

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 Regulated Industries Committee

BILL: SB 1742

INTRODUCER: Senator Thrasher

SUBJECT: Regulation of Professions

DATE: March 22, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Favorable
2.	_____	_____	HR	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill authorizes the Department of Business and Professional Regulation (DBPR) to require a person licensed by or applying for a license from DBPR to be governed by the provisions providing programs for impaired practitioners under the jurisdiction of the Medical Quality Assurance within the Department of Health (DOH).

The bill amends the definition of “health care practitioner” to include persons certified or licensed to provide medical transportation services or radiological services.

The bill creates an exception to disqualification for licensure for persons who have committed a felony related to drug abuse if the person enrolls in and successfully completes an impaired practitioner program. The bill authorizes the State Surgeon General to issue an emergency order to suspend a health care practitioner’s license for not progressing satisfactorily in a treatment program when the impairment affects his or her practice and constitutes an immediate and serious danger to the public health, safety, and welfare.

In addition, the bill amends the requirements for the impaired practitioner consultant. It provides that the consultant may be an entity that employs a registered nurse as its executive director. It provides that the consultant may contract for services if requested by a school or program for students enrolled in a school for licensure as a health care practitioner under ch. 456, F.S. or as a veterinarian under ch. 474, F.S. The bill provides that whenever the department receives a legally sufficient complaint alleging that a licensee or applicant, not just licensee, is impaired and no other complaint exists, the appropriate board, the board’s designee, or DOH shall forward all information in its possession regarding the impaired licensee or applicant to the consultant.

The bill provides an effective date of July 1, 2011.

This bill amends the following sections of the Florida Statutes: 20.165, 456.001, 456.0635, 456.074, and 456.076.

II. Present Situation:

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.¹

Professional Boards

Section 20.165(4)(a), F.S., establishes the following professional boards within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

¹ Chapter 93-220, L.O.F.

The Florida State Boxing Commission,² the Board of Pilot Commissioners,³ and the Pilot Rate Review Board⁴ are also housed within DBPR. DBPR also has regulatory oversight responsibilities over the following professions:

- Farm labor contractors under part III of ch. 450, F.S.; and
- Talent agencies under part VII of ch. 468.

In addition to administering the professional boards, DBPR processes applications for licensure and license renewal. DBPR also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of DBPR and sets forth the procedural and administrative frame-work for all of the professional boards housed under DBPR, specifically the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Impaired Practitioner Provisions - DBPR

Currently, both the Board of Veterinary Medicine and the Board of Pilot Commissioners provide impaired practitioner treatment programs for licensees within those practice acts.

Section 474.221, F.S., provides that veterinarians licensed under ch. 474, F.S., shall be governed by the treatment of impaired practitioner provisions of s. 456.076, F.S., as if they were under the jurisdiction of the Division of Medical Quality Assurance. Currently, DBPR has a contract with Professional Resources Network, Inc. (PRN) to provide consultant services for impaired veterinarians. The contract provides for compensation of \$48,132 per year to PRN. During FY 2009-2010, an average of 29 licensees participated in the program.⁵

Section 310.102, F.S., provides an impaired treatment program for pilots licensed under ch. 310, F.S. The impaired practitioner treatment program for pilots requires DBPR to retain one or more impaired practitioner consultants; the consultant must be licensed under the jurisdiction of the Division of Medical Quality Assurance. The program provides information about when the consultant assists the board,⁶ when the pilot may seek treatment,⁷ and how the information obtained by the consultant is confidential.⁸ Currently, DBPR has a contract with PRN to provide consultant services for impaired pilots and deputy pilots. The contract provides for compensation of \$2,500 per year to PRN. Currently, there are approximately four licensed participants in the program.⁹

²Section 548.003, F.S.

³Chapter 310, F.S.

⁴*Id.*

⁵According to DBPR on March 21, 2011.

⁶The consultant must assist the probable cause panel of the board and the department to determine whether the practitioner is impaired. Section 310.102(2), F.S.

⁷See s. 310.102(3), F.S., providing when an impaired practitioner may voluntarily enroll in a treatment program and the requirements for enrollment in treatment in lieu of disciplinary action against the practitioner's license.

⁸Section 310.102(5), F.S.

⁹According to DBPR on March 21, 2011.

Department of Health

The Department of Health (DOH) is created in s. 20.43, F.S. The purpose of the Department of Health is to promote and protect the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties.¹⁰

Section 20.43(3)(g), F.S., provides that the Division of Medical Quality Assurance is responsible for the following boards and professions within DOH:

- Board of Acupuncture, created under ch. 457.
- Board of Medicine, created under ch. 458.
- Board of Osteopathic Medicine, created under ch. 459.
- Board of Chiropractic Medicine, created under ch. 460.
- Board of Podiatric Medicine, created under ch. 461.
- Naturopathy, created under ch. 462.
- Board of Optometry, created under ch. 463.
- Board of Nursing, created under part I of ch. 464.
- Nursing Assistances, created under part II of ch. 464.
- Board of Pharmacy, created under ch. 465.
- Board of Dentistry, created under ch. 466.
- Midwifery, as provided under ch. 467.
- Board of Speech-Language Pathology and Audiology, created under ch. part I of ch. 468.
- Board of Nursing Home Administrators, created under part II of ch. 468.
- Board of Occupational Therapy, created under part III of ch. 468.
- Respiratory Therapy, as provided in part IV of ch. 468.
- Dietetics and Nutrition Practice, as provided in part X of ch. 468.
- Board of Athlete Training, created under XIII of ch. 468.
- Board of Orthotics and Prosthetics, created under part XIV of ch. 468.
- Electrolysis, as provided under ch. 478.
- Board of Massage Therapy, created under ch. 480.
- Board of Clinical Laboratory Personnel, created under part III of ch. 483.
- Medical physicists, as provided under part IV of ch. 483.
- Board of Opticianry, created under part I of ch. 484.
- Board of Hearing Aid Specialists, created under part II of ch. 484.
- Board of Physical Therapy Practice, created under ch. 486.
- Board of Psychology, created under ch. 490.
- School psychologists, as provided under ch. 490.
- Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491.

¹⁰ Section 20.43(1), F.S.

State Surgeon General

The head of the DOH is the State Surgeon General and the State Health Officer.¹¹ The State Surgeon General must be a physician licensed under chapter 458 or chapter 459 who has advanced training or extensive experience in public health administration.

Definition of Health Care Practitioner

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(4), 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); parts I, II, III, V, X, XIII, and XIV of ch. 468, F.S., (speech-language pathology and audiology, 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); parts III and 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).

Medicaid Fraud

Medicaid fraud in the practice of a health care profession is prohibited.¹² Licensed health care practitioners must report any allegation of Medicaid fraud to the DOH.¹³ Each board within the jurisdiction of the DOH, or the DOH if there is no board, shall refuse to issue or renew a license, certificate, or registration if the applicant has been:

- Convicted of, entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under ch. 409, F.S.,¹⁴ ch. 817, F.S.,¹⁵ ch. 893, F.S.,¹⁶ 21 U.S.C. ss. 801-970,¹⁷ or 42 U.S.C. ss. 1395-1396,¹⁸ unless the sentence and any subsequent probation ended more than 15 years prior to the date of application;
- Terminated for cause from the Florida Medicaid program pursuant to s. 409.913, F.S., unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;
- Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program or the federal Medicare program, unless the applicant has been in good standing with a state Medicaid program or

¹¹ Section 20.43(2)(a), F.S.

¹² Section 456.0635(1), F.S.

¹³ Section 456.0635(3), F.S.

¹⁴ Chapter 409, F.S., pertains to social and economic assistance issues.

¹⁵ Chapter 817, F.S., pertains to fraudulent practices.

¹⁶ Chapter 893, F.S., pertains to drug abuse prevention and control issues.

¹⁷ Pertaining to controlled substances.

¹⁸ Pertaining to public health, welfare, and Medicare issues.

the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of the application.

Impaired Practitioners' Treatment Programs

Health care practitioners are regulated under various practice acts and the general regulatory provisions of ch. 456, F.S. Under s. 456.072(1)(z), F.S., disciplinary action may be taken against a licensed health care professional who is unable to practice with reasonable skill and safety due to illness, or use of alcohol, drugs, narcotics, chemicals or any other type of material, or as the result of any mental or physical condition. The impaired practitioners' treatment program was created to help treat practitioners who are impaired due to alcohol or substance abuse. By entering and successfully completing the program, a practitioner may avoid formal disciplinary action by his or her board, if his or her only violation of the practice regulations is the impairment. Disciplinary action will not be taken if the practitioner acknowledges his or her impairment, voluntarily enrolls in an approved treatment program, and voluntarily withdraws from his or her practice or limits the scope of his or her practice as determined by the probable cause panel of the appropriate board until such time as the panel is satisfied that the practitioner has successfully completed the treatment program. To avoid discipline, the practitioner must also execute releases for medical records authorizing the release of all records of evaluation, diagnosis, and treatment to the impaired practitioners' treatment program consultant. The impaired practitioners' treatment program is only available to health care practitioners regulated by the DOH.

Section 456.076, F.S., requires the DOH to retain one or more impaired practitioner consultants to assist the department in determining whether a practitioner is impaired and to monitor the treatment of the impaired practitioner. The consultant must be a practitioner or recovered practitioner who is a Florida-licensed medical physician, osteopathic physician, physician assistant, anesthesiology assistant, or nurse. In the alternative, a consultant may be an entity employing a medical director licensed under these provisions. Consultants must refer impaired practitioners to department-approved treatment programs and providers.¹⁹ Although consultants do not provide medical treatment, they are required to make recommendations to the DOH regarding a practitioner's ability to practice.

The DOH currently contracts with the Intervention Project for Nurses (IPN) for licensed nurses and the Professional Resource Network (PRN) for all other licensed professions.

III. Effect of Proposed Changes:

Section 1. Amends s. 20.165, F.S., creating subsection (10), which provides that the Department of Business and Professional Regulation may require a person licensed by or applying for a license from DBPR to be governed by the provisions of s. 456.076, F.S., as if the person was under the jurisdiction of the Division of Medical Quality Assurance. The bill provides that DBPR may exercise any of the powers granted to the Department of Health by s. 456.076, F.S.

¹⁹ See s. 456.076, F.S.

Section 2. Amends the definition of “health care practitioner” in s. 456.001, F.S.,²⁰ to include any person licensed under part III of ch. 401, F.S., and any person licensed under part IV of ch. 468, F.S.,²¹ which includes persons certified or licensed to provide medical transportation services or radiological services.

Section 3. Creates an exception for disqualification for licensure for any person who has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony related to drug abuse under ch. 893, F.S. A person who is determined to have been suffering from an addiction or impairment at the time of the conduct for which the person was convicted, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under ch. 893, F.S., and subsequently enrolled in and continues to successfully participate in or has successfully completed an impaired practitioner program as set out in s. 456.076(1), F.S., or an equivalent program in another jurisdiction, qualifies to the exception for disqualification.

The bill provides that this exception for disqualification for licensure does not prohibit or require action against the license, certificate, or registration of such person pursuant to any relevant disciplinary provisions.

Section 4. Amends s. 456.074, F.S., providing that the State Surgeon General shall review any matter within 10 business days after receiving disclosure that a licensed health care practitioner is not progressing satisfactorily in an impaired practitioner treatment program when the impairment affects his or her practice and constitutes an immediate and serious danger to the public health, safety, and welfare. If warranted, the State Surgeon General is authorized to issue an emergency order suspending or restricting the health care practitioner’s license.

Section 5. Amends the requirements for an impaired practitioner consultant under s. 456.076, F.S. The bill provides that the consultant may also be an entity employing a registered nurse as an executive director, who must be a practitioner or recovered practitioner licensed under chs. 458, 459, or part I of ch. 464, F.S.

The bill provides that an entity that is retained as a consultant and employs a medical director or registered nurse as an executive director is not required to be licensed as a substance abuse provider or mental health treatment provider if the entity employs or contracts with licensed professionals to perform or appropriately supervise any specific treatment or evaluation that requires individual licensing or supervision.

The bill provides that the consultant may contract for services if requested by a school or program for students enrolled in a school for licensure as a health care practitioner under ch. 456, F.S. or as a veterinarian under ch. 474, F.S. The bill further provides that the school who refers such student to the consultant is not liable in any civil action against the student for the referral or for any resulting disciplinary action that affects the status of the student.

The bill provides that whenever the department receives a legally sufficient complaint alleging that a licensee or applicant, not just licensee, is impaired and no other complaint exists, the

²⁰ Part III of ch. 401, F.S., includes all persons licensed in medical transportation services.

²¹ Part IV of ch. 468, F.S., includes all persons licensed as radiological personnel.

appropriate board, the board's designee, or the Department of Health shall forward all information in its possession regarding the impaired licensee or applicant to the consultant.

The bill clarifies that the Department of Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, the consultant's officers or employees, or those acting at the direction of the consultant.

The bill provides that the impaired practitioner consultant is the official custodian of records concerning any impaired licensee monitored by that consultant. The consultant may not disclose to the impaired licensee any information that is disclosed to or retained by the consultant and is confidential. Instead, the impaired licensee must obtain such information from the Department of Health if a disciplinary proceeding is pending.

Section 6. Provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides that all persons licensed by DBPR may be required to be participate in the impaired practitioner program under the jurisdiction of the Division of Medical Quality Assurance. As a result, more licensed professionals may be eligible for assistance.

C. Government Sector Impact:

According to the DOH, this bill adds the professions of emergency medical technicians, paramedics and radiological personnel to the professions administered under the Division of Medical Quality Assurance, and will require additional contracts for services with

PRN. The DOH estimates that it will cost approximately \$94,480 per year to cover those other professions.

According to DBPR, the bill would require additional contracts for services with the Professional Resources Network, Inc. Based on their current contracts, DBPR estimates that the cost per year, per profession, for consultant services for impaired licensees ranges from \$2,500 per year (pilots) to \$48,000 per year (veterinarians). As a result, the total costs for DBPR could range from \$35,000 (14 boards times \$2,500) to \$672,000 (14 boards times \$48,000).

VI. Technical Deficiencies:

None.

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.)

None.

B. Amendments:

None.