordinating Council on Radon Protection and provides for its membership, organization, and responsibilities.

Subsection 404.056(5), F.S., requires radon testing for specified facilities. The testing is required to be completed within specified times during construction and reports provided to the department by July 1 of the year the building is opened for occupancy. Follow-up testing is required, subject to specified conditions. Requires initial testing of fill soil where such soil is required for the construction of a regulated building and submission requirements of the results of such testing to the department.

During the period between 1988-1995, the Florida Radon Research Program studied fill soil testing as a predictor of elevated radon potential. Results showed that many other construction parameters such as foundation construction details, ventilation system construction and behavior, and native soils were the leading indicator of elevated radon potential were better predictors of elevated radon potential than fill soil. In addition, fill soil parameters were rejected as a predictor when it was discovered that fill soil parameters were unreliable and not cost effective.

### **Palm Beach County Health Care District**

The Palm Beach County Health Care District was created in 1987 by chapter 87-450, Laws of Florida, as amended by chapter 91-344, 96-509, and 2000-489, Laws of Florida. The purpose of creating the health district was to provide a source of funding for indigent and medically needy residents of Palm Beach County and to maximize the health and well being of Palm Beach County residents by providing comprehensive planning, funding, and coordination of health care service delivery. During the 2000 legislative session the district was authorized to plan, coordinate, supervise, manage, and take such other action as appropriate to implement school health programs as established by the health care district. Currently, with the exception of the Palm Beach County Health Care District, all school health programs must comply with sections 831.056 – 381.0059, F.S., relating to school health services.

### **Kidney Disease Education Program**

Section 385.205, F.S., provides the Department of Health's responsibilities with regard to the patient education services and coordination of employment rehabilitation activities for Florida's renal population.

Patient education is made available through six regional patient education conferences, the distribution of educational materials through physicians' and renal facilities, and quarterly patient newsletters. Five patient education conferences were held in 1999-2000. Four rehabilitation and employment seminars were held in 1999-2000. A total of 550 patients, family members, and professionals attended these conferences. Total funding for 1999-2000 was \$200,000. In 1999-2000, 507 patients applied to participate in the Renal Employment Program and 104 found full or part-time work after referrals to Vocational Rehabilitation or other rehabilitation agencies.

C. EFFECT OF PROPOSED CHANGES:

HB 475 does the following:

- Expands the type of personnel and facilities that can accept abandoned newborns and conforms terminology related to abandoned newborns;
- Expands the type of personnel that can supervise nonmedical school district personnel;
- Revises background screening requirements for school health service personnel;
- Modifies provisions relating to acknowledgement of paternity in vital records and corrections relating to certificate of death amendments;
- Modifies the annual report date for child abuse death reviews;
- Deletes data review by Florida Association of Pediatric Tumor Programs;
- Provides for the appointment of a guardian advocate for certain tuberculosis patients and specifies qualifications, training, and responsibilities of the guardian advocate;
- Provides for use of funds in the Emergency Medical Services Trust Fund for injury prevention programs;
- Exempts emergency medical services examination questions and answers from discovery and provides conditions for introduction in administrative proceedings;
- Repeals the Florida Coordinating Council on Radon Protection;
- Repeals obsolete environmental radiation soil testing requirement;
- Clarifies rulemaking authority to include rules defining terms;
- Conforms terminology related to abandoned newborns ;
- Stipulates that school health programs of the Health Care District of Palm Beach County meet certain requirements; and
- Repeals section relating to kidney disease control programs.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Amends paragraph 39.201(2)(f), F.S., relating to mandatory reports of child abuse, abandonment, or neglect, to expand provisions relating to mandatory reporting of abandoned newborn infants to include reporting by an emergency medical services station.

**Section 2.** Amends subsections 63.0423(1), (4), and (7)(c), F.S., relating to procedures with respect to abandoned newborns, to expand provisions relating to abandoned newborn infants to include those abandoned at emergency medical service stations.

**Section 3.** Amends subsections 232.465(2) and (3), F.S., relating to provision of medical services by nonmedical school district personnel, as follows:

- Specifies that nonmedical assistive personnel may perform health related services upon the successful completion of child-specific training by an advanced registered nurse practitioner (ARNP) licensed under chapter 464, F.S. and deletes authorization for such training to be provided by a licensed practical nurse (LPN);
- Expands monitoring of procedures to include ARNPs licensed under chapter 464, F.S., physician assistants, or physicians;
- Clarifies language relating to procedures permitted to be performed by eligible nonmedical assistive personnel; and
- Expands eligible list of personnel to perform invasive medical services not listed in this section to include ARNPs, and deletes authorization for such procedures to be performed by an LPN.

**Section 4.** Amends section 381.0059, F.S., relating to background screening requirements for school health services personnel, as follows:

Paragraph (1)(a) renumbers part of the paragraph as subsection (1) providing a technical change, providing reference to chapter 435, F.S., related to employment screening, requiring any person who provides services under a school health services plan, pursuant to s. 381.0056, F.S., relating to school health services programs, to meet the level 2 screening requirements as described in s. 435.04, F.S..

Renumbers part of the paragraph as subsection (2), making technical changes, providing clarification that a person may provide services under such a plan pursuant to s. 381.0056, F.S., prior to completion of the level 2 screening, however, such a person is prohibited from being alone with a minor.

Existing paragraphs (1)(b), (c), and (2)(a), relating to criteria for level 2 screening contained under this section and the department's disqualification process are deleted, as this process is cross-referenced in s. 435.04, F.S.,

Existing paragraph (2)(b) is renumbered as subsection (3), providing clarification relating to exemption from disqualification.

Existing paragraph (2)(c), relating to exemptions from disqualification, and existing section (3), relating to background screening and failure to cooperate, are deleted.

Subsection (4) is amended to clarify language relating to perjury by a person who provides services under a school health plan for failure to disclose a disqualifying offense.

Section (5) clarifies that the term "person who provides services under a school health care plan" includes unpaid volunteers except for those who lecture students in group settings on health education topics.

**Section 5.** Amends subsections 382.003(6) and (10), F.S., relating to Vital Statistics' powers and duties of the Department of Health, as follows:

Subsection (6) clarifies language relating to the state attorney and reporting of cases of violations of any provisions of chapter 382, F.S.; and

Subsection (10) authorizes the acceptance, use, and production of all records, reports, and documents necessary for carrying out the provisions of chapter 382, F.S., in paper or electronic form, and for rules necessary for the acceptance, use, and production of such records, reports, and documents.

**Section 6.** Amends subsections 382.004(1) and (2), F.S., relating to reproduction and destruction of records, to delete the requirement that departmental reproductions of records provide data on each page in exact conformity to the original record, and allowing for destruction of original records that have been reproduced in accordance with subsection (1) and chapter 257, F.S., relating to state archiving procedures.

**Section 7.** Amends paragraph 382.013(2)(c), F.S., relating to birth registration and paternity, as follows:



- Expands the process of listing the name of the father of a child if the mother is not married at the time of the birth, to include a voluntary written acknowledgement of paternity signed by both the mother and the person named as the father, and deletes a requirement that an affidavit be a consenting affidavit;
- Clarifies that the facility must give notice orally or through the use of specifically identified methods any rights afforded due to minority status and the responsibility that arise from signing an acknowledgement of paternity if one parent is a minor;
- Deletes the requirement for the facility to provide the mother and the person to be named as the father with the affidavit; and
- Expands the requirement for the facilities to assist in the execution of the affidavit to include assisting in the execution of the voluntary acknowledgement of paternity.

**Section 8.** Amends section 382.016, F.S., relating to amendment of records, as follows:

Existing subsection (1) is redesignated as introductory language, and amended to clarify language relating to specific statutory authority for rules relating to amendments of vital records, and to delete language relating to prohibiting the department from making certain changes relating to the name of the surviving spouse on a certificate.

Existing subsection (2) is renumbered as subsection (1), entitled as "certificate of live birth amendment," and amended as follows:

Paragraph (a) is designated and amends previous subsection (2). Authorizes the amendment of a child's given name or surname on a certificate of live birth until the child's first birthday without requiring documentary evidence. Specifies that after the child's first birthday, documentary evidence is required.

Subsection (3) is renumbered as paragraph (b) and is amended to expand the department's authorization to prepare a new certificate of live birth to change the child's surname, upon request and receipt of a voluntary acknowledgement of paternity signed by the mother and the father acknowledging the paternity of a registrant born out of wedlock and, subject to additional criteria as required by this paragraph.

Subsection (4) is deleted. This subsection relates to internal department procedures for preparing a new certificate of birth.

Subsection (5) is renumbered as paragraph (c).

A new subsection (2) is created specific to certificate of death amendments. Prohibits the department from changing the name of a surviving spouse on the certificate except by order of a court of competent jurisdiction, except for a misspelling or omission the death certificate.

[NOTE: This language is currently part of existing subsection (1).]

**Section 9.** Amends paragraph 382.0255(1)(h), F.S., relating to fees, follows:

- Clarifies that the fee and cost apply to data records rather than vital records; and
- Clarifies the statutory authority for the rule relating to reasonable charges for the cost of preparation.

**Section 10.** Amends paragraph 383.402(3)(c), F.S., relating to child abuse death review, to change the deadline for the state committee annual report to the Governor, the President of the

Senate, and the Speaker of the House of Representatives from September 30 of each year to December 31 of each year.

**Section 11.** Amends subsection 383.50(1), (3), (5), (6), and (9), F.S., relating to treatment of abandoned newborn infants, to include those infants abandoned at emergency medical services (EMS) stations, including EMS personnel.

**Section 12.** Amends subsection 385.206(5), F.S., relating to the program and peer review of the hematology-oncology care center program, to delete language relating to the Florida Association of Pediatric Tumor Programs data collection [NOTE: The department has other means of obtaining this information.]

**Section 13.** Amends section 392.52, F.S., relating to tuberculosis control definitions, as follows

Subsections (6), (7), and (8) are created to define “guardian advocate,” “incompetent to consent to treatment,” and “psychiatrist.”

Existing subsections (6) and (7) are renumbered as sections (9) and (10).

**Section 14.** Creates section 392.566, F.S., relating to guardian advocates, as follows:

Subsection (1) authorizes, subsequent to hospitalization at the state’s tuberculosis hospital, the department to petition the court for appointment of a guardian advocate based upon the opinion of a psychiatrist that the person is incompetent to consent to medical treatment. If the court finds that a person is incompetent to consent to medical treatment but has not been adjudicated incapacitated under part V of chapter 744, F.S., relating to adjudication of incapacity and appointment of guardians, the court must appoint a guardian advocate, as follows:

Paragraph (a) requires the person to have the right to be represented by counsel. If the person is determined to be indigent pursuant to s. 27.52, F.S., relating to the determination of indigence, the court must appoint legal counsel to represent him or her at the hearing.

Paragraph (b) requires the person to have the right to attend the hearing, to testify, cross-examine witnesses, and present witnesses. After review and consultation by the court, counsel for the person may waive the client’s presence.

Paragraph (c) requires the proceedings to be recorded by either electronic or stenographical means, and that testimony must be under oath.

Paragraph (d) requires the psychiatrist rendering an opinion in support of the petition for a guardian advocate to testify.

Subsection (2) requires the guardian advocate to meet the qualifications of a guardian contained in part IV of chapter 744, F.S., relating to guardianship and guardians, except that the psychiatrist rendering the opinion that the person is incompetent, an employee of the department, or a member of the advocacy council is not eligible for appointment. A person appointed as a guardian advocate must agree to the appointment.

Subsection (3) requires the court, in selecting a guardian advocate, to give preference to a health care surrogate, if the person has designated one. If a person has not previously selected a surrogate, except for good cause documented in the court record, the selection must be made from a specified order of listing.

Subsection (4) requires that prior to the appointment of a guardian advocate, the department must provide the prospective guardian advocate with information about the duties and responsibilities of a guardian advocate.

Subsection (5) requires that prior to a guardian advocate exercising his or her authority, the advocate must have successfully completed a training course which must include, at a minimum, information about the person's rights, diagnosis and treatment of tuberculosis and other illnesses, the ethics of medical decision making, and the duties of guardian advocates.

Paragraph (a) requires that the training course be developed by the department and approved by the chief judge of the circuit court.

Paragraph (b) requires that the training course must take the place of training required for guardians pursuant to chapter 744, F.S.

Paragraph (c) allows the court, on a case-by-case basis, to waive some or all of the training requirements or impose additional requirements after considering the experience, training, and education of the guardian advocate, the duties assigned to the advocate, and the needs of the person.

Section (6) requires that, before asking a guardian advocate to give consent to medical treatment, the department must provide sufficient information to the guardian to enable the guardian to provide express and informed consent to treatment. Before giving consent to treatment, the guardian must meet and talk with the patient and the physician. The court upon petition by the person's attorney, person's family, or the department may review the decision of the guardian.

Section (7) requires the guardian advocate to be discharged when the department files notice with the court that the person has been discharged from the hospital or upon sufficient evidence that the person is no longer incompetent to consent to medical treatment, which may be documented by a notarized statement or affidavit signed by a psychiatrist.

**Section 15.** Amends paragraph 401.113(2)(b), F.S., relating to the Department of Health's EMS powers and duties, to authorize the department to make EMS matching grants to recipients for injury prevention programs.

**Section 16.** Amends subsection 401.27(5), F.S., relating to Department of Health's EMS personnel certification examinations, to exempt examination questions and answers from discovery processes. Allows the questions and answers to be introduced into evidence and considered only "in camera" in chapter 120, F.S., relating to Administrative Procedure Act proceedings. Requires the department to provide challenged examination questions and answers to the administrative law judge. [In camera examinations: When the judge in his private chambers examines the evidence. Only the judge is permitted to review the evidence.]

**Section 17.** Amends section 404.056, F.S., relating to environment radiation standards and programs and radon protection, as follows:

Subsection (2), relating to the Florida Coordinating Council on Radon, is repealed. [NOTE: The law relating to radon activities was repealed in 1995 and the council should have been repealed at that time.] Subsequent subsections are renumbered.

Existing subsection (5) is renumbered as subsection (4) and outdated language related to required testing of fill soil is deleted.

Existing subsection (7) is renumbered as subsection (6) and amended to specify that the Department of Health's rulemaking authority for this section includes providing definition of terms.

**Section 18.** Amends subsections 742.10(1) and (3), F.S., relating to establishment of paternity for children born out of wedlock, as follows:

Subsection (1) is amended to expand the manner of establishing paternity within an adjudicatory hearing brought under the statutes governing inheritance, or dependency under workers' compensation, or similar compensation programs, to include a voluntary of acknowledgement of paternity as provided in section 382.013 or 382.06, F.S. Makes conforming technical changes to the subsection and deletes an outdated statutory reference.

Subsection (3) is amended to make a conforming technical change.

**Section 19.** Amends section 827.035, F.S., related to newborn infants, to expand the exceptions to neglect of a child pursuant to s. 827.03, F.S., or to contributing to the dependency of a child pursuant to s. 827.04, F.S., if a parent leaves a newborn infant at an emergency medical services station.

**Section 20.** Amends subsection (3) of chapter 87-450 Laws of Florida, as amended by chapters 91-344, 96-509, and 2000-489, Laws of Florida, relating to the Palm Beach County Health Care District of Palm Beach County, to require specified school health programs established by the district to be supplementary to and consistent with the provisions of sections 381.0056-381.0059, F.S., relating to school health services programs.

**Section 21.** Repeals s. 385.205, F.S., relating to the Department of Health's responsibility with regard to the care and assistance to persons suffering from chronic renal diseases.

**Section 22.** Provides for the bill to take effect July 1, 2001.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

**Section 12.** Pediatric Tumor Program. Total funding for the Pediatric Tumor Program for FY 2000-2001 is \$150,000, consisting of the contract with the Florida Association of Pediatric Tumor Programs, Inc.

**Section 21.** Kidney Disease Education Program. Total funding for the Department of Health's Kidney Disease Education Program for FY 1999-2000 was \$200,000. The current funding for the program for FY 2000-2001 is \$225,000. The additional \$25,000 is for the addition of one

additional regional patient education conference and to expand the exercise rehabilitation project located in Tampa to other dialysis centers "to the extent funding and staffing allows."

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

**Section 14.** Indeterminate fiscal impact on the 15<sup>th</sup> Judicial Circuit. This section of the bill relates to the creation of the Guardian Advocate under chapter 382, F.S., relating to Tuberculosis Control. The bill, as introduced, requires that subsequent to hospitalization under 392.56, F.S., relating to hospitalization, placement, and residential isolation, the department may petition the court for an appointment of a guardian advocate subject to certain specified criteria and procedures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate.

**D. FISCAL COMMENTS:**

**Section 15.** Emergency Medical Services Trust Funds: Expands the department's use of these funds to include injury prevention programs. If funds are awarded for these purposes, it will reduce the funding available to the existing purposes.

**IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

**A. APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

**C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of state tax shared with counties or municipalities.

**V. COMMENTS:**

**A. CONSTITUTIONAL ISSUES:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

C. OTHER COMMENTS:

Because this bill encompasses abandoned newborns, school health personnel, guardian advocates for tuberculosis patients, and discovery issues, this bill might raise single subject concerns.

**Comments by the Committee on Health Promotion**

Sections 12 and 21, relating to pediatric tumor and kidney disease activities, respectively, are included to accompany proposed reductions to the Governor's Legislative Budget Request. If the reductions are not taken as part of the appropriations process, these two sections will need to be removed from the bill.

**Comments by the Committee on Judicial Oversight**

The bill as filed contained provisions that provided for a guardian advocate for certain tuberculosis patients, which provisions were modeled after the guardian advocate provisions in ch. 394, F.S. Amendment 2, which is traveling with this bill, removes the guardian advocate provisions, but adds other provisions that conflict with normal guardianship practice. That amendment further provides that a physician at the A.G. Holley Tuberculosis Hospital has the discretion to order any medical treatment for any illness that the physician deems necessary to treatment of the tuberculosis, before a guardian of the person is appointed. Amendment 2 also contains a sentence with drafting errors at page 2, lines 3-7.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 6, 2001, the Committee on Health Promotion adopted the following amendments:

Amendment 1 [page 10, line 19 through page 12, line 29]: corrects a drafting error; expands documents acceptable for establishment of paternity; provides an exception for requiring an order for release of certain documents; and provides a procedure for subsequent issuance of certain amended birth certificates.

Amendment 2 [page 16, line 9 through page 19, line 18]: provides for court ordered treatment for certain tuberculosis patients and provides for appointment of a limited guardian for certain patients.

Amendments 3 and 4 [page 22, lines 27 and 30]: inserts the word "notarized" before the phrase "voluntary notice of paternity."

Amendment 5 [page 23, line 11]: retains reference to s. 382.016, F.S., as currently found in statute.

Amendment 6 [page 24, lines 1-19]: requires any school health care program to comply with certain statutes relating to state school health standards.

The bill was then reported favorably with six amendments.

On March 20, 2001, the Committee on Judicial Oversight adopted five amendments:

Amendment 7 deletes section 12 from the bill, thus maintaining funding for the Pediatric Tumor Program.

Amendment 8 removes section 21 from the bill, thus maintaining funding for the Kidney Disease Education Program.

Amendment 9 amends Amendment 1 to remove language that would have allowed the Bureau of Vital Statistics to administratively examine and approve a parent's request for name change for a child without a court order.

Amendment 10 amends Amendment 1 to remove language regarding access to birth records that may have had the unintended effect of opening up some sealed adoption records.

Amendment 11 was withdrawn.

Amendment 12 adds a section to the bill regarding consent to medical care for minors. A minor cannot consent to medical procedures; a parent or legal guardian must consent on behalf of the minor child. Under current law, the parent or legal guardian of a minor child may execute a written power of attorney by which a caretaker of the minor child is authorized to consent to medical care for the minor child. Current law is unclear whether such a power of attorney gives legal authority to consent to surgical treatment. This amendment provides that a written consent for medical treatment regarding a minor includes the right of the caretaker to consent to surgical procedures and anesthesia.

The bill was then reported favorably, as amended.

On April 12, 2001, the Committee on State Administration adopted a strike-everything amendment to HB 475. It incorporates all of the traveling amendments from the Committee on Health and Promotion and the Committee on Judicial Oversight, with the exception of amendment two. The strike-everything amendment and the bill provide the same provisions, except the strike-everything amendment

- Makes technical and editorial changes;
- Extends immunity from criminal or civil liability for acting in good faith to a licensee, a fire department, or an employee or agent of a licensee or fire department;
- Removes provisions for the appointment of guardian advocates for tuberculosis patients who have been found incompetent to consent to treatment;
- Provides that it is not a violation for a licensed physician, who is providing private services to Department of Health (DOH), to also be employed by DOH, if the physician does not enter into contracts with DOH on behalf of that physician's employing business entity or agency; the physician's private-sector employment or contractual relationship does not create a conflict between the physician's private-sector interests and public duties; and the physician's employment with DOH does not compromise the ability of DOH clients to make a voluntary choice among department-referred physicians and private providers; and
- Requires DOH to establish by rule the procedure by which an applicant, and the applicant's attorney may review the certification examination questions and answers.

The bill was reported favorably with one amendment.

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VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

Prepared by:

Tonya Sue Chavis, Esq.

Staff Director:

Phil E. Williams

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Nathan L. Bond, J.D.

Staff Director:

Lynne Overton, J.D.

AS FURTHER REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.