HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1925 (PCB HC 03-04) Health
SPONSOR(S): Committee on Health Care and Farkas
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 2738(s) and CS/SB 2750(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care	17 Y, 0 N	Mitchell	Collins
2)		I	
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill is a comprehensive bill that addresses a wide range of health regulation and public health issues administered by the Department of Health. The bill contains several measures based on recommendations by the Governor's Select Task Force on Healthcare Professional Liability Insurance as well as provisions which foster the streamlining and increased efficiency of government agencies.

The licensure boards and Division of Medical Quality Assurance of the department are charged with licensing health care practitioners and regulating the standard of care with which they provide services.

The bill makes technical and clarifying changes to statutes relating to public health services to conform to current practice and new technology. Changes are made that clarify program requirements to protect the department from lawsuits.

The effective date of the bill is July 1, 2003, except as otherwise provided in the bill.

See Fiscal Comments in Section II. D., for discussion of the fiscal impacts of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[X]	No[X]	N/A[]
2. Lower taxes?	Yes[X]	No[X]	N/A[]
3. Expand individual freedom?	Yes[X]	No[]	N/A[]
4. Increase personal responsibility?	Yes[]	No[]	N/A[]
5. Empower families?	Yes[]	No[]	N/A[]

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

Many of the provisions of the bill address professional regulation. Some effects of the bill are to reduce areas of existing regulation and provide greater professional freedom with reduced licensure fees. Other effects of the bill are to strengthen existing licensure provisions and provide for fees to fund licensure costs.

B. EFFECT OF PROPOSED CHANGES:

The bill is a comprehensive bill that addresses a wide range of health regulation and public health issues administered by the Department of Health. The bill contains several measures based on recommendations by the Governor's Select Task Force on Healthcare Professional Liability Insurance as well as provisions which foster the streamlining and increased efficiency of government agencies.

The licensure boards and Division of Medical Quality Assurance of the department are charged with licensing health care practitioners and regulating the standard of care with which they provide services.

The bill makes technical and clarifying changes to statutes relating to public health services to conform to current practice and new technology. Changes are made that clarify program requirements to protect the department from lawsuits.

For example, the bill includes provisions that:

- Make Florida laws consistent with the recent FDA approval of rapid HIV testing technology.
- Eliminate a requirement that bars and lounges have a certified food manager and clarifies that public and private school food services are exempt from having a certified food manager if operated by school employees.
- Require emergency medical technician and paramedic applicants to be fingerprinted and undergo a statewide and national criminal background check.
- Revise the medical licensure requirements for persons to practice as a physician in Florida;
- Increase the financial threshold for paid professional liability claims that DOH must post on practitioner profiles;
- Revise grounds for which a health care practitioner may be disciplined for performing health care services on the wrong patient and establishes an exception to discipline for leaving a foreign body in a patient;
- Revise criminal background checks for nursing assistants and provides a procedure and fee for license renewal;
- Revise licensure fees for a midwife's license and renewal requirements;
- Revise respiratory care practice requirements and exemptions;
- Limit issuance of the designation "certified master social worker" to current licensees;
- Redefine "medical review committee" to add a committee established by a university board of trustees, and a committee comprised of faculty, residents, students and administrators of an accredited college of medicine, nursing, or other health care discipline;

- Create penalties for battery and assault on persons employed by DOH.
- Eliminate the continuing education requirements for domestic violence and HIV/AIDS;
- Require all payments by DOH to the Division of Administrative Hearings after July based on a previous payment formula to revert back to DOH based on the newly established charges in the bill; and
- Require the Office of Program Policy Analysis and Government Accountability and the Auditor General to jointly conduct an audit of all hearings and billings conducted by DOAH for DOH and submit a report to Legislature.

The effective date of the bill is July 1, 2003, except as otherwise provided in the bill.

CURRENT SITUATION

The Department of Health's Medical Quality Assurance Program
The department's Medical Quality Assurance Program (MQA) regulates health care practitioners to ensure they meet the standards of their profession. Currently, the program supports licensure and disciplinary activities for 37 professions and 6 facilities, and works with 22 boards and 6 councils. In total, MQA regulates more than 750,000 health care practitioners and facilities. Practitioners must demonstrate their proficiency by meeting testing, licensing, credentialing and continuing education requirements. (MQA Annual Report 2001-2002.)

Professional Licensing Boards and Councils
Most health care practitioners in Florida are governed by professional licensing boards or councils that are independent entities assigned to the Department of Health for administrative support purposes. MQA also directly regulates some practitioner groups that are not governed by an external board or council, as well as some health care facilities, such as pharmacies.

Current Enforcement Activities
The Medical Quality Assurance program of the Department of Health is responsible for health care practitioner enforcement activities including impaired practitioners. Enforcement procedures include a consumer complaint call center, investigation of complaints and legal services in handling cases before licensing boards. The program investigates complaints and assesses probable cause for each case. Cases are then presented to licensing boards and councils for final action. If a board finds that an allegation is justified, it may take disciplinary action. If a practitioner contests a finding of probable cause, the case is heard by an administrative law judge. Disciplinary measures can range from a reprimand and fine to suspension or revocation of the practitioner's license. (MQA Annual Report 2001-2002.)

The Department's Public Health Roles
The public health services provided by the department of health provision of services such as County Health Department immunization programs, Emergency Medical Services, and specialized services such as Children's Medical Services which provides children with special health care needs with a managed system of care. Children with special health care needs are children under age 21 whose serious or chronic physical or developmental conditions require extensive preventive and maintenance care beyond that required by typically healthy children.

CURRENT SITUTATION REGARDING ACCESS TO PATIENT RECORDS

Confidentiality of Patient Records
Currently, s. 456.057, F.S., provides that medical records are confidential and, except for certain exceptions, they cannot be shared with or provided to anyone without the consent of the patient. Subsection (5) identifies the circumstances when medical records may be released without written authorization from the patient. The circumstances are as follows:

- To any person, firm, or corporation that has procured or furnished such examination or treatment with the patient's consent;
- When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff;
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such records; or
- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.

The Florida Supreme Court has addressed the issue of whether a health care provider, absent any of the above-referenced circumstances, can disclose confidential information contained in a patient's medical records as part of a medical malpractice action.[1] The court ruled that, pursuant to s. 455.241, F.S., (the predecessor to current s. 456.057(6), F.S.), only a health care provider who is a defendant, or reasonably expects to become a defendant, in a medical malpractice action can discuss a patient's medical condition. The court also held that the health care provider can only discuss the patient's medical condition with his or her attorney in conjunction with the defense of the action. The court determined that a defendant's attorney cannot have ex parte discussions about the patient's medical condition with any other treating health care provider.

Under s. 456.057(7), F.S., the Department of Health may obtain patient records pursuant to a subpoena without written authorization from the patient, if the department and the probable cause panel of the appropriate board find reasonable cause to believe that a health care practitioner has excessively or inappropriately prescribed any controlled substance violating ch. 893, F.S, relating to controlled substances or any professional practice act or that a health care practitioner has practiced his or her profession below that level of care, skill, and treatment required by law and also find that reasonable attempts were made to obtain a patient release.

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

The department may obtain patient records, billing records, insurance information, and provider contracts pursuant to a subpoena without written authorization from the patient if the department and probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has submitted a claim, statement, or bill using a billing code that would result in payment greater in amount than would be paid using the appropriate billing code; used information derived from an automobile accident report to solicit or obtain patients personally or through an agent; solicited patients fraudulently; received a kickback; violated patient brokering provisions; presented a false or fraudulent insurance claim; or patient authorization cannot be obtained because the patient cannot be located or is deceased, incapacitated, or suspected of being a participant in the fraud or scheme; and if the subpoena is issued for specific and relevant records.

Health Insurance Portability and Accountability Act of 1996

The 1996 federal Health Insurance Portability and Accountability Act (HIPAA)[2] required the Administration to issue regulations protecting the privacy of health information. The United States

[1] *Acosta v. Richter*, 671 So.2d 149 (Fla. 1996).

[2] Section 262 of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, enacted on August 21, 1996, directed the United States Department of Health and Human Services to develop standards to protect the security, including the confidentiality and integrity, of health information.

Department of Health and Human Services issued standards for privacy of individually identifiable health information on December 28, 2000. The standards were originally scheduled to go into effect on February 26, 2001. The effective date for the regulations was delayed and took effect on April 14, 2003.

The regulations only apply to health plans, health care clearinghouses and certain health care providers. The regulations permit states to afford greater privacy protections to health information.[3] Exceptions for state law are provided for public health (authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention) and state regulatory reporting (the ability of a state to require a health plan to report, or to provided access to, information for management audits, financial audits, program monitoring and evaluation, facility licensure or certification, or individual licensure or certification).[4]

EFFECTS OF SPECIFIC PROVISIONS OF THE BILL

PUBLIC HEALTH PROVISIONS

Reference to Biomedical Research Trust Fund
Section 1 of the bill amends s. 17.41, F.S., relating to the Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to add reference to the Biomedical Research Trust Fund that supports research in the areas of cancer, cardiovascular disease, stroke and pulmonary disease. The bill corrects an oversight when the statute was enacted, which omitted the Biomedical Trust Fund of the Department of Health.

Currently, the Biomedical Research Program established in s. 216.5602, FS, is funded from a set-aside share of the Lawton Chiles Endowment Fund. The proceeds generated from that set-aside share are specifically appropriated each year to the Biomedical Research Program. The Biomedical Research Trust Fund was created in s. 20.435, FS, to receive those funds within the Department of Health. This trust fund operates separately from the Tobacco Settlement Trust Fund within the Department of Health, which is used for other programs paid through tobacco settlement funds.

Changes in Division Names:
Section 2 of the bill amends s. 20.43, F.S., to establish a Division of Disability Determinations within the department; to change the Division of Emergency Medical Services and Community Health Resources to the Division of Emergency Medical Operations; and to change the Division of Health Awareness and Tobacco to the Division of Health Access and Tobacco. This updates the statutes to accommodate Department of Health restructuring and current practice.

Blood lead level investigations:
Section 3 of the bill amends s. 154.01, F.S., to include elevated blood lead level investigations as an example of an environmental health service and to authorize county health departments to expend funds for federally mandated professional certification and renewal fees for staff who conduct lead based paint activities or lead hazard investigations.

Currently, County Health Department (CHD) staff are required by federal law to be certified by the U.S. Environmental Protection Agency (EPA) to conduct lead investigations. The certification fee for most of the CHD staff currently conducting lead-based paint activities was paid under a one-time exemption from the comptroller because they were already performing the function before EPA certification took

[3] Sections 160.201, 160.203, 160.204, and 160.205, C.F.R.
[4] The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) generally preempts state health information privacy laws, unless they provide a higher level of protection than the act. (Pub. L. No.104-191, §262, 110 Stat. 1936, 2029.) However, these state privacy provisions may not be preempted if the Secretary of Health and Human
Services determines that the state law has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. §802), or that is deemed a controlled substance by state law. (45 C.F.R. §160.203 (a)(2)). See also, 42 U.S.C.A. § 1320d-7.

effect in March 2000; or the fees were paid with grant money from the CDC. Neither of these sources is still available. Most of the currently certified staff must pay the renewal fee for licenses in 2003. Section 154.01, F.S., doesn't currently address lead investigations or the funding for this service.

Division of Disability Determinations:
Section 4 of the bill creates s. 216.342, F.S., to exempt the 100% Social Security Administration funded positions in the United States Trust Fund from the requirements of s. 216.262(l), F.S., which provides for legislative appropriation of an FTE cap and rate. This will allow Division of Disability Determinations to respond quickly to changes in workload. This change will make department handling of these positions similar to positions in County Health Departments to all flexibility to respond to changes in external funds and staffing needs.

The Division of Disability Determinations, a 100 percent federally funded program, adjudicates social security disability claims to make administrative medical disability determination based on Social Security Administration (SSA) rules and regulations. Florida has experienced an increasing rate of social security disability claims over the past several years that must be adjudicated by the division. The current requirements of s. 216.262(1), F.S., do not allow the division to adjust its staffing level timely to respond to the needs of the citizens of the state that apply for disability.

Statewide Injury Prevention:
Section 5 of the bill amends s. 381.0011(12), F.S., to clarify the department's authority to implement and maintain injury prevention activities as a component of its injury control initiatives of the department.

Currently, the department initiates and participates in a number of injury prevention specific programs and activities as components of its Injury Control Program, authorized under s. 381.0011(12), F.S. The statute does not specifically identify injury prevention activities. The department has dedicated positions and resources to develop and implement a statewide injury prevention plan; monitor incidence, trends, and costs associated with injury; and participate in state and nationwide initiatives, which target the prevention of injuries to children and rural populations.

HIV/AIDS Testing:
Section 6 of the bill amends s. 381.004, F.S., to allow the release of positive preliminary HIV rapid test results. This will make Florida laws consistent with the Federal Drug Administration (FDA) approval of rapid HIV testing technology. Rapid testing is recommended by the Centers for Disease Control (CDC) and is expected to increase the number of persons identified with HIV at an early stage of the infection, thus improving treatment outcomes.

Confidential HIV infection reporting was implemented in Florida in 1997 and over 26,000 HIV cases have been identified since that time. In December 1999, the Centers for Disease Control and Prevention issued guidelines for national HIV case surveillance, which emphasize the importance of HIV reporting in effectively and accurately monitoring the HIV/AIDS epidemic and recommend that all HIV exposed newborns and infants be reported. Because HIV infection reporting provides better information on populations recently infected with the virus, the Ryan White Care Act will transition over the next few years to the use of HIV data as the basis for funding allocations. This will result in targeting resources to the "front end" of the epidemic and makes it imperative that Florida have reliable and complete data on HIV infection.

Currently, s. 381.004 (3)(d), F.S., prohibits "the release of positive preliminary HIV test results for the routine identification of HIV-infected individuals or when HIV testing is incidental to the preliminary diagnosis or care of a patient." However, the Food and Drug Administration has found rapid testing to be effective and recently approved the use of rapid testing technology. The use of rapid testing is specifically recommended by the CDC in its Guidelines on HIV Counseling, Testing, and Referral. It is estimated that 95,000 individuals in Florida are infected with HIV and at least 25% are unaware of their

infection. Advances in medical treatment for HIV, particularly antiretroviral therapies, make early identification of HIV infection essential.

> **Section 14** of the bill also addresses HIV testing and reporting. (See below.) It amends s. 384.25, F.S., to delete the reference to the HIV/AIDS Reporting System and give DOH statutory authority to use the latest HIV/AIDS reporting system developed by CDC or an equivalent system.

Onsite sewage program:
Section 7 of the bill amends s. 381.0065, F.S., to allow the onsite sewage program to use the most current products derived from United States Geologic Survey (USGS) mapping which include aerial photographs and data products from 1998-2000 mapping as opposed to maps that may date from 1954. This section also deletes an obsolete requirement that DOH hold a rule workshop by September 1, 1996 and advertise rules for a public hearing no later than October 1, 1997. This language is obsolete as the workshop has been held and the rules advertised and adopted.

Currently, s. 381.0065, F.S., regulates onsite sewage and disposal systems. In the definition of "permanent nontidal surface water body," the map that can be used is limited to a specific map produced by the US Geological Survey, although other products have been developed since the statute was enacted. Subsection (4) (j) contains deadlines for promulgation of rules that have already been adopted.

Food manager certification:
Section 8 of the bill amends s. 381.0072, F.S., to exempt "bars and lounges" from having a certified food manager and clarify that public and private school food services are exempt from having a certified food manager only if operated by school employees.

Current s. 381.0072, F.S., describes the department's responsibility for food service protection and requires that rules be adopted to regulate minimum sanitation standards and manager certification requirements. The statute exempts public and private schools, hospitals, nursing homes, childcare facilities, and medically related residential facilities from the rules for manager certification.

Currently, bars and lounges regulated by the department are limited to the preparation of drinks and the service of food-types that are seldom implicated in reported food borne illnesses (non-potentially hazardous foods). If bars and lounges choose to exceed these limitations, the regulatory jurisdiction switches to the Department of Business and Professional Regulation. The clarification of the exemption of public and private schools from manager certification testing requirements is needed because private vendors who are awarded contracts to assume the duties of school food service employees are required to meet similar manager certification requirements under Department of Business and Professional Regulations.

Employee Health and Wellness:
Section 9 of the bill creates s. 381.104, F.S., to authorize all state agencies to establish employee wellness programs using existing resources. It provides that employees may participate in the program for 30 minutes per day, three days per week, which may be counted as work time at the discretion of the agency administration. The bill requires the department to provide guidelines to state agency programs to assist in the development of wellness programs.

Currently, there is no statute that authorizes agencies and programs to improve and enhance the health and well being of state government employees. The department has conducted employee wellness activities since it was established as a separate department. The employee wellness program is coordinated by a 0.5 FTE employee. The salary for this position is paid out of federal Preventive Health and Health Services block grant funds.

The bill would remove barriers that have prevented the employee wellness program in the department from becoming more comprehensive and addressing the needs of the employees, as determined through needs assessment surveys and evaluations of existing program activities. Other departments that have established employee wellness programs would also benefit. The bill will allow for relationships to be established between state wellness programs and private and public enterprises, within existing agency resources or at the expense of the employee.

It is expected that participating employees in all state agencies may experience increases in productivity and effectiveness through a reduction in chronic disease health risks, sick leave usage and employee turnover.

Statewide Research:
Section 10 of the bill creates s. 381.86, F.S., to establish the Review Council for Human Subjects within the Department of Health in compliance with federal requirements, to review biomedical and behavioral research on human subjects. It establishes the council as the state's institutional review board and gives the council authority to charge a fee to cover the costs of research review. The fee is waived for degree seeking students in Florida universities. The department is authorized to adopt rules related to rule review and compliance with federal requirements.

Federal Regulations require that all research projects involving human subjects and materials of human origin be reviewed and approved by an Institutional Review Board (IRB) before initiation. The current Review Council for Human Subjects is the 10-member committee that serves as Florida's IRB. The research studies are submitted to the IRB by academic entities and private for-profit companies, such as pharmaceutical companies. Currently, the IRB is not in statute and cannot charge fees to meet expenses.

Tanning facility licensure fees:
Section 11 of the bill amends 381.89, F.S., to reduce tanning facility licensure fees and bring them in line with the department's cost of administering the program. The department may prorate the fees quarterly, rather than monthly.

Current s. 381.89, F.S., regulates tanning facilities and includes specific permit fees. The minimum fees specified in statute are $125, which generate more revenue than the department needs to administer the program which conflicts with another portion of the statute that requires the department to collect fees necessary to cover the expenses of administering the section. The bill removes the minimum fee level.

Florida Health Information Systems Council:
Section 12 of the bill amends s. 381.90, F.S., to revise incorrect statutory references, revise the membership of the Florida Health Information Systems Council, and correct the date for DOH strategic plan submission from March 1 to June 1.

Current statute for the Florida Health Information Systems Council (FHISC), which was created in 1997, contains obsolete references to the "Treasurer and State Insurance Commissioner" and "Board of Regents." Requirements for development and approval of a strategic plan by March 1 of each year are obsolete and inconsistent with the provisions of s. 186.022, related to the State Technology Office. The Department of Veterans' Affairs is recognized as a member of the Health and Human Services Domain but is not a designated member of the FHISC.

Technical Correction of Term "Newborn:"
Section 13 of the bill amends s. 383.14, F.S., to correct an error that was made when the statute was drafted. Section 383.14 incorrectly uses the term "infant" when the term "newborn" should be used pursuant to the nationally accepted definition of "newborn" and the definition of "newborn" in s. 383.145, F.S.

HIV/AIDS Reporting:
Section 14 of the bill amends s. 384.25, F.S., to delete the reference to the HIV/AIDS Reporting System and give DOH statutory authority to use the latest HIV/AIDS reporting system developed by CDC or an equivalent system.

Currently, the HIV/AIDS Reporting System (HARS) has been used for reporting of HIV and AIDS since 1993. HARS is a collection of computer programs and data files developed by CDC for use by states. HARS simplifies the management and analysis of HIV and AIDS surveillance data. CDC is currently developing a new system, e-HARS (Evaluation-HARS) that will be deployed to ten states funded for the Evaluation of Performance of Integrated HIV/AIDS Surveillance Systems project as well as the nineteen states funded for Behavioral Surveillance and HIV Incidence Studies. E-HARS is an interim system developed to capture the enhanced data needed for these projects. Ultimately, HARS and e-HARS will be replaced by Program Area Modules (PAMS) of the National Electronic Disease Surveillance System (NEDSS).

The bill also eliminates HIV infection reporting exemptions and allows the department to require by rule the reporting of HIV exposed newborns and infants up to 18 months of age.

The changes put Florida in compliance with CDC minimum reporting standards and will also prepare Florida for the Ryan White CARE Act transition to HIV data as the basis for funding allocations. Complete and accurate reporting of HIV infection and AIDS will ensure that Florida receives its share of critical HIV/AIDS funding.

> **Section 6** of the bill also addresses HIV/AIDS testing. (See above.) It amends s. 381.004, F.S., to allow the release of positive preliminary HIV rapid test results.

Technical Correct of Reference to Insulin Distribution:
Section 15 of the bill amends 385.204, F.S., to clarify that to the extent funds are available, the department will distribute insulin. In addition, language is deleted which references “kindred diseases,” because diabetes does not have what is referred to as “kindred diseases.”

Children's Medical Services Eligibility and Physician Participation:
Section 16 of the bill amends s. 391.021, F.S., to revise the definition of children with special health care needs to conform to current practice. The definition of children with special health care needs is: children under the age of 21 years who have, or are at increased risk for, chronic physical, developmental, behavioral, or emotional conditions and who also require health care and related services of a type or amount beyond that which is generally required by children. The bill eliminates wording based on statistical usage of services. This revision clarifies eligibility to avoid litigation regarding eligibility.

Section 17 of the bill amends s. 391.025, F.S., regarding the scope of the Children’s Medical Services program, to remove language from the statutes that includes references to other programs including Medicaid and KidCare and provision of services to the uninsured and underinsured.

The references in current statute have been misinterpreted to extend CMS eligibility inappropriately. The removal of this language will serve to avoid litigation.

Section 18 of the bill amends s. 391.029, F.S., to clarify language regarding CMS eligibility, and to clarify that the CMS program is not an entitlement program and some extended services are subject to available funding.

The changes clarify that CMS services provided to children above 200 percent of federal poverty guidelines based on financial criteria for Title XXI and for Title V of the federal Social Security Act, are provided based on the availability of funds. According to the department this clarification will serve to avoid litigation.

Currently, the Department of Health does not receive funds to pay for children above 200 percent of the federal poverty guidelines. The Department of Health has intervened as amicus curie in a lawsuit between a provider for the Healthy Kids Corporation and the Corporation, in which the trial court entered a preliminary order that potentially includes children of families over 200 percent of the federal poverty in the CMS Network, contrary to the statute and the limits of federal funding under Title XXI.

Section 19 of the bill amends s. 391.055, F.S., adding a new subsection (4) to require that any newborn found to have an abnormal screening result in the metabolic screening authorized by section 383.14 shall be referred to the CMS network. This language ensures that these newborns will receive follow-up services that include confirmatory testing, medical management, or medical referral. This language will improve quality of care.

Section 20 of the bill creates s. 391.309, F.S., to place into statute, language that has been included in the Appropriations Act as proviso language for many years. This language authorizes the department to implement and administer Part C of the federal Individuals with Disabilities Education Act and specifies certain actions and responsibilities of the department.

Section 21 of the bill amends s. 393.064, F.S., to change the contracting authority for the Raymond C. Philips Research and Education Unit from the Developmental Disabilities program of the Department of Children and Family Services, to Children's Medical Services of the Department of Health to be consistent with changes made when the two departments were separated.

Currently, the Department of Health does not receive funds to pay for children above 200 percent of the federal poverty guidelines. The Department of Health has intervened as amicus curie in a lawsuit between a provider for the Healthy Kids Corporation and the Corporation, in which the trial court entered a preliminary order that potentially includes children of families over 200 percent of the federal poverty in the CMS Network, contrary to the statute and the limits of federal funding under Title XXI.

> **Section 39** of the bill also addresses CMS eligibility. (See below.) It amends s. 409.814, F.S., to make it clear that the reference to the Kidcare program for the purposes of this section does not include the Children's Medical Services network as listed in Section 409.813, F.S. This clarifies that the CMS program is not required to serve children above 200 percent of federal poverty guidelines. The language states that such children may participate only in the Healthy Kids and MediKids programs.

Patient Access to Clinical Records:
Section 22 of the bill amends s. 394.4615, relating to confidentiality of clinical records to clarify criteria that a patient has reasonable access to their clinical records, unless such access is determined by the patient's physician to be a "danger to the patient's life or safety" rather than the current statutory standard of "harmful to patient."

Currently, s. 394.4615(1), F.S., authorizes a psychiatrist to deny a patient access to his or her records when the psychiatrist determines that access would be "harmful" to the patient. The federal Health Insurance Portability and Accountability Act of 1996 regulations state that access may be denied only if access would pose a danger to the patient's life or safety.

Department of Children and Families Contracting with Correctional Medical Authority:
Section 23 of the bill amends s. 394.9151, F.S., to allow the Department of Children and Family Services (DCF) to contract with Correctional Medical Authority for medical surveys in the sexually violent predator facilities operated by DCF.

Currently, the Sexually Violent Predator Program within the Department of Children and Families (DCF) is the custodian of more than 400 persons detained or committed as sexually violent predators under chapter 394, part V, Florida Statutes. The Florida Civil Commitment Center (FCCC), which houses

such persons, is a privatized facility operated under DCF contract. DCF is neither staffed nor funded to conduct reviews of health care provided at the FCCC and is seeking a qualified entity to perform annual health care reviews.

The proposed legislation will allow the CMA to assist DCF with the review function within existing funding allocations. Medical care is a major source of complaints and litigation from involuntarily confined individuals. The Correctional Medical Authority has specialized expertise and experience in conducting formal reviews of institutional health care. Obsolete Statutory References

> **Section 101** of the bill also addresses medical surveys of sexually violent predator facilities. (See below.) It creates s. 945.6038, F.S., to provide authority for the Correctional Medical Authority (CMA) to enter into an agreement or contract with Department of Children and Families (DCF) for the purpose of conducting an annual medical review of health care provided in their secure confinement and treatment facilities.

Release of Hospital Records
Section 24 of the bill amends s. 395.3025, F.S., relating to confidentiality of hospital patient records. The bill clarifies that records may be released to facility personnel and other health care practitioners for treatment purposes. The bill requires that the hospital administrator or records custodian shall release a certified copy of records subpoenaed by the department for practitioner licensure discipline. It provides that records may be provided for research purposes to researchers or facility personnel who meet federal confidentiality requirements. The bill also provides for release of patient information for "marketing" purposes as established in federal HIPAA regulations regarding patient confidentiality and protection of records.

Brain and Spinal Cord Injury Registry:
Section 25 of the bill amends s. 395.404, F.S., to clarify reporting requirements for trauma centers and acute care hospitals to the brain and spinal cord injury central registry.

Legislation was passed in 1999 to transfer the Brain and Spinal Cord Injury Program from the Department of Labor and Employment Security, Division of Vocational Rehabilitation to the Department of Health effective January 2002. Reference to vocational rehabilitation was not removed from s. 395.404, F.S., to reflect the transfer of the program to the Department of Health or to clarify the reporting requirements for trauma centers and acute care hospitals to the brain and spinal cord injury central registry.

MEDICAL QUALITY ASSURANCE PROVISIONS

Correct Cross-References:
Section 26 of the bill amends s. 395.7015, F.S., relating to assessment of health care entities, to correct cross references to changes in ch. 458, F.S.

Access to Nursing Home Records for Practitioner Discipline:
Section 27 of the bill amends s. 400.141, F.S., relating to nursing home and assisted living facility records, providing for release of a certified copy to the department when subpoenaed for practitioner disciplinary cases.

Section 28 of the bill amends s. 400.145, F.S., relating to treatment records of nursing home residents, providing for release of a certified copy to the department when subpoenaed for practitioner disciplinary cases.

Currently, department access to patient records in nursing homes and assisted living facilities is limited. Medical Quality Assurance is granted access to hospital records upon subpoena, under s. 395.3025 (4)(e), F.S., but is currently not provided this access to nursing homes and assisted living facilities licensed under 400, F.S.

According to the department, a nursing home or assisted living facility patient is often unable to provide a signed patient release, which is the department's only alternative in lieu of subpoena power. Without a complete set of patient medical records it is impossible for the department to proceed against health care practitioners who may be practicing below minimal standards. Legislation passed during the 2001 session requires nursing homes and assisted living facilities to report adverse incidents. Reported incidents must be analyzed by the department for legal sufficiency and investigated. The department needs to be able to have access to records to make a thorough and complete investigation. The confidentiality of the records will be protected under provisions of ch. 456, F.S., and the records will be exempt from public access provided under s. 119.07 (1) F.S.

Section 30 of the bill also addresses access to nursing home records. (See below.) It creates s. 400.455, F.S., relating to provision of certified copies of nursing home and assisted living facility records to the department for practitioner discipline cases.

Reduced In-Service Requirements for Certified Nursing Assistants:
Section 29 of the bill amends s. 400.211, F.S., relating to certification of nursing assistants, reducing in-service training requirement to 12 hours per year. See changes to s. 464.203, F.S.

The current requirement of 18 annual hours of in-service (36 hours biennially) for Certified Nursing Assistants (CNAs) exceeds that for nurses (12 hours annually; 24 hours biennially) and is difficult for CNAs who are not employed to achieve. Discussions with the associations, nursing home industry, educators, and Agency for Health Care Administration concluded that reducing the number of hours would not jeopardize patient safety and would reduce the financial burden on CNAs.

Access to Nursing Home Records for Practitioner Discipline:
Section 30 of the bill creates s. 400.455, F.S., relating to provision of certified copies of nursing home and assisted living facility records to the department for practitioner discipline cases.

Sections 27 and 28 of the bill also address access to nursing home records. (See above.)

PUBLIC HEALTH PROVISIONS

Use of Emergency Medical Services Funds:
Section 31 of the bill amends s. 401.113, F.S., to clarify that interest generated from awarded Emergency Medical Services Grant funds may be expended by the grantee on approved grant project budget items.

Currently, interest earned from awarded EMS grant funds must be returned to the department with the grant's final report. Prior to a recent audit by the department's Inspector General's Office, grantees were allowed to expend this interest on grant related budget items.

Statewide Injury Prevention:
Section 32 of the bill amends s. 401.211, F.S., to clarify legislative recognition of a comprehensive statewide Injury Prevention and Control Program that is integrated with broader community health systems.

Section 33 of the bill creates s. 401.243, F.S., to clarify the role of prevention activities within the department's Injury Control Program and describe its responsibilities.

Currently, the department initiates and participates in a number of injury prevention specific programs and activities as components of its Injury Control Program, authorized under s. 381.0011(12), F.S. The statute does not specifically identify injury prevention activities. The department has dedicated positions and resources to develop and implement a statewide injury prevention plan; monitor incidence, trends,

and costs associated with injury; and participate in state and nationwide initiatives, which target the prevention of injuries to children and rural populations.

Section 5 of the bill also addresses injury prevention and control. (See above.) It amends s. 381.0011(12), F.S., to clarify the department's authority to implement and maintain injury prevention activities as a component of its injury control initiatives of the department.

Emergency Medical Technician and Paramedic Certification:
Section 34 of the bill amends s. 401.27(3) and (4), F.S., to eliminate the requirement that emergency medical technicians and paramedics submit paper applications and to eliminate the need for an oath, both of which will facilitate the department's efforts to offer an online application process.

The bill also amends s. 401.27(5), F.S., to eliminate provisions for a temporary certificate. Section 401.27(13), F.S., is amended to repeal the department's statewide regulation of the design of emergency medical technician and paramedic patches in favor of local emergency medical services provider control.

The bill creates new subsection s. 401.27(14), F.S., to require emergency medical technician and paramedic applicants to undergo a statewide and national criminal background check consistent with other professions regulated by the department. The bill provides for background check information gathered within the previous two years by other state and local agencies to be used to diminish the impact of duplication between agencies. The bill identifies specific criminal offenses that preclude certification and establishes an exemption from the denial process for applicants with extenuating circumstances related to the offense.

Section 35 of the bill amends s. 401.2701, F.S., to require department-approved emergency medical technician and paramedic training programs to provide specific information related to the regulation of emergency medical technicians and paramedics by the department, including the criminal background check requirements.

Currently, s. 401.27, F.S., provides the requirements for the certification and renewal certification of emergency medical technicians and paramedics. Under s. 401.27(3), F.S., all application for certification or renewal certification of emergency medical technicians and paramedics is made by paper format under oath. Section 401.27(13), F.S., provides authority to adopt standardized emergency medical technician and paramedic patches for use throughout the state. The department, by practice, has delegated the designation of the required patch to each emergency medical services licensee. The section makes no provision for mandatory criminal history background screening of emergency medical technician and paramedic applicants, but certification applicants are required to indicate if they have had a felony conviction.

Section 36 of the bill amends s. 401.2715, F.S., to allow the department to accept national accreditation by Continuing Education Coordinating Board for Emergency Medical Services as a standard of equivalence to proprietary cardiopulmonary resuscitation and advanced cardiac life support courses, as required under s. 401.27(4), F.S., provided the course is taught within the state.

Currently, s. 401.2715, F.S., establishes requirements for the application and approval of emergency medical technician and paramedic recertification training programs. The section makes no provision for the department to accept national accreditation as standard of equivalence to proprietary cardiopulmonary resuscitation or advanced cardiac life support courses as required under s. 401.27(4), F.S.

Employment of Paramedics in Emergency Rooms:
Section 37 of the bill amends s. 401.272, F.S., relating to emergency medical services, to provide for paramedics to work in hospital emergency rooms. The bill provides that paramedics may provide life support services under the direction of the emergency department nursing director/manager. When

provision of emergency services is contracted by the hospital with a medical group, the paramedics providing services are employees of the contracted medical group and are under the direct supervision of a physician.

Time Requirements for Radon Testing:
Section 38 of the bill amends s. 404.056 (4), F.S., to clarify the time frames for performing mandatory radon testing in public and private buildings. The revisions allow one full year to complete and report both the initial and follow-up radon measurements for new buildings and new facilities inside existing buildings. Eliminates the contradictory completion and reporting times and uniformly provides one year for completion and reporting regardless of when the building received its occupancy or license.

Current language in s. 404.056(4), F.S., regarding the time frames for testing and reporting mandatory radon measurements to the department is contradictory and implies all buildings are newly constructed. One statement requires testing within the first year of construction. Another statement requires completion and reporting to the department by July 1 the year the building is opened for occupancy which implies testing and reporting must be completed in 6 months or less. Also, it is not clear what is expected if a building is opened for occupancy just days before July 1 or sometime after July 1. Follow-up measurements must be conducted after 5 years of occupancy but must be reported by July 1 of the 5th year of occupancy, which poses a similar problem.

Children's Medical Services Eligibility
Section 39 of the bill amends s. 409.814, F.S., to make it clear that the reference to the Kidcare program for the purposes of this section does not include the Children's Medical Services network as listed in Section 409.813, F.S. This clarifies that the CMS program is not required to serve children above 200 percent of federal poverty guidelines. The language states that such children may participate in the Healthy Kids and MediKids programs.

Currently, the Department of Health does not receive funds to pay for children above 200 percent of the federal poverty guidelines. The Department of Health has intervened as amicus curie in a lawsuit between a provider for the Healthy Kids Corporation and the Corporation, in which the trial court entered a preliminary order that potentially includes children of families over 200 percent of the federal poverty in the CMS Network, contrary to the statute and the limits of federal funding under Title XXI.

> **Sections 19 and 20** of the bill also address CMS eligibility and services in ss. 391.055 and 391.309, F.S. (See above.)

MEDICAL QUALITY ASSURANCE PROVISIONS

Correct Cross-Reference:
Section 40 of the bill amends s. 455.227, F.S., relating to grounds for discipline, to correct a cross reference to changes in chapters 404 and 501, F.S.

Notification of Examination Results:
Section 41 of the bill creates a new paragraph (7) of s. 456.017, F.S., relating to examinations, to clarify that posting examination grades of license applicants on the Internet is consistent with the due process requirements of Chapter 120, F.S. The bill provides that administrative procedures requirements of ch. 120, F.S., are satisfied if the electronic posting of the examination scores by the department is accompanied with a notification of rights. The date of receipt of the examination scores is the date the examination scores are posted electronically. When scores are posted electronically, the department must notify examinees of the availability of a post-examination review.

Remove Provisions for Required Department Continuing Education Tracking System:
Section 42 of the bill amends s. 456.025, F.S., relating to continuing education fees, to remove statutory provisions that require the department to develop a continuing education tracking system.

No funding was provided for the tracking system that was intended to be developed out of existing resources. The department contract for development provides for the contractor fund the program through fees charged to organizations providing continuing education. These fees may be excessive for some professional associations. Development of the system has been delayed because the department contract has been contested by another provider.

Community College and University Clinic Exemption from Registration:
Section 43 of the bill amends s. 456.0375, F.S., relating to registration of certain medical clinics to add two exemptions: those within community colleges and university clinics (s. 456.0375(1)(b)2., F.S.); and clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents or fellows (s. 456.0375(1)(b)4.)

The bill also clarifies that supervision of the administrative functions of a registered medical clinic is a function distinct from the supervision of the delivery of health care services (s. 456.0375(1)(b)3., F.S.). The function of health care delivery is the sole responsibility of the physician delivering that care.

Correct Cross-Reference:
Section 44 of the bill amends s. 456.039, F.S., relating to information required for licensure, to correct a cross reference to changes in ch. 458, F.S.

Reporting of Liability Claims:
Section 45 of the bill amends s. 456.049, F.S., relating to reporting of professional liability claims, to establish a threshold amount for claims that must be reported. The bill amends s. 456.049(1), F.S., to require reporting of claims only if they are of $50,000 or more for physicians or $25,000 or more for dentists.

Currently, licensed allopathic, osteopathic, and podiatric physicians, as well as licensed dentists, must report to the department any claims for damages in any amount for personal injury caused by malpractice, if such actions were not required to be reported under the provision of s. 627.912, F.S., by an insurer. Raising the threshold of claims that must be reported will mean that fewer minor incidents resulting in malpractice claims will have to be reviewed and investigated, allowing the department to concentrate its resources on the most serious cases.

Rule Authority for Sexual Misconduct Reporting:
Section 46 of the bill amends s. 456.063, F.S., relating to sexual misconduct, to grant to all health regulatory boards the rule making authority to implement statutory requirements to report sexual misconduct. The bill will allow boards to tailor disciplinary guidelines to the specific conditions of their respective professions.

Grounds for Practitioner Discipline:
Section 47 of the bill amends s. 456.072, F.S., relating to grounds for discipline to make several changes in criteria and procedures that include:.

Clarification of leaving a “foreign body” in a patient is provided in s. 456.072(1)(bb), F.S., The bill clarifies that a foreign body may be left in a patient after surgery if this is medically indicated and documented. For example, a pacemaker may be installed as medically necessary and this would not constitute grounds for disciplinary action.

Discipline for prescribing treatment or drugs without establishing a valid professional relationship with the patient is provided in s. 456.072(1)(dd), F.S. The bill establishes that it is not considered appropriate standard of care to prescribe treatment or drugs for a patient without establishing a valid professional relationship with the patient. The bill makes it grounds for discipline if a practitioner prescribes, administers, dispenses, or distributes any legend drugs without establishing such a relationship and specifies that completing a medical questionnaire by internet, telephone, electronic transfer, or mail does not constitute establishing a relationship.

The bill will prohibit Internet prescribing under circumstances where the health care practitioner cannot demonstrate appropriate documentation of a patient-health care practitioner relationship and evaluation before drugs are prescribed. It does not prohibit Internet prescribing in its entirety.

Assessment of costs related to discipline is provided by s. 456.072(4), F.S. that grants boards the authority to assess the costs related to the investigation and prosecution of cases. The bill clarifies that the recovery of administrative costs in a final order and the amount thereof shall be determined by the boards and not by any other judicial or administrative entity. It also clarifies that for purposes of this provision, "costs related to the investigation and prosecution of the case" include costs associated with an attorney's time. The bill establishes the type of evidence to be presented to establish the costs to be assessed and the opportunity for the disciplined licensee to object to the amount. The proof required to determine those costs and any objections thereto will be provided through affidavit form. Affidavits and any arguments to the amount of the administrative costs will be dealt with in writing.

Criteria of burden of proof for discipline and revoking of licensure is clarified by s. 456.072(7), F.S. Currently, s. 458.331(3), F.S, states that the burden of proof for Board of Medicine prosecutions not seeking revocation or suspension of a license shall be the greater weight of the evidence. Prosecution of serious grounds for discipline that demand penalties such as suspension or revocation of license, are held to the greater burden of proof known as the clear and convincing evidence. The bill applies the lesser burden of proof of the greater weight of evidence to all health care practitioner discipline where revocation and suspension is not sought.

By distinguishing the lesser cases for a lesser burden of proof of the greater weight of evidence, it is anticipated that the rate, frequency and amount of time for settlement will improve and the cost of prosecution will decline.

Referral and Billings for Administrative Hearings:
Section 48 of the bill amends s. 456.073, F.S., related to disciplinary proceedings to provide for timely referral for an administrative hearing and payment of hearing costs. The bill amends s. 456.073(1), F.S., to allow 30 days for all practitioners to respond when notified of being the subject of a complaint.

Currently, when a complaint is received against a health care practitioner and is determined to be legally sufficient, an investigation is initiated. Upon initiation of an investigation, the practitioner must be provided a copy of the initiating document and must be given the opportunity to submit a written response. All licensed practitioners, with the exception of physicians, osteopathic physicians, chiropractic physicians and podiatric physicians are given 20 days to provide a written response.

Physicians, osteopathic physicians, chiropractic physicians and podiatric physicians are given 45 days to submit a written response. Revision of the statute is needed for uniformity and will result in imposition of the same response time frame for all practitioners undergoing investigation. In addition, these revisions will provide investigators adequate time to thoroughly investigate allegations and still meet the statutory case processing time mandates.

The bill amends s. 456.073(5) to revise current statutory provisions regarding formal administrative hearings of disciplinary action. The bill establishes a 45 day timeframe for election of a formal hearing.

This will minimize delays in completion of disciplinary cases and improve accountability to the public. Amending the Department's formal hearing process will allow more time for the settlement of complaints to avert costly administrative proceedings.

The bill creates a new paragraph (c) under s. 456.073(5), F.S. to modify the billing arrangement between the department (DOH) and the Division of Administrative Hearings (DOAH). The bill only allows billing for hours actually spent on a case by an administrative law judge and imposes only nominal fees for cancellation of hearings.

In the past three fiscal years costs billed to the DOH by DOAH have risen dramatically. Costs have been incurred for hearings that have been forwarded to the DOAH for the setting of a hearing date that resulted in a stipulation agreement without need for formal litigation before the DOAH. DOAH billed the DOH for time that was not used. The change in the bill will result in significant savings to MQA.

Citations for Minor Violations not Considered Discipline:
Section 49 of the bill amends s. 456.077, F.S.. relating to citations, to provide that first offense citations do not constitute discipline. The bill will allow more licensees to accept a citation in lieu of going through the formal disciplinary course of action. The information that a citation has been issued will be available to the public to allow for better-informed health care choices.

Citations are a way of resolving allegations of minor violations that allow practitioners to agree to the citation and pay a fine and/or costs, without having a disciplinary record. Currently, all citations are considered discipline and reportable to national databanks.

Mediation as an Alternative to Disciplinary Proceedings:
Section 50 of the bill amends s. 456.078, F.S., relating to mediation, to require licensing boards to designate certain offenses for mediation, and to provide that successful mediation does not constitute discipline. The bill specifically excludes more serious violations from mediation. Successful mediation will state whether or not penalties imposed constitute discipline. No licensee may use the mediation option more than once if the allegation relates to breach of standard of care. The licensee will bear the costs of mediation.

The option that mediation will not constitute discipline may encourage the use of this quicker and less costly method of resolving enforcement issues.

Correct Cross-References:
Section 51 of the bill amends s. 458.303, F.S., relating to medical practice provisions that are not applicable to other practitioners, to correct cross references to changes in ch. 458, F.S.

Substantial Rewrite of Provisions for Unrestricted Physician Licensure:
Section 52 of the bill substantially rewrites s. 458.311, F.S., relating to unrestricted licensure of physicians to consolidate existing provisions into two clear licensure tracks, and including provisions for physicians who do not have traditional medical education and training. The bill replaces both current ss. 458.311 and 458.313, F.S. The new section 458.311, F.S., includes one uniform set of licensure requirements for the unrestricted practice of medicine. The bill allows physicians to receive an unrestricted license to practice medicine in this state if they: are at least 21 years of age and have completed their medical education at acceptable medical schools; completed at least two years of approved postgraduate training; taken a national licensure examination; and who are clear of current investigation by another jurisdiction.

The bill adds the requirement that the physician's identity, medical education, postgraduate training, and examination history be verified by the Federation Credentials Verification Services of the Federation of State Medical Boards (FCVS).

The bill adds the requirement of a uniform two-year approved postgraduate training program for American medical school graduates, which is currently being required for International medical school graduates.

The bill continues to allow special pathways for the physician who may not have the traditional medical and postgraduate education, as well as special pathways for physicians that have not taken a national examination. This provision streamlines and simplifies the medical licensure process and eliminates unnecessary unique licensure avenues. Licensure qualifications would be more understandable to applicants and uniform requirements for licensure will better protect the public safety.

The Board of Medicine recommended the use of the Federation of State Medical Boards Credential Verification Service (FCVS) as part of the licensure Task Force Recommendations. The requirement of FCVS will create timesaving to the department and to the applicant. In addition it will be a cost saving to the department, as it will transfer the cost to the applicant. The FCVS requirement will also benefit the applicant with his/her future credentialing needs when applying for hospital staff privileges, malpractice insurance and potential employment endeavors.

Correct Cross-Reference:
Section 53 of the bill amends s. 458.3124, F.S., relating to foreign trained physicians, to correct a cross reference to changes in ch. 458, F.S.

Substantial Rewrite of Provisions for Limited Physician Licensure:
Section 54 of the bill substantially rewrites s. 458.315, F.S., relating to limited physician licensure to consolidate provisions in four existing sections of statute. The bill replaces current ss. 458.315, 458.316, 458.3165 and 458.317, F.S., related to temporary certificates in areas of critical need, public health certificates, public psychiatry certificates, and limited licenses, respectively. The bill establishes limited licensure with one uniform set of licensure requirements to streamline and simplify the limited licensure process.

The bill allows physicians who have been licensed to practice medicine in any jurisdiction in the United States, U. S. territory or Canada for at least two years and who submit evidence of the active licensed practice for at least 2 of the immediately preceding four years to receive a license to provide uncompensated health care services to low-income or uninsured persons. These programs and facilities shall include but not be limited to: county or municipal correctional facilities, the Departments of Corrections, Juvenile Justice, Children and Families, Health, and those programs and facilities funded under s. 330 of the United States Public Health Service Act. Programs and facilities shall be located within federally designated Primary Care Health Professional Shortage Areas unless otherwise approved by the Secretary of the Department of Health.

In the area of critical need, the bill provides for employment of physicians for compensated health care in the following program or facilities: county or municipal correctional facilities, the Departments of Corrections, Juvenile Justice, Children and Families, Health and those programs and facilities funded under s. 330 of the United States Public Health Service Act. Programs and facilities shall be located within federally designated Primary Care Health Professional Shortage Areas unless otherwise approved by the Secretary of the Department of Health. The bill requires the same minimum standards and past conduct that are required of all other licensure avenues.

The bill requires a recipient of a limited license to notify the Board of Medicine within 30 days after accepting employment and of all approved institutions in which the licensee practices and those in which the licensee has been denied practice privileges. The licensee must renew the limited license biennially and verify compliance with the restrictions prescribed in this section and other applicable provisions of ch. 458, F.S.

The bill specifies procedures for any person who holds an active or inactive license to practice medicine in Florida, to convert that license to a limited license in order to provide volunteer, uncompensated care for low-income persons. The application and all licensure fees, including neurological injury compensation assessments are waived for the applicant. The limited license provisions do not limit any policy by the board to grant licenses to other physicians who are licensed in other states under conditions less restrictive than the requirements of this section. The board may refuse to authorize a physician otherwise qualified in the employ of any agency or institution if the agency or institution has caused or permitted violations of ch. 458, F.S., which it knew or should have known were occurring.

Correct Cross-References:
Section 55 of the bill amends s. 458.319, F.S., relating to license renewal, to correct cross references to changes in chapters 456 and 458, F.S.

Section 56 of the bill amends s. 458.320, F.S., relating to financial responsibility, to correct a cross reference to changes in ch. 458, F.S.

Reactivation of Licensure for Retired Physicians to Participate in Research:
Section 57 of the bill creates s. 458.3215, F.S., relating to reactivation of license for clinical research, to allow physicians who have not been retired more than 10 years to reactivate their license for purposes of seeing patients solely in a clinical research setting. The Board of Medicine may promulgate rules to set the criteria for qualifying for this reactivation.

Threshold Amount for Investigation of Liability Claims Against Physicians:
Section 58 of the bill amends s. 456.331, F.S., relating to grounds for disciplinary action to increase the threshold amount of closed liability claims within a 5-year that must be reported and investigated as cases of gross or repeated malpractice from $25,000 to $50,000.

According to the department, this will result in costs savings and more effective use of disciplinary resources by the department by eliminating the evaluation of reports and investigations of minor claims and allowing the department to focus on more serious cases.

Correct Cross-References:
Section 59 of the bill amends s. 458.345, F.S., relating to registration, to correct a cross reference to changes in ch. 458, F.S.

Section 60 of the bill amends s. 458.347, F.S., relating to physician assistants, to correct a cross reference to changes in chapter 458, F.S.

Section 61 of the bill amends s. 459.008, F.S., relating to renewal of licenses and certificates, to correct a cross reference to changes in ch. 456, F.S.

Reactivation of Licensure for Retired Osteopathic Physicians to Participate in Research:
Section 62 of the bill creates s. 459.0091, F.S., relating to reactivation of for retired osteopathic physicians licenses for clinical purposes, with the same provisions as that for allopathic physicians in s. 458.3215, F.S. It allows osteopathic physicians who have not been retired more than 10 years to reactivate their license for purposes of seeing patients solely in a clinical research setting. The Board of Medicine may promulgate rules to set the criteria for qualifying for this reactivation.

Threshold Amount for Investigation of Liability Claims for Osteopathic Physicians:
Section 63 of the bill amends s.459.015, F.S., relating to grounds for disciplinary action for osteopathic physicians, providing the same threshold changes for investigating liability claims as are made in s. 458.331, F.S., for allopathic physicians.

The bill increases the level of closed liability claims that must be reported and investigated as cases of gross or repeated malpractice from $25,000 to $50,000. According to the department this will result in costs savings and more effective use of disciplinary resources by the department by eliminating the evaluation of reports and investigations of minor claims and allowing the department to focus on more serious cases.

Section 96 of the bill addresses insurer reporting of liability claims against physicians in s. 627.912, F.S. (See below.)

Technical Change in Name of Accreditation Agency for Chiropractic Physicians:
Section 64 of the bill amends s. 460.406, F.S., relating to licensure by examination for chiropractic physicians. The bill makes a technical change to correct a change in the name of the accrediting agency. The organization has changed its name. The "Commission on Recognition of Postsecondary Accreditation" is replaced with the phrase "Council for Higher Education Accreditation or the United States Department of Education" to correctly reference organizations involved in accrediting educational qualifications.

Grounds for Discipline for Chiropractic Physicians:
Section 65 of the bill amends s. 460.413, F.S., relating to grounds for discipline to change the period for physician response to within 30 days instead of current 45 days, to conform to changes in s. 456.072, F.S.

Grounds for Discipline for Podiatric Physicians:
Section 66 of the bill amends s. 461.013, F.S., relating to grounds for discipline to make changes in the threshold of liability claims for repeated malpractice to $50,000, and physician response within 30 days, to conform to changes in s. 456.072, F.S.

Technical Change in Name of Accreditation Agency for Optometrists:
Section 67 of the bill amends s. 463.006, F.S., relating to licensure by examination for optometrists. The bill makes a technical change to correct a change in the name of the accrediting agency to Council for Higher Education Accreditation.

Correct Cross-Reference:
Section 68 of the bill amends s. 464.0205, F.S., relating to retired volunteer nurses, to correct a cross reference to changes in ch. 458, F.S.

Licensure of Certified Nursing Assistants:
Section 69 of the bill amends s. 464.203, F.S., relating to certification requirements. The bill requires: criminal background checks for certified nurse assistants (CNAs); establishes required biennial renewal of certified nurse assistant certificates and a fee not to exceed $50 biennially; and reduces the amount of required annual in-service hours for CNAs from 18 to 12.

The bill requires persons who apply to become a certified nursing assistant subject to receive a national criminal history check in lieu of the criminal background screening requirements under ch. 435, F.S. The bill specifies procedures for the submission of fingerprints and information to the Department of Health along with a payment equal to the costs incurred by the department. The Department of Health must review the results of the criminal history check and issue a license to any applicants who have met all of the other requirements for licensure and have no criminal history. The department is required to refer all applicants with criminal histories back to the Board of Nursing for determination as to whether a licensed should be issued and under what conditions.

The bill also specifies procedures for renewal of the certificate of a nursing assistant. The Department of Health is required to renew a nursing assistant certificate upon receipt of a fee no greater than $50 biennially and establish rules for the procedure.

The effect of the bill will give the department the ability to clean-up the certified nursing assistant registry for the first time. Currently there is no requirement for renewal of certificates, so that many who are currently certified in the registry may no longer be practicing in the field. The bill establishes provisions consistent with required background screens of nurses and reduces the number of in-service hours that are currently greater than that required of nurses.

According to the department, considerable confusion has existed on background screening requirements for CNAs. The bill's language on background screening requirements of candidates will simplify procedures for the department and continue to be consistent with Part I of ch. 464, F.S.

According to the department the bill will clarify the requirements for the public and private industry, as well as for applicants.

According to the department, the required renewal process will generate revenue to support the CNA registry functions, reduce errors in the registry (federal mandate), and validate certification. Other states have similar fees and renewal processes (AZ $25; CO $5; MD $30; OR $35; NJ $20: VA $45; WY $50; VT $20; CA $20). Federal law (s CFR483.156(a)(4) prohibits charges related to registration of individuals listed in the CNA Registry but does not forbid renewal fees for licensure. Currently, the Registry has over 275,000 listings, but no process exists for maintaining records of the federal work requirement for a CNA to remain in the Registry.

The department will issue a unique license number to each CNA that will not change. Currently, when a duplicate certificate is requested, a new certificate number is issued, resulting in several certificates for an individual.

The current annual18 hours of in-service requirement (36 hours biennially) for CNAs exceeds that for nurses (12 hours annually; 24 hours biennially) and is difficult for CNAs who are not employed to achieve. Discussions with the associations, nursing home industry, educators, and Agency for Health Care Administration concluded that reducing the number of hours would not jeopardize patient safety and would reduce the financial burden on CNAs. S. 400.211(4)(a), F.S. needs to be amended to conform to this change.

Technical Change to Conform Cross Reference in Discipline for Certified Nurse Assistants:
Section 70 of the bill amends s. 464.204, F.S., related to disciplinary actions to correct a cross reference to be consistent with Part I of 464.018, F.S. The bill revises the grounds for which nursing assistants are subject to discipline for intentionally violating any provision of chapters 464 or 456, F.S., to no longer require proof that the act was done intentionally.

Pharmacist Discipline for Filing Prescriptions not Based on a Professional Relationship with a Prescriber:
Section 71 of the bill amends s. 465.016, F.S., relating to disciplinary actions for pharmacists, to conform to changes made to s. 456.072, F.S. The bill clarifies that a quantity of a legend drug which a pharmacist knows or reasonably should know was not prescribed in the course of a valid professional relationship with the prescribing physician, is presumed to be an excessive or inappropriate quantity. According to the department, this provision will make it easier for the department to prosecute practitioners for drug violations.

Nurse Midwife Licensure:
Section 72 of the bill amends s. 467.009, F.S., relating to licensure by examination for licensed midwives. The bill makes a technical change to correct the name of the accrediting agency to the Council for Higher Education Accreditation or the United States Department of Education.

Section 73 of the bill amends s. 467.013, F.S., relating to inactive status, to replace statutory provisions with rule making authority, conforming to section 456.036, F.S. The bill revises the requirements for placement of midwife's license on inactive status pursuant to department rule, and authorizes the Department of Health to establish the application procedures. Continuing education requirements for midwives as part of license reactivation are eliminated.

Section 74 of the bill amends s. 467.0135, F.S., relating to fees, to eliminate the $500 examination fee for licensed midwives to conform to section 456.017, F.S., and to clarify the renewal fees of active statue and inactive status licenses. The bill eliminates the provision that the renewal fee for an inactive status license is not refundable.

Section 75 of the bill, amends s. 467.017, F.S., relating to emergency care plans to clarify that midwifery emergency care plans must be provided to the Department upon request, rather than at licensure.

Nuclear medicine technologists:
Section 76 of the bill, amends 468.302, F.S., to clarify procedures that can be conducted by a nuclear medicine technologist. The bill excludes nuclear medical technologist from certain computer tomography procedures.

A new type of medical device has recently been developed that combines nuclear medicine and computed tomography. Because nuclear medicine requires a unique expertise, it is important that the use of these devices be limited to persons who have a nuclear medicine technologist certificate and who have obtained device-specific training on the combination device. However, current language in s. 468.302(3)(g) prevents the nuclear medicine technologist from using these devices.

Computer tomography (CT scan) yields series of X-ray-based cross-sectional images of solid objects. It provides for 3-dimensional images by combining series of consecutive cross-sectional images. CT scans are a more complex form of X-ray technology that is not related to licensure of nuclear medical technology.

MEDICAL QUALITY ASSURANCE PROVISIONS

Respiratory Therapy Definitions:
Section 77 of the bill substantially rewords s. 468.352, F.S., relating to definitions of respiratory care, to reorder the provisions in alphabetical order and make changes that include a distinction between direct supervision, that includes practicing under a licensed respiratory therapist, and physician supervision. The bill includes an increased number of specified services in the definition of what constitutes "respiratory care services."

"Critical care" is redefined to mean care given to a patient in any setting involving a life-threatening emergency. "Direct supervision" is redefined to mean supervision under the direction of a licensed, registered, or certified respiratory therapist who is physically on the premises and readily available, as defined by the board. The definition in current law for "noncritical care" is eliminated. The term, "physician supervision" (currently defined as "direct supervision") is defined to mean supervision and control by a licensed allopathic or osteopathic physician who assumes legal liability for the services rendered by the personnel employed in his or her office.

"Certified respiratory therapist" is redefined to mean any person licensed under part V, ch. 468, F.S., who is certified by the National Board for Respiratory Care or its successor, who is employed to deliver respiratory care services, under the order of a Florida-licensed allopathic or osteopathic physician in accordance with protocols established by a hospital or other health care provider or the Board of Respiratory Care, and who functions in situations of unsupervised patient contact requiring individual judgment. "Registered respiratory therapist" is redefined to mean any person licensed under this part who is registered by the National Board for Respiratory Care or its successor, and who is employed to deliver respiratory care services under the order of a Florida-licensed allopathic or osteopathic physician in accordance with protocols established by a hospital or other health care provider or the Board of Respiratory Care, and who functions in situations of unsupervised patient contact requiring individual judgment.

The "practice of respiratory care" or "respiratory therapy" is defined to mean the allied health specialty associated with the cardiopulmonary system that is practiced under the orders of a Florida-licensed allopathic or osteopathic physician and in accordance with protocols, policies, and procedures established by a hospital or other health care provider or the Board of Respiratory Care. "Respiratory care practitioner" is defined to mean any person licensed under part V, ch. 468, F.S., to deliver

respiratory care services under direct supervision and pursuant to an order of a Florida-licensed allopathic or osteopathic physician.

The definition of “respiratory care services” is revised to include evaluation and disease management; diagnostic and therapeutic use of respiratory equipment, devices, or medical gas; administration of drugs, as duly ordered or prescribed by a Florida-licensed allopathic or osteopathic physician and in accordance with protocols, policies, and procedures established by a hospital or other health care provider or the Board of Respiratory Care; initiation, management, and maintenance of equipment to assist and support ventilation and respiration; diagnostic procedures, research, and therapeutic treatment and procedures; cardiopulmonary resuscitation; advanced cardiac life support, neonatal resuscitation, and pediatric advanced life support, or equivalent functions; insertion and maintenance of artificial airways and intravascular catheters; performing sleep-disorder studies; education; and the initiation and management of hyperbaric oxygen.

Respiratory Therapy Licensure Requirements:
Section 78 of the bill substantially rewords s. 468.355, F.S., relating to eligibility for respiratory care licensure and temporary licensure. The bill replaces existing statutory provisions with the provision that an applicant must be an active “Certified Respiratory Therapist” or an active “Registered Respiratory Therapist” by the National Board for Respiratory Care.

According to the department this provision eliminates reference to a national examination that is no longer administered by the department. The examination is available on a daily basis on computer, so that a temporary permit to allow examination is no longer need.

According to the department the bill will expedite the licensure process for the applicant. The only licensure requirement will be official documentation from the National Board for Respiratory Care that credentials the applicant as an active “Certified Respiratory Therapist” or an active “Registered Respiratory Therapist.” According to the department this will have the effect of reducing board staff review of exam application requirements related to processing the application, and staff will no longer be required to maintain records related to the temporary permits.

Exemptions to Respiratory Therapy Licensure Requirements:
Section 79 of the bill substantially rewords s. 468.368, F.S., relating to exemptions to respiratory care regulation, to revise the exemptions.

The bill eliminates the requirement that polysomnography technicians under a physician’s supervision be board registered

The bill deletes the exemption provided in existing s. 468.368(3), F.S., relating to care as a part of training in any health care program, and rewords it in subsection (8) to limit the exemption to accredited respiratory care programs.

According to the department the existing exemption has created a potential harm to the public as some students have practiced on an expired registration and without supervision. The bill will reduce the amount of department resources devoted to registering students and maintain data.

Technical Change in Name of Accrediting Agency for Licensure by Examination for: Dietitian/Nutritionist--
Section 80 of the bill amends s. 468.509, F.S., relating to requirements of licensure for Dietitian/Nutritionist. It includes a technical amendment to correct the name of the accredited agency to the Council for Higher Education Accreditation. The bill also removes the required HIV continuing education requirement to conform to other provisions of the bill.

Athletic Trainer--
Section 81 of the bill amends s. 468.707, F.S., relating to licensure of athletic trainers. It is a technical amendment to reflect the current name of the national accrediting body to the Council for Higher Education Accreditation.

Physical Therapist--
Section 82 of the bill amends s. 486.031, F.S., relating to requirements of licensure for physical therapists. It is a technical amendment to correct the name of the accredited agency to the Council for Higher Education Accreditation.

Physical Therapist Assistant--
Section 83 of the bill amends s. 486.102, F.S., relating to requirements of licensure for physical therapist assistants. It is a technical amendment to correct the name of the accredited agency to the Council for Higher Education Accreditation.

> **Sections 86 and 87** of the bill also address the same technical change in the name of the accrediting agency. (See below.)

Septic Tank Contractor Licensure:
Section 84 of the bill amends s. 489.553, F.S., to require that septic tank contractors have three years of qualifying work experience immediately preceding the date of application. This clarifies the existing requirement for three years of experience.

Currently, s. 489.553, F.S., which provides for registration of septic tank contractors requires at least 3 years of experience for a master septic tank contractor, but doesn't specify any limitation on the dates or quality of that work experience. Administrative rules have been adopted that require the three years to directly precede the application date.

Section 85 of the bill amends s. 489.554, F.S., to provide statutory authority to the DOH for long existing rules relating to continuing education and registration renewal. The proposed language allows a septic tank contractor to hold his registration in an inactive status and allows a contractor to revert to a lower level contractor status while attending the necessary courses needed to qualify for the higher level contractor registration.

Currently, s. 489.554, F.S., which provides for license renewal for septic tank contractors, provides rule authority only for approval of continuing education and renewal of registrations. It doesn't authorize rules to address late filing of renewal applications, inactive status of registrations, or reactivation of licenses.

Technical Change in Name of Accrediting Agency:
School Psychologist--**Section 86** of the bill amends s. 490.005, F.S., relating to licensure by examination for school psychologists. It is a technical amendment to correct the name of the accrediting education agency to the Council for Higher Education Accreditation or the US Department of Education.

Licensure by Examination and Technical Change in Name of Accrediting Agency:
Clinical Social Worker--**Section 87** of the bill amends s. 491.005, F.S., relating to licensure by examination for clinical social work. The bill provides for completion of coursework before examination to conform to current policy and includes technical amendments to correct the name of the accrediting agency to the Council for Higher Education Accreditation or the US Department of Education.

The bill requires applicants to pass a theory and practice examination that has been approved by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. The bill requires that the examination may be taken only following the completion of the clinical experience requirement for clinical social workers. The licensure requirements are revised to allow applicants to

satisfy all coursework requirements either by successfully completing the required course as a student or by teaching the required graduate course as an instructor or professor in an accredited institution.

End Licensure of Certified Master Social Workers:
Section 88 of the bill amends s. 491.0145, F.S., to discontinue licensing certified master social workers. The bill prohibits the Department of Health from adopting any rules that would allow a person who was not licensed as a certified master social worker in accordance with ch. 491, F.S., on January 1, 1990, to become licensed. In effect, this would prevent any additional applicants from being granted the designation.

According to the department, there are currently only three certified master social workers currently licensed by the department.

Section 89 of the bill creates s. 491.0146, F.S., to establish a saving clause that permits the three certified social workers to continue to renew their licenses. It provides that all licenses to practice as a certified master social worker issued pursuant to ch. 491, F.S., and valid on October 1, 2002, remain in full force and effect.

Protection of Therapists if They Release Patient Records:
Section 90 of the bill amends s. 491.0147, F.S., relating to confidentiality and privileged communications with licensed clinical, counseling and mental health therapists. To provide the same protection from civil and criminal liability as provided to psychiatrists under s. 456.059, F.S., when information is provided to protect the client or others from clear and immediate harm.

PUBLIC HEALTH PROVISIONS

Pharmacy Regulations:
Section 91 of the bill amends s. 499.003, F.S., to change the definition of a compressed medical gas to include a gas classified as a medical device in addition to a gas classified as a prescription drug. This definition enhancement eliminates the technical requirement for a company to hold two permits – one as a compressed medical gases manufacturer and another as a medical device manufacturer.

Currently, the Federal Food and Drug Administration classifies products as drugs or medical devices. Depending on the intended use of a medical gas, it can carry either designation, but the substance remains the same. Section 499.003 (6), F.S., defines compressed medical gas only as a prescription drug.

Section 92 of the bill amends s. 499.007, F.S., to amend the information required to be printed on the label of a drug or device. This will make the state law consistent with federal law.

Currently, s. 499.007, F.S., requires that all drugs have the manufacturer or the distributor name on the label, except for prescription drugs which must have the manufacturer name and address on the label. Federal law does not require the name of the manufacturer to be on a prescription drug.

Section 93 of the bill amends s. 499.01, F.S., to allow the department to issue a prescription drug manufacturer permit to an applicant at the same address as a licensed nuclear pharmacy when the applicant is producing specified drugs that have an extremely short half life, sometimes a few hours.

Currently, s. 499.01, F.S., prohibits granting permits to health care facilities for drug manufacturers, drug wholesalers, or pharmacy wholesalers. The bill will provide greater access for patients and their doctors to a new nuclear pharmaceutical agent that is capable of detecting breast cancer, for example, months before the cancer would show up on a mammogram. By allowing a nuclear drug manufacturer and nuclear pharmacy to co-locate, the bill extends the life of the new nuclear pharmaceutical agent so more patients and their doctors can obtain the treatment.

Section 94 of the bill amends s. 499.0121, F.S., to provide that records required to be prepared and maintained under the Florida Drug and Cosmetic Act, Chapter 499, Florida Statutes, must be retained either for two years after disposition of the drug or, in accordance with the new provision in federal law, three years after the date of creation of the records, whichever is longer. Adding the federal language into Florida law will help Florida companies comply with both Florida and federal record retention requirements and avoid slightly different retention schedules.

Currently, provisions for record retention (s. 499.0121, F.S.) require records to be kept for two years from the date of disposition of the drug. A federal rule went into effect in December 2000 that requires similar records to be retained for three years from the date of creation. Florida's record retention provision is actually more effective because it requires a company to hold drugs potentially longer than three years from the date of acquisition. If only the federal provision applied, acquisition records could be destroyed, thus hindering the ability to ascertain the source of prescription drugs.

Nonionizing Radiation and Lasers:
Section 95 of the bill transfers and renumbers s. 501.122, F.S., which governs DOH's responsibility for the regulation of lasers and other nonionizing radiation, to s. 404.24, F.S.

Currently, ch. 404, F.S., includes all radiation programs that the Department of Health has regulatory responsibility for except for the regulation of lasers and other nonionizing radiation. Chapter 501, F.S. where these provisions are now placed governs the Department of Agriculture and Consumer Services.

Threshold Amount for Required Reporting of Liability Claims by Insurers:
Section 96 of the bill amends s. 627.912, F.S., relating to insurer professional liability claims. The bill requires insurers to report to the department, final judgments or settlement amounts against physicians licensed under ch. 458, 459, or 461, F.S., or dentists licensed under ch. 466, F.S. The threshold amounts for reporting of $25,000 for physicians and $5,000 for dentists are raised to $50,000 and $25,000 respectively to conform to changes in investigation thresholds in other provisions of the bill. The effect of the bill will be to eliminate department review and investigation of claims that are minor in nature to enable the department to focus on more serious complaints of malpractice.

> **Sections 45, 58 and 63** of the bill also address reporting and investigation of liability claims against physicians. (See above.)

Immunity from Liability for College and University Medical Review Committees:
Section 97 of the bill amends s. 766.101, F.S., relating to immunity from liability for medical review committees, to include committees established by university boards and colleges of health care disciplines.

Under current law the meetings and proceedings of medical review committees, such as that of the Alachua County Medical Association for example, are immune from liability and exempt from public record. The same is not true for the committees established by the University of Florida or their College of Medicine. This impedes efforts to address quality assurance and promote quality medical education. At the present time it is unclear that not only are the proceedings but also the documents prepared for use by the medical review committee are exempt from public record.

OTHER PROVISIONS

Exemption of Teaching Hospitals from Assessment to Support the Birth-Related Neurological Injury Compensation Plan:
Section 98 of the bill amends s. 766.314, F.S., relating to assessments to finance compensation of birth-related neurological injury, to exempt assessments at teaching hospitals. The fund to compensate serious birth related injuries and reduce litigation is funded by assessments on hospitals for each birth. The bill exempts teaching hospitals that have sovereign immunity from paying the assessment.

Battery on Department of Health Workers:
Section 99 of the bill amends s. 784.081, F.S., to increase penalties for battery and assault on persons employed by DOH or its direct service providers. These protections will apply to Environmental Health regulatory staff, A.G. Holley nursing staff, STD investigative staff and all other DOH employees and the employees of DOH's service providers. The increased criminal penalty will authorize law enforcement to take offenders into custody following assault or battery against a DOH employee.

Under current law, when a person commits battery on an employee of the Department of Health (DOH) or on one of its direct service providers, it is up to the victim to decide whether or not they want to file criminal charges. If they elect to file, they are instructed to go to the state attorney's office.

According to the department currently staff at A.G. Holley Tuberculosis Hospital, for example, have been threatened with razor blades and other contrived weapons, socked in the face, thrown against large objects, and painfully grabbed by patients. A patient who has committed a battery remains at A.G. Holley because it is a misdemeanor and patients cannot be arrested unless it is done in the presence of law enforcement or results in a significant injury. Leaving a violent batterer in the hospital threatens staff safety, has had a negative effect on staff morale and productivity, and affects retention and the recruitment of new staff.

DOH disease intervention specialists go into homes and high-risk areas to perform contact investigations and take blood specimens. They have been held hostage at gunpoint, threatened with knives, chased with machetes, and physically assaulted on many occasions while fulfilling their public health responsibilities.

DOH Environmental Health employees perform inspections at work locations and in the field as part of their public health regulatory functions, citing business operators on health violations and sanitary nuisances. These DOH employees have on occasion been verbally and physically assaulted in the performance of their duties.

Prior to the separation of Department of Health and Rehabilitative Services into Department of Health and Department of Children and Families, employees of health programs were included under the protections of s. 784.081, F.S., which imposes a higher penalty for assault or battery against certain individuals. Chapter 99-8, Laws of Florida, as part of a clean up of statutes following the separation, changed the language in the statute from Department of Health and Rehabilitative Services to Department of Children and Families. This drafting oversight resulted in the exclusion of DOH employees from the protections of the statute.

Technical Change in Name of Accreditation Agency:
Section 100 of the bill amends s. 817.567, F.S., relating to licensure to correct a change in the name of the accrediting agency to the Council for Higher Education Accreditation.

Department of Children and Families Contracting with Correctional Medical Authority:
Section 101 of the bill creates s. 945.6038, F.S., to provide authority for the Correctional Medical Authority (CMA) to enter into an agreement or contract with Department of Children and Families (DCF) for the purpose of conducting an annual medical review of health care provided in their secure confinement and treatment facilities.

Currently, the Sexually Violent Predator Program within the Department of Children and Families (DCF) is the custodian of more than 400 persons detained or committed as sexually violent predators under chapter 394, part V, Florida Statutes. The Florida Civil Commitment Center (FCCC), which houses such persons, is a privatized facility operated under DCF contract. DCF is neither staffed nor funded to conduct reviews of health care provided at the FCCC and is seeking a qualified entity to perform annual health care reviews.

The proposed legislation will allow the CMA to assist DCF with the review function within existing funding allocations. Medical care is a major source of complaints and litigation from involuntarily confined individuals. The Correctional Medical Authority has specialized expertise and experience in conducting formal reviews of institutional health care.

Section 23 of the bill also addresses medical review of sexual violent predator facilities. (See above.) It amends s. 394.9151, F.S., to allow the Department of Children and Family Services (DCF) to contract with Correctional Medical Authority for medical surveys in the sexually violent predator facilities operated by DCF.

Technical Change in Name of Accreditation Agency:
Section 102 of the bill amends s. 1009.992, F.S., to correct a change in the name of the accrediting agency to the Council for Higher Education Accreditation.

Athletic Trainers in Schools:
Section 103 of the bill amends s. 1012.46, F.S., relating to school personnel, athletic trainers, to clarify the role of athletic trainers in school. The bill provides that athletic trainers are not required to be a teacher, and that first responders may not hold themselves out as athletic trainers licensed under ch. 468.

Billing and Payments for Administrative Hearings:
Section 104 of the bill creates an undesignated section of law to provide that that all payments made after July 1, 2003 by the department to the Division of Administrative Hearings that are based on a formula in effect prior to that date are required to revert to the department. Effective July 1, 2004, the Division of Administrative Hearings is required to bill the department in accordance with s. 456.073(5), F.S., as provided above in this bill.

The bill also requires the Office of Program Policy Analysis and Government Accountability and the Auditor General to conduct a joint audit of all hearings and billings conducted by Division of Administrative Hearings for all state and non-state agencies. The report must make recommendations for alternative billing formulas and must be presented to the President of the Senate and the Speaker of the House of Representatives by January 1, 2004.

Obsolete Statutory References:

Section 105 of the bill repeals statutory language that is obsolete, requires unnecessary rules, creates programs that are not needed and not funded, or have been replaced by provisions of the bill.

The bill repeals ss. 381.0098(9), 381.103(2)(f), 381.85, 385.205, 385.209, and 445.033(7), 456.031, 456.033, and 456.034, 458.313, 458.316, 458.3165, 458.317, 468.356, 468.357 and 468.711(3), F.S.

Sections 456.031, 456.033, and 456.034, F.S., which are repealed, require continuing education for instruction on HIV and AIDS. According to the department board members, associations, and practitioners have raised concerns regarding legislative mandates of specific content for continuing education. Many of these mandates have been enforced for over 10 years and have met the original intent of awareness. Domestic Violence and HIV courses offer no new information as no further developments in research or treatment have occurred.

Effective Date

Section 106 of the bill provides that except as otherwise provided in the act, the effective date of the bill is July 1, 2003.

C. SECTION DIRECTORY:

Section 1. Amends s. 17.41, F.S., relating to Department of Banking and Finance Tobacco Settlement Clearing Trust Fund to add reference to the Biomedical Research Trust Fund.

Section 2. Amends s. 20.43, F.S., to update the names of department divisions to accommodate restructuring and current practice.

Section 3. Amends s. 154.01, F.S., to include blood lead level investigations in environmental health service.

Section 4. Creates s. 216.342, F.S., to exempt federal Social Security Administration positions in the Division of Disability Determinations from the need for specific appropriation as FTEs from the United States Trust Fund.

Section 5. Amends s. 381.0011, F.S., to clarify the department's authority to implement and maintain injury prevention activities as a component of its injury control initiatives of the department.

Section 6. Amends s. 381.004, F.S., to allow use of new FDA approved rapid HIV testing and immediate release of preliminary positive results to client.

Section 7. Amends s. 381.0065, F.S., to allow the onsite sewage program to use the most current products derived from United States Geologic Survey (USGS) mapping which include aerial photographs.

Section 8. Amends s. 381.0072, F.S., to clarify that managers of "bars and lounges" do not have to be a certified food manager for incidental food use and clarify that public and private school food services do not have to have a certified food manager if they are operated by school employees.

Section 9. Creates s. 381.104, F.S., to authorize the department and other state agencies to establish employee wellness programs and encourage participation in available services within existing resources.

Section 10. Creates s. 381.86, F.S., to establish the Review Council for Human Subjects within the Department of Health, to meet federal requirements to review biomedical and behavioral research involving human subjects.

Section 11. Amends s. 381.89, F.S., to remove the statutory minimum for tanning facility licensure fees so that fees to not exceed the department's cost of administering the program.

Section 12. Amends s. 381.90, F.S., relating to the Florida Health Information Systems Council, to make technical corrections.

Section 13. Amends s. 383.14, F.S., to correct an error that was made when the statute was drafted. Section 383.14 incorrectly uses the term "infant" when the term "newborn" should be used pursuant to the nationally accepted definition of "newborn" and the definition of "newborn" in s. 383.145, F.S.

Section 14. Amends s. 384.25, F.S., to give the department authority to use the HIV/AIDS reporting system developed by CDC or an equivalent system required for federal reporting purposes.

Section 15. Amends s. 385.204, F.S., to clarify that the department will distribute insulin to the extent funds are available.

Section 16. Amends s. 391.021, F.S., to revise the definition of children with special health care needs to conform to current practice. This revision clarifies eligibility to avoid litigation regarding eligibility.

Section 17. Amends s. 391.025, F.S., to remove language from the statutes that has been misinterpreted to inappropriately extend CMS eligibility.

Section 18. Amends s. 391.029, F.S., to clarify language regarding CMS eligibility, and to clarify that the CMS program is not an entitlement program.

Section 19. Amends s. 391.055, F.S., to require that any newborn found to have an abnormal metabolic screening result shall be referred to the CMS network.

Section 20. Creates s. 391.309, F.S., to authorize the department to participate in Part C, of the federal, Individuals with Disabilities Education Act, as is already done annually through Appropriations Act proviso language.

Section 21. Amends s. 393.064, F.S., to change the contracting authority for the Raymond C. Philips Research and Education Unit from the Developmental Disabilities program of the Department of Children and Family Services, to Children's Medical Services of the Department of Health to be consistent with changes made when the two departments were separated.

Section 22. Amends s. 394.4615, F.S., relating to confidentiality of clinical records changing "harmful to patient" to "a danger to the patient's life or safety" to clarify criteria.

Section 23. Amends s. 394.9151, F.S., to allow the department to contract with the Correctional Medical Authority for medical surveys in the sexually violent predator facilities operated by the Department of Children and Families.

Section 24. Amends s. 395.3025, F.S., relating to confidentiality of patient records, to clarify provisions for release for treatment purposes, for practitioner licensure discipline by the department and for research purposes; defines "marketing" as established in federal HIPAA regulations.

Section 25. Amends s. 395.404, F.S., to clarify brain and spinal cord injury central registry reporting requirements for trauma centers and acute care hospitals.

Section 26. Amends s. 395.7015, F.S., to correct cross references.

Section 27. Amends s. 400.141, F.S., relating to nursing home and assisted living facility records, providing for release of a certified copy to the department when subpoenaed for practitioner disciplinary cases.

Section 28. Amends s. 400.145, F.S., relating to treatment records of nursing home residents, providing for release of a certified copy to the department when subpoenaed for practitioner disciplinary cases..

Section 29. Amends s. 400.211, F.S., relating to certification of nursing assistants, reducing in-service training requirement to 12 hours per year.

Section 30. Creates s. 400.455, F.S., relating to provision of certified copies of nursing home and assisted living facility, records to the department, for practitioner discipline cases.

Section 31. Amends s. 401.113, F.S., to clarify that unused interest income generated from awarded Emergency Medical Services Grant funds may be expended for purposes of the grant.

Section 32. Amends s. 401.211, F.S., to clarify legislative recognition of a comprehensive statewide Injury Prevention and Control Program.

Section 33. Creates s. 401.243, F.S., to clarify the role of prevention activities within the department's Injury Control Program.

Section 34. Amends s. 401.27, F.S., to facilitate the department's efforts to offer online application to emergency medical technicians and paramedics, and required criminal background checks.

Section 35. Amends s. 401.2701, F.S., to require emergency medical and paramedic training programs to provide specific information

Section 36. Amends s. 401.2715, F.S., to allow the department to accept national accreditation by Continuing Education Coordinating Board for Emergency Medical Services as state course equivalency.

Section 37. Amends s. 401.272, F.S., relating to emergency medical services, providing for paramedics to work in emergency rooms.

Section 38. Amends s. 404.056 (4), F.S., to clarify the time frames for performing mandatory radon testing in public and private buildings.

Section 39. Amends s. 409.814, F.S., to make technical changes that clarify the Children's Medical Services network is not required to serve children above 200 percent of federal poverty guidelines, but that these children may participate in the Healthy Kids and MediKids programs.

Section 40. Amends s. 455.227, F.S., to correct cross references.

Section 41. Amends s. 456.017, F.S., relating to examinations, allowing electronic posting of scores.

Section 42. Amends s. 456.025, F.S., relating to licensure fees, to delete the requirement that the department develop a continuing education tracking system.

Section 43. Amends s. 456.0375, F.S., relating to registration of certain clinics, providing exemptions for clinics at colleges and medical schools, and distinguishing administrative supervision from supervision of practice.

Section 44. Amends s. 456.039, F.S., to correct cross references.

Section 45. Amends s. 456.049, F.S., relating to reporting of professional liability claims, to establish a threshold amount of $50,000, or greater, for physicians, and $25,000 for dentists.

Section 46. Amends s. 456.063, F.S., relating to disqualification for sexual misconduct, providing for adoption of rules.

Section 47. Amends s. 456.072, F.S., relating to grounds for discipline, clarifying harmful attempt and including provision of a controlled substance when there is no professional relation to the prescriber.

Section 48. Amends s. 456.073, F.S., relating to disciplinary proceedings, providing timely referral for administrative hearing and payment of hearing costs.

Section 49. Amends s. 456.077, F.S., relating to citations, providing that first offense citations do not constitute discipline.

Section 50. Amends s. 456.078, F.S., relating to mediation, providing that economic harm shall be designated as mediation offenses, except for fraud or adverse events.

Section 51. Amends s. 458.303, F.S., to correct cross references.

Section 52. Amends s. 458.311, F.S., substantially rewording requirements for licensure of physicians, to consolidate existing provisions into two clear licensure tracks, and including provisions for physicians who do not have traditional medical education and training.

Section 53. Amends s. 458.3124, F.S., to correct cross references.

Section 54. Amends s. 458.315, F.S., substantially rewording requirements for limited licensure of physicians to consolidate provisions in four existing sections of statute.

Section 55. Amends s. 458.319, F.S., to correct cross references.

Section 56. Amends s. 458.320, F.S., to correct cross references.

Section 57. Creates s. 458.3215, F.S., relating to reactivation of a license for clinical research purposes.

Section 58. Amends s. 458.331, F.S., relating to grounds for discipline, conforming to $50,000 claims threshold and requiring licensee to respond to complaint within 30 days.

Section 59. Amends s. 458.345, F.S., to correct cross references.

Section 60. Amends s. 458.347, F.S., to correct cross references.

Section 61. Amends s. 459.008, F.S., to correct cross references.

Section 62. Creates s. 459.0091, F.S., relating to reactivation of an osteopathic physician license for clinical research.

Section 63. Amends s. 459.015, F.S., relating to grounds for discipline, conforming to $50,000 claims threshold and requiring licensee to respond to complaint within 30 days.

Section 64. Amends s. 460.406, F.S., to correct the name change of an accrediting organization.

Section 65. Amends s. 460.413, F.S., relating to grounds for discipline for chiropractic physicians, changing time to respond to complaint from 45 to 30 days.

Section 66. Amends s. 461.013, F.S., relating to grounds for discipline for podiatric physician, conforming to $50,000 claims threshold and requiring licensee to respond to complaint within 30 days.

Section 67. Amends s. 463.006, F.S., to correct the name change of an accrediting organization.

Section 68. Amends s. 464.0205, F.S., to correct cross references.

Section 69. Amends s, 464.203, F.S., relating to certified nurse assistants, to clarify provisions for background screening and require biennial renewal and fee.

Section 70. Amends s. 464.204, F.S., relating to discipline, to clarify cross-reference.

Section 71. Amends s. 465.016, F.S., relating to disciplinary actions for pharmacists, to include dispensing medication not prescribed in a valid professional relationship, providing that the internet is not a valid relationship.

Section 72. Amends s. 467.009, F.S., relating to nurse midwives, to update reference to organizations involved in accrediting educational qualifications.

Section 73. Amends s. 467.013, F.S., relating to inactive licensure status, replacing statutory provisions with authority to adopt rule.

Section 74. Amends s. 467.0135, F.S., relating to fees, clarifying language and eliminating examinations.

Section 75. Amends s. 467.017, F.S., relating to emergency care plan, to make available to department.

Section 76. Amends s. 468.302, F.S., to clarify the limitations on procedures conducted by a nuclear medicine technologist.

Section 77. Amends s. 468.352, F.S., substantially rewording definitions for respiratory therapy.

Section 78. Amends s. 468.355, F.S., substantially rewording licensure requirements to replace statutory provision with reference to national certification board.

Section 79. Amends s.468.368, F.S., substantially rewording exemptions from respiratory therapy licensure; removes exemption for training in other health care programs.

Section 80. Amends s. 468.509, F.S., to make accrediting organization name change.

Section 81. Amends s. 468.707, F.S., to make accrediting organization name change.

Section 82. Amends s. 486.031, F.S., to make accrediting organization name change.

Section 83. Amends s. 486.102, F.S., to make accrediting organization name change.

Section 84. Amends s. 489.553, F.S., to require that the three years of qualifying work experience by septic tank contractors prior to application are immediately preceding the application.

Section 85. Amends s. 489.554, F.S., to provide statutory authority to the department for rules relating to septic tank contractor continuing education and registration renewal.

Section 86. Amends s. 490.005, F.S., to make accrediting organization name change.

Section 87. Amends s. 491.005, F.S., to make accrediting organization name change, and clarify coursework requirements for clinical social work.

Section 88. Amends s. 491.0145, F.S., relating to certified master social worker, to limit new licensure.

Section 89. Creates s. 491.0146, F.S., to provide a saving clause for continued licensure of existing certified master social workers.

Section 90. Amends s. 491.0147, F.S., relating to confidentiality of records of counseling and mental health therapists, to provide protection from liability.

Section 91. Amends s. 499.003, F.S., to change the definition of a compressed medical gas to include a gas classified as a medical device in addition to a gas classified as a prescription drug.

Section 92. Amends s. 499.007, F.S., to amend the information required to be printed on the label of a drug or device to be consistent with federal law.

Section 93. Amends s. 499.01, F.S., to allow the department to issue a prescription drug manufacturer permit to an applicant at the same address as a licensed nuclear pharmacy.

Section 94. Amends s. 499.0121, F.S., to update time period for retention of records required under the Florida Drug and Cosmetic Act, ch. 499, F.S.

Section 95. Transfers s. 501.122, F.S., relating to department regulation of lasers and other nonionizing radiation from ch. 501, F.S., relating to the Department of Agriculture and Consumer Affairs to ch. 404 relating to all radiation programs regulated by the department.

Section 96. Amends s. 627.912, F.S., relating to professional liability claims, conforming to $50,000 and $25,000 reporting thresholds.

Section 97. Amends s. 766.101, F.S., relating to immunity from liability for medical review committees, to include committees established by university boards and colleges of health care disciplines.

Section 98. Amends s. 766.314, F.S., relating to assessments to finance birth related neurological injury compensation, to exempt births at teaching hospitals.

Section 99. Amends s.784.081, F.S., to increase penalties for battery and assault on persons employed by the department or its direct service providers.

Section 100. Amends s. 817.567, F.S., to make accrediting organization name change.

Section 101. Creates s. 945.6038, F.S., to provide authority for the Correctional Medical Authority to enter into an agreement or contract with the Department of Children and Families, for annual medical review of health.

Section 102. Amends s. 1009.992, F.S., to make accrediting organization name change.

Section 103. Amends s. 1021.46, F.S., relating to athletic trainers in schools, to clarify qualifications.

Section 104. Replaces Department of Health payment to Division of Administrative Hearing with Division billing, and requires the Office of Program Policy Analysis and Government Accountability and the Auditor General to audit the Division of Administrative Hearings and its hearings and billings.

Section 105. Repeals ss. 381.0098(9), 381.103(2)(f), 381.85, 385.205, 385.209, 445.033(7), 456.031, 456.033, 456.034, 458.313, 458.316, 458.3165, 458.317, 468.356, 468.357 and 468.711(3), F.S, to remove statutory language that is obsolete, requires unnecessary rules, or creates programs that are not needed, and not funded.

Section 106. Establishes an effective date of July 1, 2003, except as otherwise provided by the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires medical licensure applicants use the Federation of State Medical Boards Verification Service (FCVS) that costs the applicant $250. However, by using this service the applicant saves the costs of contacting schools and programs to request copies of transcripts and saves the fees some school charge to provide the requested documentation.

The bill requires a biennial renewal fee not to exceed $50 for Certified Nurse Assistants. The department estimates that the actual biennial renewal fee would be $20.

D. FISCAL COMMENTS:

Some effects of the bill are to reduce areas of existing regulation and provide greater professional freedom with reduced licensure fees. Other effects of the bill are to strengthen existing licensure provisions and provide for fees to meet government expenses for professional regulation.

According to the department, provisions relating to general licensure requirements may have mixed fiscal impacts. The bill requires medical licensure applicants to use the Federation of State Medical Boards Verification Service (FCVS) which costs the applicant $250. However, by using this service the applicant saves the costs of contacting schools and programs to request copies of transcripts and saves the fees some schools charge to provide the requested documentation. The use of FCVS will allow the licensure unit to focus on other aspects of the licensure application process and reduce processing time.

According to the department, provisions of the bill relating to citations and mediation also appear to have beneficial fiscal impacts on the Medical Quality Assurance Trust Fund (MQATF) by reducing administrative costs of disciplinary hearings. It is believed that more licensees will want to take advantage of resolving complaints by the citation or the mediation process rather than the formal disciplinary hearings and appeals.

The bill sets a 45 day timeframe for election of a formal disciplinary hearing, which may reduce the number of cases being referred to the Division of Administrative Hearings (DOAH) and the annual costs of formal hearings. According to the department this will have a positive fiscal impact of the Division of Medical Quality Assurance.

The bill also changes the methodology for billing the department for costs of formal hearings. The fiscal impact on the Medical Quality Assurance Trust Fund (MQATF) is substantial. In FY 02-03, the MQATF was charged $2,159,008 for DOAH services and it is anticipated that reimbursement in FY 03-04 will be $1,429,367. The number of actual hearing hours in FY 00-01 was 824 and in FY 01-02 it was 716. By using an average of 770 actual hearing hours, the cost for DOAH services is estimated at $77,000 plus a one time filing fee of $50 for an estimated 250 cases per year or a total of $89,500. It is indeterminate as to the amount of expenses that would be incurred by DOAH in cases cancelled 21 days or less from the scheduled date of the hearing. Estimated cost savings to the MQATF are computed by assuming that annual DOAH costs would be $100,000 in lieu of $1,429,367 for a net savings estimated at $1,329,367 in year 1 and in year 2. This issue is also addressed in section 94 of the bill.

According to the department, the requirement for Certified Nursing Assistants to pay a biennial renewal fee not to exceed $50 as determine by rule of the department will be a significant source of revenue. With approximately 200,000 CNAs, it is anticipated that 100,000 would renew in year 1 and 100,000 would renew in year 2 at an estimated renewal fee of $20 for a projected revenues of $2,000,000 each year. Printing and issuing renewal certificates would increase costs based on $7.48 per licensee or $748,000 in years 1 and 2.

The Department of Health does not anticipate a cost to implement the criminal history background screening requirements for emergency medical technicians and paramedics. The department is committed to covering its share of these expenses from the Emergency Medical Services Trust Fund.

The Office of Program Policy Analysis and Government Accountability and the Auditor General will have costs to jointly conduct the audit of the Division of Administrative Hearings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority for specific provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES