

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 2620

INTRODUCER: Health Regulation Committee and Senator Altman

SUBJECT: Medical Quality Assurance

DATE: April 2, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HR	Fav/CS
2.			GO	
3.			HA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill requires certain disciplinary actions against health care practitioners by hospitals, ambulatory surgical centers, and mobile surgical facilities to be reported to the Division of Medical Quality Assurance of the Department of Health (DOH) rather than the Division of Health Quality Assurance of the Agency for Health Care Administration (AHCA). The bill requires the AHCA to forward copies of each adverse incident report received from the risk management program of these facilities to the Division of Medical Quality.

The bill authorizes the disclosure of certain patient records to the DOH for use in its investigation, prosecution, and appeal of disciplinary proceedings. The records must be certified as true and complete copies of the records that have been requested by the DOH under a subpoena. The DOH is required to review nursing home adverse incident reports submitted to the AHCA and determine whether the reports involve potential misconduct by a licensed health care professional.

The bill amends ch. 456, F.S., relating to the general regulatory provisions for health care practitioners to:

- Define “application” to mean the documents required by the DOH to initiate the licensing process, including the responses to the DOH requests for additional data and information.
- Revise what constitutes a quorum for the conduct of official board business.
- Require a nonrefundable application fee established by the board, or the DOH when there is no board, to be submitted with a licensure application in an amount established by rule of the board, or the DOH when there is no board, to comply with s. 456.025, F.S., relating to fees.
- Extend the temporary license for licensure applicants obtaining a social security number from 30 to 90 days, unless a social security number is obtained and submitted in writing by the applicant to the DOH.
- Require proof of identity for licensees seeking name changes.
- Authorize each board, or the DOH if there is no board, to charge a fee as determined by rule for the reinspection of a business establishment prior to its licensure.
- Prohibit the DOH from renewing the license of a licensed business or health care practitioner who owes outstanding fees, costs, or fines to the DOH.
- Authorize the board, or the DOH if there is no board, to adopt a rule to require the display of a business establishment license.
- Authorize each board or the DOH if there is no board, to adopt rules to implement the provisions for licensed health care practitioners to report allegations of sexual misconduct to the DOH.
- Add a ground for which a practitioner may be subject to discipline for failing to report to the board or the DOH if there is no board, in writing, within 30 days after an action has been taken against a licensee’s license to practice any profession in Florida or another state, territory, or jurisdiction.

This bill amends sections 395.0193, 395.0197, 395.3025, 400.145, 400.147, 456.001, 456.011, 456.013, 456.025, 456.036, 456.037, 456.063, 456.072, 381.00593, 381.0303, 456.074, 456.41, 468.703, 627.6474, 641.315, 766.1016, 766.1116, 768.13, and 768.28, Florida Statutes.

II. Present Situation:

Chapter 456, F.S., provides the general regulatory provisions for health care professions within the Division of Medical Quality Assurance in the DOH. Section 456.001, F.S., defines “health care practitioner” to mean any person licensed under ch. 457, F.S., (acupuncture); ch. 458, F.S., (medicine); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathic medicine); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry and dental hygiene); ch. 467, F.S., (midwifery); part I, II, III, IV, V, X, XIII, or XIV of ch. 468, F.S., (speech-language pathology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); ch. 478, F.S., (electrology or electrolysis); ch. 480, F.S., (massage therapy); part III or IV of ch. 483, F.S., (clinical laboratory personnel or medical physics); ch. 484, F.S., (opticianry and hearing aid specialists); ch. 486, F.S., (physical therapy); ch. 490, F.S., (psychology); and ch. 491, F.S., (psychotherapy).

Section 456.011, F.S., specifies the requirements for the organization and meetings of health care professional boards. The chairperson or a quorum of each board has the authority to call meetings for that board. A quorum is necessary for the conduct of official business by each board

or any committee thereof. Unless otherwise provided by law, 51 percent or more of the appointed members of each board or any committee constitutes a quorum. Board member vacancies are filled by appointments by the Governor pursuant to Article II, section 5 of the Florida Constitution and ch. 114, F.S. The Florida Constitution requires state and county officers, before entering upon the duties of the office, to swear or affirm an oath.¹ Sometimes board members appointed by the Governor attend board meetings before officially taking the oath of office. Board appointees who have not taken the oath of office may participate in discussions of the board, but may not otherwise vote or conduct official business of the board. Confusion has occurred as to whether such board member appointees may be considered members for purposes of establishing a quorum.

Section 456.013, F.S., provides general licensing procedures for health professions regulated by the DOH. Licensure applicants who have not been issued a social security number by the federal government and who are otherwise eligible for licensure may be issued a temporary license which expires 30 days after issuance unless a social security number is obtained and submitted in writing to the DOH. The DOH staff indicates that the process for applicants to obtain a social security number from the federal government often takes longer than 30 days and results in an unnecessary hardship for applicants who are unable to work after their temporary license expires.

The DOH does not have clear authority to request proof of identity and the documentation needed for a legal name change. The DOH has identified isolated instances of fraud when name changes have been requested by persons other than the legitimate license holder.

Various practice acts require proof of completion of specified coursework for licensure. Applicants who are experienced practitioners in other states have sometimes taught the required course. The law does not expressly authorize the DOH to grant credit for a course for purposes of licensure to an applicant who has taught the course. The DOH does not have authority to require licensees, including business establishments, to display their license.

The DOH does not have clear authority to assess a fee for all forms or documents submitted to the department for approval, such as continuing education programs, internship or residency programs, or any other license that is not submitted with a fee to cover the costs of processing. Officials at the DOH indicated that approximately 1,859 applications for seven different types of licenses were not charged a fee to cover the costs of processing because the applicable board or the DOH lacked authority to do so.²

Section 456.025(1), F.S., requires the DOH or each board to set, by rule, licensure renewal fees which are based on specified criteria, including requirements that such fees may not be more than 10 percent greater than the fee imposed for the previous biennium and may not be more than 10 percent greater than the actual cost to regulate that profession for the previous biennium. Section 456.025(3), F.S., requires each board, or the DOH if there is no board, to determine by rule, the amount of license fees for the profession it regulates, based upon long-range estimates of revenue from the DOH.

¹ See Article II, section 5, FLORIDA CONSTITUTION.

² According to the DOH, examples of such licenses include: podiatric medicine residency programs, pharmacy interns, massage schools, dental teaching permits, and dental residency programs.

Each board is responsible for ensuring that the licensure fees set out are adequate to cover all anticipated costs in order to maintain a reasonable cash balance. If a board does not take sufficient action within 1 year after notification from the DOH that license fees are projected to be inadequate, the department must set licensure fees within the caps on behalf of the board in order to cover anticipated costs and to maintain required cash balances. The department must include recommended fee cap increases in its annual report to the Legislature. When a profession is in a deficit and the fees it can charge are already at the statutory cap, the profession may not comply with the requirements of law, which mandates that license fees be adequate to cover anticipated costs. Section 456.025(5), F.S., authorizes each board, or the DOH if there is no board, to assess and collect a one-time fee from each active or inactive status licensee in an amount necessary to eliminate a cash deficit. As of June 30, 2008, 12 professions (anesthesiologist assistants; certified nursing assistants; certified social workers; dentistry; electrolysis; hearing aid specialists; midwifery; natureopathy; nursing home administration; orthotics, prosthetics, and pedorthics; physician assistants; and podiatry) have had a chronic cash deficit or are projected to be in a chronic cash deficit.

The DOH performs pre-licensure inspections on dental labs, electrolysis facilities, massage establishments, and pharmacies. The DOH or boards do not have authority to charge for the costs associated with re-inspection, although the costs are equivalent to the costs of the initial inspection.

A licensee is not restricted from renewing his or her license if the licensee has outstanding fees, costs, or fines due to the DOH. At the end of fiscal year 2007-2008, a total of \$5,583,785 in outstanding fees and costs were owed to the DOH.

Section 456.063, F.S., requires licensed health care practitioners to report allegations of sexual misconduct to the DOH. The boards that regulate psychotherapists have authority to define, by rule, sexual misconduct within their profession.

Medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians must report to the DOH any disciplinary action taken against their license in another jurisdiction.³

Under s. 395.0193, F.S., hospitals are required to report any disciplinary actions taken against a medical physician or osteopathic physician in writing to the Division of Health Quality Assurance of the AHCA within 30 days after its initial occurrence. The notice must identify the disciplined practitioner, the action taken, and the reason for the action. Section 395.0197, F.S., requires the AHCA to review adverse incident reports that it receives from hospitals to determine whether the reports potentially involve conduct by a health care professional who is subject to disciplinary action, in which case the provisions relating to the discipline of licensed health care practitioners apply. Under s. 395.3025, F.S., confidential patient records may be disclosed to the AHCA upon subpoena issued without the consent of the person to whom the records pertain. Such records must be issued pursuant to subpoena authority that rests with the DOH. Section 395.3025, F.S., provides the fee for patient records may not exceed \$1 per page except for

³ See sections 458.331(1)(kk), 456.039(1)(a)8., and 456.039(3), F.S.

nonpaper records that are subject to a charge not to exceed \$2 per page. The DOH reports that there is not any consistency on the fee that facilities charge the DOH for copies of subpoenaed records.

Part II, ch. 400, F.S., provides for the regulation of nursing homes. The DOH does not have any statutory authority to enforce a request for a nursing home to certify that subpoenaed records are complete and accurate. Section 400.147, F.S., requires the AHCA to review adverse incident reports from nursing homes to determine whether they potentially involve any conduct by certain health care professionals who are subject to disciplinary action.

III. Effect of Proposed Changes:

Section 1. Amends s. 395.0193, F.S., relating to disciplinary actions by peer review panels and hospitals, ambulatory surgical centers, and mobile surgical facilities against staff members and physicians, to require disciplinary actions to be reported to the Division of Medical Quality Assurance of the DOH rather than the Division of Health Quality Assurance of the AHCA.

Section 2. Amends s. 395.0197, F.S., relating to hospital, ambulatory surgical center, and mobile surgical facility internal risk management programs, to require the AHCA to forward a copy of each adverse incident report received from the risk management program of such facilities to the Division of Medical Quality Assurance within the DOH.

Section 3. Amends s. 395.3025, F.S., relating to patient and personnel records held by hospitals, ambulatory surgical centers, and mobile surgical facilities, to authorize the disclosure of patient records, without the patient's consent, to the DOH and the AHCA for use in its investigation, prosecution, and appeal of disciplinary proceedings. The administrator or records custodian in a hospital, ambulatory surgical center, or mobile surgical facility must certify that true and complete copies of the records that have been requested by the AHCA or the DOH under a subpoena or a patient release have been provided to the AHCA or the DOH or otherwise identify those documents that have not been provided. If the DOH requests copies of the records, the facility may charge a fee pursuant to s. 395.3025, F.S., which provides that the fee for patient records may not exceed \$1 per page except for nonpaper records that are subject to a charge not to exceed \$2 per page. Patient records remain confidential when used in disciplinary proceedings by the AHCA or the DOH.

Section 4. Amends s. 400.145, F.S., relating to records of care and treatment of nursing home residents, to require the administrator or records custodian in a facility licensed under ch. 400, F.S., to certify that true and complete copies of the records that have been requested by the DOH under a subpoena or a patient release have been provided to the DOH or otherwise identify those documents that have not been provided.

Section 5. Amends s. 400.147, F.S., relating to the internal risk management and quality assurance programs for nursing home facilities, to authorize the DOH to receive notification of an adverse incident report. The bill requires the AHCA to forward an adverse incident report that relates to health care practitioners to the DOH for review. The DOH must review each incident and determine whether the report involves potential misconduct by a licensed health care professional. Language requiring AHCA to obtain such reports for its review to determine if

certain licensed health care practitioners were involved in potential misconduct is deleted. The confidentiality of the notification is maintained except in disciplinary proceedings by the AHCA, the DOH, or the appropriate regulatory board.

Section 6. Amends s. 456.001, F.S., relating to definitions, to define “application” to mean the documents required by the DOH to initiate the licensing process, including, but not limited to, the initial document filing and responses to requests from the DOH for additional data and information.

Section 7. Amends s. 456.011, F.S., relating to health care practitioner boards, to revise what constitutes a quorum for the conduct of official board business. Unless otherwise provided by law, 51 percent or more of the appointed members of the board or any committee, when applicable, who have taken the oath of office pursuant to the Florida Constitution and s. 114.05, F.S., (s. 114.05 specifies procedures for gubernatorial appointment of board members) constitutes a quorum.

Section 8. Amends s. 456.013, F.S., relating to the general licensing provisions of the DOH, to require a nonrefundable application fee established by the board, or the DOH when there is no board, to be submitted with a licensure application in an amount established by rule of the board, or the DOH when there is no board, to comply with s. 456.025, F.S., relating to fees. If an applicant is not a citizen or resident of the U.S. and does not have a social security number and is otherwise eligible for licensure, the board or the DOH may issue a temporary license as established by rule of the board or the DOH. The temporary license expires 90, rather than 30, days after issuance unless a social security number is obtained and submitted in writing by the applicant to the DOH.

The DOH must issue a license in the legal name of the applicant as reflected on the applicant’s birth certificate or U.S. passport. Any request to change or issue a license under any other name must be supported by either a certified copy of a marriage license, a certified copy of an order of a U.S. federal or state court, or the applicant’s original naturalization certificate.

The board, or the DOH when there is no board, is authorized to adopt a rule allowing a licensure applicant to complete the coursework requirements for licensure by successfully completing the required coursework as an instructor or professor in an accredited institution.

The board, or the DOH when there is no board, may by rule require the display of a license.

Section 9. Amends s. 456.025, F.S., relating to fees, to provide that each board, or the DOH if there is no board, is authorized to charge a fee as determined by rule for the reinspection of a business establishment prior to its licensure.

Section 10. Amends s. 456.036, F.S., relating to the active and inactive status of licenses, to prohibit the DOH from renewing the license of a licensed business or health care practitioner who owes outstanding fees, costs, or fines to the DOH. The DOH must notify each licensed business or health care practitioner who has failed to pay outstanding fees, costs, or fines at the last known address of record with the DOH of the business or practitioner when issuing the license renewal notice. The DOH must renew the license of any business or health care

practitioner when the outstanding fees, costs, or fines are paid if all other requirements for licensure renewal are met.

Section 11. Amends s. 456.037, F.S., relating to the licensing of business establishments, to authorize the board, or the DOH if there is no board, to adopt a rule to require the display of a business establishment license.

Section 12. Amends s. 456.063, F.S., relating to sexual misconduct, to authorize each board, or the DOH if there is no board, to adopt rules to implement the provisions for licensed health care practitioners to report allegations of sexual misconduct to the DOH, regardless of the practice setting in which the alleged sexual misconduct occurred.

Section 13. Amends s. 456.072, F.S., relating to grounds for the discipline of health care practitioners, to add a ground for which a practitioner may be subject to discipline for failing to report to the board, or the DOH if there is no board, in writing, within 30 days after an action has been taken against a licensee's license to practice any profession in Florida or another state, territory, or jurisdiction.

Section 14. Amends s. 381.00593, F.S., relating to the public school volunteer health care practitioner program, to correct a statutory cross-reference to s. 456.013, F.S., relating to licensing provisions, to conform to changes in the bill.

Section 15. Amends s. 381.0303, F.S., relating to special needs shelters, to correct a statutory cross-reference to provisions in s. 456.001, F.S., setting forth definitions, to conform to changes in the bill.

Section 16. Amends s. 456.074, F.S., relating the immediate licensure suspension of certain health care practitioners, to correct a statutory cross-reference to provisions in s. 456.001, F.S., setting forth definitions, to conform to changes in the bill.

Section 17. Amends s. 456.41, F.S., relating to complementary or alternative health care treatments, to correct a statutory cross-reference to provisions in s. 456.001, F.S., setting forth definitions, to conform to changes in the bill.

Section 18. Amends s. 468.703, F.S., relating to the Board of Athletic Training, to correct a statutory cross-reference to provisions in s. 456.001, F.S., setting forth definitions, to conform to changes in the bill.

Section 19. Amends s. 627.6474, F.S., relating to health insurance provider contracts, to correct a statutory cross-reference to provisions in s. 456.001, F.S., setting forth definitions, to conform to changes in the bill.

Section 20. Amends s. 641.315, F.S., relating to health maintenance organization provider contracts, to correct a statutory cross-reference to provisions in s. 456.001, F.S., setting forth definitions to conform to changes in the bill.

Section 21. Amends s. 766.1016, F.S., relating to the patient safety data privilege, to correct a statutory cross-reference to provisions in s. 456.001, F.S., setting forth definitions, to conform to changes in the bill.

Section 22. Amends s. 766.1116, F.S., relating to a waiver of license renewal fees and continuing education requirements for certain health care practitioners who provide services to low-income persons, to correct a statutory cross-reference to s. 456.013, F.S., the general licensing provisions, to conform to changes in the bill.

Section 23. Amends s. 768.13, F.S., relating to the Good Samaritan Act, to correct a statutory cross-reference to provisions in s. 456.001, F.S., setting forth definitions, to conform to changes in the bill.

Section 24. Amends s. 768.28, F.S., relating to waiver of sovereign immunity, to correct a statutory cross-reference to provisions in s. 456.001, F.S., setting forth definitions, to conform to changes in the bill.

Section 25. Provides an effective of July 1, 2009.

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, Section 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 Article I, Section 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. Fiscal Impact Statement:

A. Tax/Fee Issues:

On lines 264-269 of the bill, each board, and the DOH when there is no board, is authorized to establish a nonrefundable application fee to comply with s. 456.025, F.S., which requires each board to establish licensure fees that are adequate to cover all anticipated costs and to maintain a reasonable cash balance.

On lines 342-344 of the bill, each board, or the DOH if there is no board, is authorized to charge a fee as determined by rule for the reinspection of a business establishment before its licensure.

B. Private Sector Impact:

The bill prohibits the DOH from renewing the license of a licensed business or health care practitioner who owes outstanding fees, costs, or fines to the DOH. Such business or health care practitioner will be unable to operate or practice until outstanding fees, costs, or fines are paid to the DOH.

Licensees may incur additional costs to display their licenses as required by the bill.

C. Government Sector Impact:

The DOH reports that while new fees or enhanced fees are proposed in the bill to ensure that the department is in compliance with existing statutory requirements that all costs of regulating health care practitioners should be borne by licensees and licensure applicants, there is no immediate, direct fiscal impact on the DOH.

VI. Technical Deficiencies:

Lines 168 and 169 of the bill require the administrator or records custodian in a facility licensed under ch. 400, F.S., to certify the requested records. Chapter 400, F.S., is divided into ten parts. Part II of ch. 400, F.S., relates to nursing homes. Parts III-X relate to other types of licensed programs and facilities. This new requirement is placed in part II relating to nursing homes, although the requirement applies to parts II-X. If the intent is for this new requirement to apply to all parts of ch. 400, F.S., each part should be amended.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Health Regulation on April 1, 2009:**

The committee substitute continues the existing disclosure of hospital patient records under a subpoena issued by the AHCA. The committee substitute continues the existing requirements for confidentiality of hospital patient records obtained by the AHCA when used in their investigations and disciplinary proceedings. The confidentiality of the notice of nursing home facility incident reports is maintained in disciplinary proceedings by the AHCA.

The committee substitute adds a reference to s. 114.05, F.S., relating to procedures for gubernatorial appointment of board members. The bill revises the fee that hospitals may charge the DOH for requested patient records to the charges authorized in s. 395.3025, F.S., rather than a reasonable fee as determined by rule of the DOH. The committee substitute deletes a provision that would have allowed the board or the DOH to increase fees when a profession is in a deficit under certain circumstances.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
