

# 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: SB 1666

SPONSOR: Senator Saunders

SUBJECT: Continuing Education for Health Care Practitioners

DATE: February 12, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable
2.			AHS	
3.			AP	
4.				
5.				
6.				

## I. Summary:

The bill eliminates requirements for the Department of Health to implement an electronic tracking system for continuing education of health care professions regulated by the Division of Medical Quality Assurance in the department.

This bill amends section 456.025, Florida Statutes.

## II. Present Situation:

Chapter 456, F.S., provides the general regulatory provisions to be administered by the Department of Health and boards for health care professions. A number of health care professions must meet continuing education requirements as a condition of maintaining a license to practice in Florida. Any board that currently requires continuing education for license renewal or the Department of Health, if there is no board, must adopt rules to establish *the criteria* for continuing education courses.<sup>1</sup>

As a condition of license renewal, the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, and the Board of Podiatric Medicine must require licensees whom they regulate to periodically demonstrate their professional competency by completing at least 40 hours of continuing education every 2 years.<sup>2</sup> The boards may require by rule that up to 1 hour of the required 40 or more hours be in the area of risk management or cost containment.<sup>3</sup> Each of such boards must determine whether any specific continuing education requirements not

<sup>1</sup> See s. 456.013(9), F.S.

<sup>2</sup> See s. 456.013(6), F.S.

<sup>3</sup> See s. 456.013(6), F.S.

otherwise mandated by law shall be mandated and shall *approve criteria for, and content of, any continuing education* mandated by such board.<sup>4</sup>

Notwithstanding any other provision of law, the board<sup>5</sup>, or department when there is no board, may approve by rule alternative methods of obtaining continuing education credits in risk management. The alternative methods may include attending a board meeting at which another licensee is disciplined, serving as a volunteer expert witness for the department in a disciplinary case, or serving as a member of a probable cause panel following the expiration of a board member's term.

The boards, or the department when there is no board, must require the completion of a 2-hour course relating to the prevention of medical errors as part of the licensure and renewal process.<sup>6</sup> The medical errors course must count towards the total number of continuing education hours required for the profession. The course must be approved by the board or department, and must include a study of root-cause analysis, error reduction and prevention, and patient safety. During Special Session 2-D (2003), the Legislature amended the law to require that the prevention of medical errors course approved by the board or department also include information relating to the five most misdiagnosed conditions during the previous biennium.

Section 456.025(7), F.S., requires each board, or the Department of Health if there is no board, to establish by rule, a fee not to exceed \$250 for anyone seeking approval to provide continuing education courses or programs and to establish by rule a biennial renewal fee no greater than \$250 for the renewal of providership of such courses. The fees collected from continuing education providers must be used for the purposes of reviewing course provider applications, monitoring the integrity of the courses provided, covering legal expenses incurred as a result of not granting or renewing a providership, and developing and maintaining an electronic tracking system for each biennial renewal cycle for which electronic renewals are implemented.

The practice act for the health care professions may specify the number of hours of continuing education that must be completed to satisfy the license renewal requirements, the approval of the continuing education provider or programs, and the exceptions to satisfying the continuing education requirement. Under ch. 456, F.S., boards have express authority to adopt rules to assess a fee from providers of continuing education courses and programs seeking approval and express authority to establish criteria for continuing education courses. Some boards have not expressly approved continuing education providers, although they may have approved courses offered by continuing education providers or adopted rules specifying the criteria that such providers must meet.

The Board of Medicine has adopted a rule to require each medical physician to complete 40 hours of continuing education courses approved by the board in the 24 months preceding each biennial renewal period as established by the Department of Health.<sup>7</sup> The Board of Medicine rule

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<sup>4</sup> See s. 456.013(6), F.S.

<sup>5</sup> See s. 456.013(6), F.S., the term includes the Board of Medicine, the Board of Osteopathic Medicine, the Board of Chiropractic Medicine, the Board of Podiatric Medicine, and other boards within the Division of Medical Quality Assurance.

<sup>6</sup> See s. 456.013(7), F.S.

<sup>7</sup> See Rule 64B8-13.005, F.A.C.

approves specified courses for licensees to take to satisfy the continuing education requirement, but does not expressly approve the provider of such continuing education courses.<sup>8</sup>

A dentist must complete no less than 30 hours of continuing education in dental subjects every 2 years to obtain license renewal.<sup>9</sup> Each dentist must submit sworn affidavits attesting that the dentist has completed the required continuing education and must retain records to document completion of the coursework. The Board of Dentistry may request the documentation from license renewal applicants selected at random without cause. The Board of Dentistry may approve continuing education providers and the continuing education may be developed and offered by entities specified in statute.<sup>10</sup> The Board of Dentistry has adopted rules that specify standards for the approval of continuing education providers.<sup>11</sup>

The Board of Osteopathic Medicine must, by rule, prescribe continuing education programs and courses, not to exceed 40 hours every 2 years, as a condition for the renewal of an osteopathic physician's license.<sup>12</sup> Up to 10 hours of continuing education credit may be extended to an osteopathic physician for the performance of pro bono services to indigent or underserved populations during each biennial period.

The Board of Nursing must, by rule, prescribe continuing education, not to exceed 30 hours biennially, as condition for renewal of a license or certificate.<sup>13</sup> The criteria for continuing education programs must be approved by the Board of Nursing. Each licensed nurse who is presenting a continuing education course as either the lecturer of the offering or as an author of the course materials may earn a maximum of 12 hours of continuing education credit per biennium.<sup>14</sup>

The practice acts for the other health care professions regulated by the Department of Health should be consulted for detail regarding the continuing education requirements for those professions. The Department of Health and regulatory boards enforce the continuing education requirements imposed on practitioners by disciplining the practitioner for failing to comply with the educational course requirements for HIV/AIDS,<sup>15</sup> or for domestic violence,<sup>16</sup> or for violating any provision of ch. 456, F.S., the applicable practice act, or any rules adopted pursuant thereto.<sup>17</sup> The boards are required to establish disciplinary guidelines that provide a range of penalties for disciplinary violations. Continuing education violations have been designated by some regulatory boards as minor violations for which a citation may be issued under s. 456.077, F.S. Section 456.077, F.S., requires the boards or the Department of Health to designate by rule citation violations for which there is no substantial threat to the public health, safety, and welfare or no violation of standard of care involving injury to a patient.

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<sup>8</sup> See Rule 64B8-13.005, F.A.C.

<sup>9</sup> See s. 466.0135, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> See Rules 64B5-12.017 and 64B5-12.0175, Florida Administrative Code.

<sup>12</sup> See Rules 64B15-13.001, 64B15-13.002, 64B15-13.003, and 64B15-13.005, F.A.C.

<sup>13</sup> See s. 464.013, F.S., and Rules in chapter 64B9-5, F.A.C.

<sup>14</sup> *Id.*

<sup>15</sup> See s. 456.072(1)(e), F.S.

<sup>16</sup> See s. 456.072(1)(s), F.S.

<sup>17</sup> See s. 456.072(1)(cc), F.S.

A medical physician who has continuing medical education (CME) violations is subject to the issuance of a citation for a minor violation with an accompanying range of penalties by the Board of Medicine rule:

- Within 12 months of the date the citation is issued, the licensed physician must submit certified documentation of completion of all CME requirements for the period for which the citation was issued; before renewing the license for the next biennial period, the physician must document compliance with the CME requirements for the relevant period; and
- If the violation involved failure to document the required HIV/AIDS CME *or* domestic violence CME *or* medical errors CME the physician may be fined \$500; and if the violation involved the failure to document the required HIV/AIDS, medical errors, *and* domestic violence CME, the physician may be fined \$1,000.
- If the violation involved some but not all, of 40 hours of required CME for license renewal the physician may be fined \$50 for each hour not documented.
- If the violation involved obtaining license renewal by fraud or misrepresentation, the physician may be fined \$5,000.<sup>18</sup>

The Board of Nursing has not designated continuing education violations as appropriate for the issuance of a citation for a minor violation. A nurse who procures, or attempts to procure, or renew a license to practice nursing by bribery, by knowing misrepresentations, or through an error of the Department of Health or the Board of Nursing is subject to the following range of penalties:

- (first offense) \$250 fine and probation – denial of licensure or revocation.
- (second offense) \$500 fine and probation – denial of licensure or permanent revocation.<sup>19</sup>

A nurse who fails to comply with the education course requirements for HIV/AIDS or for domestic violence is subject to the following range of penalties:

- (first offense) \$250 fine and complete the course - \$500 fine and suspension until the course is completed.
- (second offense) \$500 fine and complete the course - \$750 fine and suspension until the course is completed plus probation.
- (third offense) \$750 fine and suspension until the course is completed - \$1,000 fine and suspension until the course is completed plus probation.<sup>20</sup>

Other boards have adopted by rule a range of penalties for continuing education violations.

The Department of Health has monitored licensee compliance with the continuing education requirements by implementing post-licensure renewal and pre-licensure renewal audits. The random audits are expressly authorized by statute in some instances<sup>21</sup> and involve board staff

<sup>18</sup> See Rule 64B8-8.017(3), F.A.C.

<sup>19</sup> See Rule 64B9-8.006(3)(a), F.A.C.

<sup>20</sup> See Rules 64B9-8.006(3)(y) and 64B9-8.006(3)(hh), F.A.C.

<sup>21</sup> See (acupuncture) s. 457.105(3), F.S.; (dentistry) s. 466.135(3), F.S.; (dental hygiene) s. 466.014, F.S.; (midwifery) s. 467.012(13), F.S.; (certified nursing assistants) s. 464.203(7), F.S.; (occupational therapy) s. 468.209, F.S.; (psychologists

contacting the licensee to obtain proof that he or she did complete the required continuing education courses for license renewal. Both procedures have been reported to be time-consuming for both the licensee subject to the audit and the department. A Justification Review by the Office of Program Policy Analysis and Government Accountability reports that compliance with continuing education requirements has been a long-standing problem and that the pre-licensure renewal audits in which licensees were notified six months in advance to provide proof of compliance with the continuing education requirements were more effective in advancing licensee compliance.<sup>22</sup>

In 2001, the Legislature amended s. 456.025(7), F.S., to require the Department of Health to integrate the electronic tracking system for continuing education into the licensure and renewal system. The law also requires all approved continuing education providers to provide information on course attendance to the Department of Health that is necessary to implement the electronic tracking system. The department must, by rule, specify the form and procedures by which the information is to be submitted.

Under the Department of Health's electronic tracking system for continuing education, continuing education providers must register once with basic information including the name address, e-mail address, and contact person for the continuing education provider. "Approved" continuing education providers must register the provider name, course title, when the course is offered, and the number of hours for which the course is approved. For purposes of the tracking system, continuing education providers must apply for initial approval from the Department of Health and for renewal of that approval online.

In December, 2003, the Department of Health noticed proposed administrative rules to implement the electronic tracking system for continuing education.<sup>23</sup> Proposed Rule 64B-5.001, F.A.C, establishes definitions. The proposed rule defines "continuing education (CE) tracking system" to mean the designated electronic system through which approved providers submit necessary information on course attendance. The proposed rule defines "electronically" to mean the submission of information and data via the Internet. "Course" is also defined by the proposed rule. "Approved provider" is defined to mean a person, firm, institution of higher learning, partnership, company, corporation, society or association *deemed approved by statute, or approved by rule or action of the board or the department when there is no board*, to provide continuing education courses. This definition includes providers accredited by national organizations *approved by statute or approved by the appropriate licensing board*.

For purposes of the electronic tracking system for continuing education, the Department of Health has taken the position that the Board of Medicine does not have express authority to approve continuing education providers *or* courses and therefore licensed medical physicians are exempt from the electronic tracking system for continuing education. The Board of Medicine has

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and school psychologists) s. 490.0085(3), F.S.; and (clinical social work, marriage and family therapy, and mental health counseling) s. 491.0085(3), F.S.

<sup>22</sup> See Office of Program Policy Analysis and Government Accountability, Justification Review: While Medical Quality Assurance Improving, Licensure Needs Increased Accountability (Report 03-06), January 2003 cited at <<http://www.oppaga.state.fl.us/reports/pdf/0306rpt.pdf>>.

<sup>23</sup> See Proposed Rules 64B-5.001 and 64B-5.002, F.A.C., in *Florida Administrative Weekly*, Vol. 29, No. 51, pp. 4973-4974, December 19, 2003.

adopted rules that approve specified courses for the continuing education of medical physicians. The department's position also appears to be in conflict with provisions in ch. 456, F.S. Section 456.013(9), F.S., requires any board that currently requires continuing education for license renewal or the Department of Health, if there is no board, to adopt rules to establish the *criteria* for continuing education courses.<sup>24</sup> The boards for other professions within the Division of Medical Quality Assurance such as dietetics and nutrition do not have express authority to approve continuing education providers but have statutory direction to impose continuing education requirements on licensees over which it has jurisdiction.<sup>25</sup>

Proposed Rule 64B-5.002, F.A.C., requires continuing education providers applying to a board for initial or renewed status as an approved provider or for initial or renewed approval of a continuing education course to electronically submit their application through the continuing education tracking system and to submit specified identifying information, including detailing information on continuing education courses offered by the approved provider. The proposed rule also requires all approved continuing education providers to electronically submit course information by the first day of the renewal period. The proposed rule requires continuing education providers to report continuing education course attendance: (1) in an designated excel format (electronic); (2) a text file format (electronic); (3) manual entry of the required data direct to the continuing education system; or (4) by submitting the completed scan cards signed by the licensed health care professional. The proposed rule requires submission of all information and data required by the proposed rule to: <https://www.cebroker.com>.<sup>26</sup> The <http://www.cebroker.com> website requires the payment of a fee to use its services to view a licensed health care professional's continuing education credits. The registration process does not require current approved continuing education providers to pay a fee to register. Licensees have the option to subscribe to CE Broker to manage their compliance with continuing education credits for \$17.50 annually.

The Department of Health has held workshops on the proposed rules. On January 22, 2004, the Florida Dental Association filed an administrative petition with the Division of Administrative Hearings to contest the validity of the proposed rules by the Department of Health, and the adoption of the rules is held in abeyance pending the outcome of the petition.<sup>27</sup> An order was issued on January 29, 2004, holding the case in abeyance.

### III. Effect of Proposed Changes:

The bill eliminates requirements for the Department of Health to implement an electronic tracking system for continuing education of health care professions regulated by the Division of Medical Quality Assurance in the department.

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<sup>24</sup> See s. 468.711(2), F.S., which provides that “[t]he board may, by rule, prescribe continuing education requirements, not to exceed 24 hours biennially. The *criteria for continuing education shall be approved by the board* and shall include 4 hours in standard first aid and cardiovascular pulmonary resuscitation from the American Red Cross or equivalent training as determined by the board.” The Board of Athletic Trainers has adopted a rule to approve continuing education courses for athletic trainers to complete as a condition of biennial licensure renewal. Rule 64B33-2.003, F.A.C.

<sup>25</sup> Section 468.514, F.S., relating to the regulation of dietetics and nutrition practice, provides that the agency shall renew a license under this part upon receipt of the renewal application, fee, and proof of the successful completion of continuing education requirements as determined by the board.

<sup>26</sup> *Id.*

<sup>27</sup> See Division of Administrative Hearings Case No. 04-0284RP.

The effective date of the bill is upon becoming a law.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, 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 Article III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of Health will not incur additional expenditures to implement an electronic tracking system for continuing education.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.