

1 A bill to be entitled
2 An act relating to treatment programs for impaired
3 practitioners; amending s. 456.076, F.S.; exempting
4 entities retained as impaired practitioner consultants
5 from certain licensing requirements under certain
6 circumstances; revising circumstances under which impaired
7 practitioner consultants may contract for certain
8 services; limiting liability of certain medical schools
9 and schools that prepare certain health care practitioners
10 and veterinarians for licensure under certain
11 circumstances related to services provided by impaired
12 practitioner consultants; revising procedures for
13 processing complaints against impaired licensees; revising
14 requirements for forwarding information about impaired
15 licensees and certain students preparing for licensure to
16 impaired practitioner consultants; providing for
17 recommendations to the State Surgeon General for emergency
18 suspension orders under certain circumstances; clarifying
19 the types of legal proceedings related to services
20 provided by impaired practitioner consultants against
21 which the Department of Financial Services shall defend;
22 revising requirements for the maintenance and disclosure
23 to impaired licensees of confidential information by
24 impaired practitioner consultants and the Department of
25 Health; amending s. 456.0635, F.S.; excluding persons
26 subject to addiction or impairment under certain
27 circumstances from disqualification requirements related
28 to examinations, licenses, certificates, and registrations

29 | for health professions and occupations; providing an
 30 | effective date.

31 |

32 | Be It Enacted by the Legislature of the State of Florida:

33 |

34 | Section 1. Subsections (1), (2), and (3), paragraph (b) of
 35 | subsection (5), and paragraph (b) of subsection (7) of section
 36 | 456.076, Florida Statutes, are amended, and subsection (8) is
 37 | added to that section, to read:

38 | 456.076 Treatment programs for impaired practitioners.—

39 | (1) For professions or occupations that do not have
 40 | impaired practitioner programs provided for in their practice
 41 | acts, the department shall, by rule, designate approved impaired
 42 | practitioner programs under this section. The department may
 43 | adopt rules setting forth appropriate criteria for approval of
 44 | treatment providers. The rules may specify the manner in which
 45 | the consultant, retained as set forth in subsection (2), works
 46 | with the department in intervention, requirements for evaluating
 47 | and treating a professional, requirements for continued care of
 48 | impaired professionals by approved treatment providers,
 49 | continued monitoring by the consultant of the care provided by
 50 | approved treatment providers regarding the professionals under
 51 | their care, and requirements related to the consultant's
 52 | expulsion of professionals from the program.

53 | (2) (a) The department shall retain one or more impaired
 54 | practitioner consultants who are each licensees. ~~The consultant~~
 55 | ~~shall be a licensee~~ under the jurisdiction of the Division of
 56 | Medical Quality Assurance within the department and who must be:

57 | 1. A practitioner or recovered practitioner licensed under
 58 | chapter 458, chapter 459, or part I of chapter 464;~~7~~ or

59 | 2. An entity employing a medical director, or employing a
 60 | registered nurse as an executive director, who is ~~must be~~ a
 61 | practitioner or recovered practitioner licensed under chapter
 62 | 458, chapter 459, or part I of chapter 464.

63 | (b) An entity retained as a consultant that employs a
 64 | medical director, or employs a registered nurse as an executive
 65 | director, is not required to be licensed as a substance abuse
 66 | provider or mental health treatment provider pursuant to chapter
 67 | 394, chapter 395, or chapter 397 to operate as a consultant
 68 | under this section if it employs or contracts with licensed
 69 | professionals to perform or appropriately supervise any specific
 70 | treatment or evaluation that requires individual licensing or
 71 | supervision.

72 | (c) The consultant shall assist the probable cause panel
 73 | and department in carrying out the responsibilities of this
 74 | section. This shall include working with department
 75 | investigators to determine whether a practitioner is, in fact,
 76 | impaired. The consultant may contract for services to be
 77 | provided, for appropriate compensation, if requested by a the
 78 | school or program, for students enrolled in any school ~~schools~~
 79 | for licensure as a health care practitioner under chapter 456 or
 80 | a veterinarian under chapter 474 ~~allopathic physicians or~~
 81 | ~~physician assistants under chapter 458, osteopathic physicians~~
 82 | ~~or physician assistants under chapter 459, nurses under chapter~~
 83 | ~~464, or pharmacists under chapter 465~~ who are alleged to be
 84 | impaired as a result of the misuse or abuse of alcohol or drugs,

85 or both, or due to a mental or physical condition.

86 (d) The department is not responsible under any
 87 circumstances for paying the costs of care provided by approved
 88 treatment providers, and the department is not responsible for
 89 paying the costs of consultants' services provided for such
 90 students.

91 (e) A medical school accredited by the Liaison Committee
 92 on Medical Education of the Commission on Osteopathic College
 93 Accreditation, or another ~~other~~ school providing for the
 94 education of students enrolled in preparation for licensure as a
 95 health care practitioner under chapter 456 or a veterinarian
 96 under chapter 474 ~~allopathic physicians under chapter 458 or~~
 97 ~~osteopathic physicians under chapter 459~~, which school is
 98 governed by accreditation standards requiring notice and the
 99 provision of due process procedures to students, is not liable
 100 in any civil action for referring a student to the consultant
 101 retained by the department or for disciplinary actions that
 102 adversely affect the status of a student when the disciplinary
 103 actions are instituted in reasonable reliance on the
 104 recommendations, reports, or conclusions provided by such
 105 consultant, if the school, in referring the student or taking
 106 disciplinary action, adheres to the due process procedures
 107 adopted by the applicable accreditation entities and if the
 108 school committed no intentional fraud in carrying out ~~the~~
 109 ~~provisions of~~ this section.

110 (3) (a) Whenever the department receives a written or oral
 111 legally sufficient complaint alleging that a licensee under the
 112 jurisdiction of the Division of Medical Quality Assurance within

HB 393

2011

113 the department is impaired as a result of the misuse or abuse of
114 alcohol or drugs, or both, or due to a mental or physical
115 condition which could affect the licensee's ability to practice
116 with skill and safety, but the department has not received a ~~and~~
117 ~~no~~ complaint against the licensee on grounds other than
118 impairment ~~exists~~, the reporting of such information shall not
119 constitute grounds for discipline pursuant to s. 456.072 or the
120 corresponding grounds for discipline within the applicable
121 practice act if the probable cause panel of the appropriate
122 board, or the department when there is no board, finds:

123 1. The licensee has acknowledged the impairment problem.

124 2. The licensee has voluntarily enrolled in an
125 appropriate, approved treatment program.

126 3. The licensee has voluntarily withdrawn from practice or
127 limited the scope of practice as required by the consultant, in
128 each case, until such time as the panel, or the department when
129 there is no board, is satisfied the licensee has successfully
130 completed an approved treatment program.

131 4. The licensee has executed releases for medical records,
132 authorizing the release of all records of evaluations,
133 diagnoses, and treatment of the licensee, including records of
134 treatment for emotional or mental conditions, to the consultant.
135 The consultant shall make no copies or reports of records that
136 do not regard the issue of the licensee's impairment and his or
137 her participation in a treatment program.

138 (b) If, however, the department has not received a legally
139 sufficient complaint and the licensee agrees to withdraw from
140 practice until such time as the consultant determines the

HB 393

2011

141 licensee has satisfactorily completed an approved treatment
142 program or evaluation, the probable cause panel, or the
143 department when there is no board, shall not become involved in
144 the licensee's case.

145 (c) Inquiries related to impairment treatment programs
146 designed to provide information to the licensee and others and
147 which do not indicate that the licensee presents a danger to the
148 public do ~~shall~~ not constitute a complaint within the meaning of
149 s. 456.073 and are ~~shall be~~ exempt from ~~the provisions of~~ this
150 subsection. In addition, a suspension from hospital staff
151 privileges due to impairment does not constitute a complaint for
152 purposes of this section.

153 (d) Whenever the department receives information regarding
154 the possible impairment of a licensee but has not received a
155 ~~legally sufficient complaint alleging that a licensee is~~
156 ~~impaired as described in paragraph (a) and no~~ complaint against
157 the licensee on grounds other than impairment ~~exists, or~~
158 receives information regarding the possible impairment of a
159 student enrolled in preparation for licensure as an allopathic
160 physician or physician assistant under chapter 458 or an
161 osteopathic physician or physician assistant under chapter 459,
162 the appropriate board, the executive director of that board, or
163 the department shall forward all information in its possession
164 regarding the impaired licensee or student to the consultant.
165 ~~For the purposes of this section, a suspension from hospital~~
166 ~~staff privileges due to the impairment does not constitute a~~
167 ~~complaint.~~

168 (e) The probable cause panel, or the department when there

HB 393

2011

169 is no board, shall work directly with the consultant, and all
 170 information concerning a practitioner obtained from the
 171 consultant by the panel, or the department when there is no
 172 board, shall remain confidential and exempt from the provisions
 173 of s. 119.07(1), subject to the provisions of subsections (5)
 174 and (6).

175 (f) A finding of probable cause shall not be made as long
 176 as the panel, or the department when there is no board, is
 177 satisfied, based upon information it receives from the
 178 consultant and the department, that the licensee is progressing
 179 satisfactorily in an approved impaired practitioner program and
 180 no other complaint against the licensee exists.

181 (5)

182 (b) If in the opinion of the consultant, after
 183 consultation with the treatment provider, an impaired licensee
 184 has not progressed satisfactorily in a treatment program, all
 185 information regarding the issue of a licensee's impairment and
 186 participation in a treatment program in the consultant's
 187 possession shall be disclosed to the department. Such disclosure
 188 shall constitute a complaint pursuant to the general provisions
 189 of s. 456.073. Whenever the consultant concludes that impairment
 190 affects a licensee's practice and constitutes an immediate,
 191 serious danger to the public health, safety, or welfare, the
 192 department ~~that conclusion~~ shall recommend an emergency
 193 suspension order that contains the consultant's conclusions ~~be~~
 194 ~~communicated~~ to the State Surgeon General for immediate review.

195 (7)

196 (b) In accordance with s. 284.385, the Department of

197 Financial Services shall defend any claim, suit, action, or
 198 proceeding, including a claim, suit, action, or proceeding for
 199 injunctive, affirmative, or declaratory relief, against the
 200 consultant, the consultant's officers or employees, or those
 201 acting at the direction of the consultant for the limited
 202 purpose of an emergency intervention on behalf of a licensee or
 203 student as described in subsection (2) when the consultant is
 204 unable to perform such intervention which is brought as a result
 205 of any act or omission by any of the consultant's officers and
 206 employees and those acting under the direction of the consultant
 207 for the limited purpose of an emergency intervention on behalf
 208 of a licensee or student as described in subsection (2) when the
 209 consultant is unable to perform such intervention when such act
 210 or omission arises out of and in the scope of the consultant's
 211 duties under its contract with the department.

212 (8) An impaired practitioner consultant shall serve as the
 213 official records custodian for any impaired licensee that the
 214 consultant monitors. The consultant may not, except to the
 215 extent necessary for carrying out the consultant's duties under
 216 this section, disclose to the impaired licensee or his or her
 217 designee any information disclosed to or obtained by the
 218 consultant that is confidential under paragraph (5) (a). When a
 219 disciplinary proceeding is pending, an impaired licensee may
 220 obtain such information from the department under s.
 221 456.073(10).

222 Section 2. Subsection (2) of section 456.0635, Florida
 223 Statutes, is amended to read:

224 456.0635 Medicaid fraud; disqualification for license,

225 certificate, or registration.—

226 (2) Each board within the jurisdiction of the department,
 227 or the department if there is no board, shall refuse to admit a
 228 candidate to any examination and refuse to issue or renew a
 229 license, certificate, or registration to any applicant if the
 230 candidate or applicant or any principal, officer, agent,
 231 managing employee, or affiliated person of the applicant, has
 232 been:

233 (a) Convicted of, or entered a plea of guilty or nolo
 234 contendere to, regardless of adjudication, a felony under
 235 chapter 409, chapter 817, chapter 893, 21 U.S.C. ss. 801-970, or
 236 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent
 237 period of probation for such conviction or pleas ended more than
 238 15 years before ~~prior to~~ the date of the application;

239 (b) Terminated for cause from the Florida Medicaid program
 240 pursuant to s. 409.913, unless the applicant has been in good
 241 standing with the Florida Medicaid program for the most recent 5
 242 years; or

243 (c) Terminated for cause, pursuant to the appeals
 244 procedures established by the state or Federal Government, from
 245 any other state Medicaid program or the federal Medicare
 246 program, unless the applicant has been in good standing with a
 247 state Medicaid program or the federal Medicare program for the
 248 most recent 5 years and the termination occurred at least 20
 249 years before ~~prior to~~ the date of the application.

250

251 The disqualification set forth in this subsection does not apply
 252 to a person who was subject to addiction or impairment at the

HB 393

2011

253 time of the violation for which the person was convicted of, or
254 entered a plea of guilty or nolo contendere to, a felony under
255 chapter 893 if the person subsequently enrolled in and either
256 continues to successfully participate in or has subsequently
257 successfully completed an impaired practitioner program approved
258 under s. 456.076(1) or an equivalent program in another
259 jurisdiction. However, this exception from disqualification does
260 not prohibit or require action against the license, certificate,
261 or registration of the person pursuant to the disciplinary
262 provisions of this chapter or the appropriate practice act.

263 Section 3. This act shall take effect July 1, 2011.