

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1928

SPONSOR: Criminal Justice Committee and Senator Geller

SUBJECT: Health Care Practitioners/Complaints

DATE: April 3, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>HC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This CS amends s. 456.073, F.S., to require that a state prisoner exhaust administrative remedies within the Department of Corrections before filing a complaint with the Department of Health against a health care practitioner who is employed by or providing health care within a department facility. However, the Department of Health may investigate the complaint of a prisoner who has not exhausted administrative remedies if the department makes a preliminary determination that the practitioner poses a serious threat to the health or safety of an individual who is not a prisoner.

Section 456.073, F.S., is further amended to require notification to the Department of Health within fifteen days of the Department of Corrections disciplining or allowing the resignation of a health care practitioner for a practice-related offense.

The CS provides that it will take effect upon becoming a law.

This CS substantially amends, creates, or repeals the following section of the Florida Statutes: 456.073, F.S.

II. Present Situation:

Section 456.073, F.S., provides that the Department of Health shall cause an investigation of any written complaint filed against a health care practitioner if the complaint is signed by the complainant and is legally sufficient. The statute provides that a complaint is legally sufficient if it contains ultimate facts showing that the health care practitioner has violated ch. 456, F.S., any practice act relating to the practitioner's area of practice, or any rule adopted by the department or a department regulatory board. The department is required to expeditiously and thoroughly

conduct an investigation to determine whether a complaint is legally sufficient. If a complaint is found to be legally sufficient, the complaint and the investigative report are referred to a probable cause panel of the board that regulates the health care practitioner. If the panel finds that probable cause exists, it directs the department to file and prosecute a formal complaint pursuant to ch. 120, F.S.

The Department of Corrections has established a grievance procedure pursuant to s. 944.09(1)(d), F.S. Rule 33-103.008, F.A.C., applies to grievances of a medical nature. Such grievances are referred to the chief health officer for investigation and response. If the grievance is not filed at the institutional level, it is referred to either the Office of the Director of Regional Health Care or the Office of the Assistant Secretary for Health Services for investigation and response. Unless the grievance is of an emergency nature, the inmate must be provided a response within 20 days of receipt of the grievance.

Inmates often bypass the department's grievance procedure by filing complaints directly with the Department of Health pursuant to s. 456.073, F.S.

III. Effect of Proposed Changes:

This CS amends s. 456.073, F.S., to add exhaustion of administrative remedies as a criterion for making a finding of legal sufficiency of a complaint filed by a state prisoner against a health care practitioner employed by or providing health care within facilities of the Department of Corrections. Currently, the determination of the legal sufficiency of a complaint filed by a state prisoner is made based upon the same criteria as is applied to complaints filed by other complainants. The CS provides that a complaint filed by a state prisoner that does not show exhaustion of administrative remedies through use of the grievance process set forth in ch. 33-103, F.A.C., is legally insufficient for further investigation or consideration by a probable cause panel. However, a prisoner would not be restricted from filing a complaint pursuant to s. 456.073, F.S., if he or she first utilizes the inmate grievance process but is not satisfied with the results.

The CS includes an exception to the exhaustion requirement for cases in which the Department of Health makes a preliminary finding that the practitioner poses a serious threat to the health and safety of any individual who is not a prisoner. In such cases, the department could proceed with an investigation, finding of legal sufficiency, and disciplinary action even if the prisoner did not first raise the complaint through the inmate grievance process.

The CS also amends s. 456.073, F.S., to require that the Department of Health be notified within fifteen days if the Department of Corrections disciplines a health care practitioner for an offense related to the practice of his or her profession. Notification is also required if a practitioner is allowed to resign for such an offense.

The CS provides for an effective date upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

It is anticipated that mandatory use of the grievance process will result in many complaints being satisfactorily resolved at a lower level than if the complaint is filed directly with the Department of Health, and that private companies will incur less expense to investigate and respond to complaints.

C. Government Sector Impact:

The overall financial impact on the government sector cannot be determined, but it is likely that the number of complaints filed with the Department of Health would decrease as a result of the requirement to exhaust administrative remedies within the Department of Corrections before filing a complaint with the Department of Health.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.