

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 16, 2003

REVISED: _____

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Withdrawn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

I. Summary:

This bill specifies that a complaint filed by a state prisoner against a health care practitioner who is employed by or providing health care within a Department of Corrections facility is not legally sufficient unless the prisoner has exhausted all available administrative remedies within the state correctional system before filing the complaint with the Department of Health. However, the Department of Health may determine legal sufficiency and 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.

The bill requires 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.

This bill amends s. 456.073, F.S.

II. Present Situation:

Health Care Practitioner Disciplinary Procedures

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.

Section 456.073(1), F.S., allows a person to file an administrative complaint anonymously against any health professional as long as the complaint is in writing and the complaint contains an allegation of possible violation of the law. Such complaint must be investigated if it is determined that the alleged violation of law and/or rule is substantial and there is reason to believe, after a preliminary inquiry, that the alleged violation in the complaint is true. The Department of Health, Division of Medical Quality Assurance has responsibility for processing administrative complaints and reports involving potential misconduct of a licensee and initiating investigations when appropriate. In addition to anonymous complaints, the Department of Health under s. 456.073(1), F.S., may initiate an investigation against a health care practitioner under its jurisdiction if it has reasonable cause to believe that a licensee or group of licensees has violated a Florida statute, a rule of the department, or a rule of a board.

Section 456.073(6), F.S., imposes time limitations on the filing of administrative complaints against licensed health care practitioners. An administrative complaint against a licensed health care practitioner under the jurisdiction of the Department of Health must be filed within 6 years after the time of the incident or occurrence giving rise to the complaint against the licensee. If such incident or occurrence involved criminal actions, diversion of controlled substances, sexual misconduct, or impairment of the licensee, the initiation of an investigation or filing of an administrative complaint beyond the 6-year time frame is not barred. In cases in which it can be shown that fraud, concealment, or intentional misrepresentation of fact prevented the discovery of the violation of law, the period of limitations is extended forward, but in no event may it exceed 12 years after the time of the incident or occurrence.

Section 120.60(6), F.S., authorizes an agency to take emergency action against a license if the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license.¹ The agency may take such action by any procedure that is fair under the circumstances if: the procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution; the agency takes only that action necessary to protect the public interest under the emergency procedure; and the agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable.² Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding under ss. 120.569 and 120.57, F.S., must also be promptly instituted and acted upon.

¹ Similar procedures are required for emergency rulemaking under the Administrative Procedure Act (s. 120.54(4)(a), F.S.)

² See also, s. 120.68, F.S., which provides for immediate judicial review of final agency action.

Section 456.073, F.S., empowers the Secretary of the Department of Health to summarily suspend a health care practitioner's license to practice his or her profession, in accordance with s. 120.60(6), F.S.

Department of Corrections Grievance Procedure

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. According to the Department of Corrections staff, on average, 350 grievances are received monthly from inmates that are related to the delivery of health care within the Department of Corrections. Unless the grievance is of an emergency nature, the inmate must be provided a response within 20 days of receipt of the grievance.

Inmates sometime bypass the Department of Corrections' grievance procedure by filing complaints directly with the Department of Health pursuant to s. 456.073, F.S. Such complaints are not routinely reviewed by the Correctional Medical Authority.

The Correctional Medical Authority was created in 1986 to give independent advice to the Governor, the Legislature, and the Department of Corrections on the conduct of health care and management of costs consistent with quality care. Among its statutory responsibilities, the Correctional Medical Authority is required to employ health care providers and other medical personnel to conduct comprehensive evaluations of the health care system at each correctional facility.

III. Effect of Proposed Changes:

This bill amends s. 456.073, F.S., to require exhaustion of administrative remedies as a criterion for the Department of Health to make 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 bill 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.

The bill includes an exception to the exhaustion of administrative remedies 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 bill 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 bill provides for an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

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

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 the Department of Health can find legal sufficiency. The Department of Health staff has indicated that it receives less than 20 complaints per year that are filed by state prisoners against licensed health care practitioners under its jurisdiction.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that the Department of Health may determine that legal sufficiency exists and proceed with a disciplinary complaint filed by a complainant who is a state prisoner if it determines that the practitioner may present a serious threat to the health and safety of any individual who is not a state prisoner. The bill does not allow the department to proceed with complaints that present a serious threat to the health and safety of other prisoners.

VIII. Amendments:

None.

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