

1 A bill to be entitled
2 An act relating to the regulation of professions; amending
3 s. 20.165, F.S.; authorizing the Department of Business
4 and Professional Regulation to require certain licensees
5 and applicants to be governed by provisions providing for
6 programs for impaired practitioners under the jurisdiction
7 of the Division of Medical Quality Assurance within the
8 Department of Health; authorizing the Department of
9 Business and Professional Regulation to exercise any of
10 the powers granted to the Department of Health with
11 respect to such programs; amending s. 456.001, F.S.;
12 redefining the term "health care practitioner" as it
13 relates to the regulation of health care professions to
14 include those persons certified or licensed to provide
15 medical transportation services or radiological services;
16 amending s. 456.0635, F.S.; exempting a health care
17 practitioner from disqualification for a license,
18 certificate, or registration if the practitioner was
19 suffering from an addiction or impairment at the time of
20 the disqualifying offense and subsequently completes an
21 impaired practitioner program; amending s. 456.074, F.S.;
22 requiring the State Surgeon General to issue an emergency
23 order suspending or restricting a health care
24 practitioner's license under certain circumstances;
25 amending s. 456.076, F.S.; revising the types of entities
26 that may be retained by the Department of Health as an
27 impaired practitioner consultant; exempting such an entity
28 from certain licensing requirements if the entity employs

29 | or contracts with licensed professionals; revising the
 30 | schools or programs that may contract for impaired
 31 | practitioner consulting services; limiting the liability
 32 | of certain medical schools and schools that prepare health
 33 | care practitioners and veterinarians for licensure for
 34 | referring a student to an impaired practitioner
 35 | consultant; revising requirements for forwarding
 36 | information about impaired licensees and applicants for
 37 | licensure to impaired practitioner consultants; clarifying
 38 | the types of legal proceedings related to services
 39 | provided by impaired practitioner consultants that are
 40 | defended by the Department of Financial Services;
 41 | clarifying requirements for an impaired practitioner
 42 | consultant to maintain as confidential certain information
 43 | concerning an impaired practitioner; providing an
 44 | effective date.

45 |
 46 | Be It Enacted by the Legislature of the State of Florida:

47 |
 48 | Section 1. Subsection (10) is added to section 20.165,
 49 | Florida Statutes, to read:

50 | 20.165 Department of Business and Professional
 51 | Regulation.—There is created a Department of Business and
 52 | Professional Regulation.

53 | (10) The Department of Business and Professional
 54 | Regulation may require a person licensed by or applying for a
 55 | license from the department to be governed by s. 456.076 as if
 56 | the person were under the jurisdiction of the Division of

57 Medical Quality Assurance. The Department of Business and
 58 Professional Regulation may exercise any of the powers granted
 59 to the Department of Health by s. 456.076.

60 Section 2. Subsection (4) of section 456.001, Florida
 61 Statutes, is amended to read:

62 456.001 Definitions.—As used in this chapter, the term:

63 (4) "Health care practitioner" means any person licensed
 64 under part III of chapter 401; chapter 457; chapter 458; chapter
 65 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter
 66 464; chapter 465; chapter 466; chapter 467; part I, part II,
 67 part III, part IV, part V, part X, part XIII, or part XIV of
 68 chapter 468; chapter 478; chapter 480; part III or part IV of
 69 chapter 483; chapter 484; chapter 486; chapter 490; or chapter
 70 491.

71 Section 3. Subsection (2) of section 456.0635, Florida
 72 Statutes, is amended to read:

73 456.0635 Medicaid fraud; disqualification for license,
 74 certificate, or registration.—

75 (2) Each board within the jurisdiction of the department,
 76 or the department if there is no board, shall refuse to admit a
 77 candidate to any examination and refuse to issue or renew a
 78 license, certificate, or registration to any applicant if the
 79 candidate or applicant or any principal, officer, agent,
 80 managing employee, or affiliated person of the applicant, has
 81 been:

82 (a) Convicted of, or entered a plea of guilty or nolo
 83 contendere to, regardless of adjudication, a felony under
 84 chapter 409, chapter 817, chapter 893, 21 U.S.C. ss. 801-970, or

85 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent
 86 period of probation for such conviction or pleas ended more than
 87 15 years before ~~prior to~~ the date of the application. The
 88 disqualification set forth in this paragraph does not apply to a
 89 person who is determined to have been suffering from an
 90 addiction or impairment at the time of the offense for which the
 91 person was convicted, or to a person who entered a plea of
 92 guilty or nolo contendere to, regardless of adjudication, a
 93 felony under chapter 893, and who subsequently enrolled in and
 94 continues to successfully participate in or has subsequently
 95 successfully completed an impaired practitioner program as set
 96 forth in s. 456.076(1) or the equivalent of such program in
 97 another jurisdiction. This exception from disqualification does
 98 not prohibit or require action against the license, certificate,
 99 or registration of such person pursuant to the disciplinary
 100 provisions of this chapter or the appropriate practice act;

101 (b) Terminated for cause from the Florida Medicaid program
 102 pursuant to s. 409.913, unless the applicant has been in good
 103 standing with the Florida Medicaid program for the most recent 5
 104 years; or

105 (c) Terminated for cause, pursuant to the appeals
 106 procedures established by the state or Federal Government, from
 107 any other state Medicaid program or the federal Medicare
 108 program, unless the applicant has been in good standing with a
 109 state Medicaid program or the federal Medicare program for the
 110 most recent 5 years and the termination occurred at least 20
 111 years before ~~prior to~~ the date of the application.

112 Section 4. Subsection (5) is added to section 456.074,

113 Florida Statutes, to read:

114 456.074 Certain health care practitioners; immediate
 115 suspension of license.-

116 (5) If an impaired practitioner treatment program
 117 consultant retained by the department pursuant to s. 456.076
 118 discloses to the department that a health care practitioner is
 119 not progressing satisfactorily in that treatment program and the
 120 health care practitioner's impairment affects his or her
 121 practice and constitutes an immediate, serious danger to the
 122 public health, safety, or welfare, the State Surgeon General
 123 shall review the matter within 10 business days after receiving
 124 the disclosure and, if warranted, shall issue an emergency order
 125 suspending or restricting the health care practitioner's
 126 license.

127 Section 5. Subsection (2), paragraph (d) of subsection
 128 (3), and paragraph (b) of subsection (7) of section 456.076,
 129 Florida Statutes, are amended, and subsection (8) is added to
 130 that section, to read:

131 456.076 Treatment programs for impaired practitioners.-

132 (2)(a) The department shall retain one or more impaired
 133 practitioner consultants. Each ~~The~~ consultant must ~~shall~~ be a
 134 licensee under the jurisdiction of the Division of Medical
 135 Quality Assurance within the department and ~~who~~ must be:

136 1. A practitioner or recovered practitioner licensed under
 137 chapter 458, chapter 459, or part I of chapter 464;; or

138 2. An entity employing a medical director or employing a
 139 registered nurse as an executive director, who must be a
 140 practitioner or recovered practitioner licensed under chapter

141 458, chapter 459, or part I of chapter 464.

142 (b) An entity that is retained as a consultant under this
 143 section and employs a medical director or registered nurse as an
 144 executive director is not required to be licensed as a substance
 145 abuse provider or mental health treatment provider under chapter
 146 394, chapter 395, or chapter 397 in order to operate as a
 147 consultant under this section if the entity employs or contracts
 148 with licensed professionals to perform or appropriately
 149 supervise any specific treatment or evaluation that requires
 150 individual licensing or supervision.

151 (c) The consultant shall assist the probable cause panel
 152 and department in carrying out the responsibilities of this
 153 section. This includes ~~shall include~~ working with department
 154 investigators to determine whether a practitioner is, in fact,
 155 impaired. The consultant may contract for services to be
 156 provided, for appropriate compensation, if requested by ~~a the~~
 157 school or program, for students enrolled in a school ~~schools~~ for
 158 licensure as a health care practitioner under chapter 456 or a
 159 veterinarian under chapter 474 ~~allopathic physicians or~~
 160 ~~physician assistants under chapter 458, osteopathic physicians~~
 161 ~~or physician assistants under chapter 459, nurses under chapter~~
 162 ~~464, or pharmacists under chapter 465~~ who are alleged to be
 163 impaired as a result of the misuse or abuse of alcohol or drugs,
 164 or both, or due to a mental or physical condition.

165 (d) The department is not responsible under any
 166 circumstances for paying the costs of care provided by approved
 167 treatment providers, and the department is not responsible for
 168 paying the costs of consultants' services provided for such

169 students.

170 (e) A medical school accredited by the Liaison Committee
171 on Medical Education of the Commission on Osteopathic College
172 Accreditation, or another ~~other~~ school providing for the
173 education of students enrolled in preparation for licensure as a
174 health care practitioner under chapter 456 or a veterinarian
175 under chapter 474 ~~allopathic physicians under chapter 458 or~~
176 ~~osteopathic physicians under chapter 459~~, which school is
177 governed by accreditation standards requiring notice and the
178 provision of due process procedures to students, is not liable
179 in any civil action for referring a student to the consultant
180 retained by the department or for disciplinary actions that
181 adversely affect the status of a student when the disciplinary
182 actions are instituted in reasonable reliance on the
183 recommendations, reports, or conclusions provided by such
184 consultant, if the school, in referring the student or taking
185 disciplinary action, adheres to the due process procedures
186 adopted by the applicable accreditation entities and if the
187 school committed no intentional fraud in carrying out the
188 provisions of this section.

189 (3)

190 (d) Whenever the department receives a legally sufficient
191 complaint alleging that a licensee or applicant is impaired as
192 described in paragraph (a) and no complaint against the licensee
193 or applicant other than impairment exists, the board from which
194 the license was granted or is sought, the board's designee, or
195 the department shall forward all information in its possession
196 regarding the impaired licensee or applicant to the consultant.

CS/HB 393

2011

197 For the purposes of this section, a suspension from hospital
198 staff privileges due to the impairment does not constitute a
199 complaint.

200 (7)

201 (b) In accordance with s. 284.385, the Department of
202 Financial Services shall defend any claim, suit, action, or
203 proceeding, including a claim, suit, action, or proceeding for
204 injunctive, affirmative, or declaratory relief, against the
205 consultant, the consultant's officers or employees, or those
206 acting at the direction of the consultant for the limited
207 purpose of an emergency intervention on behalf of a licensee or
208 student as described in subsection (2) when the consultant is
209 unable to perform such intervention which is brought as a result
210 of any act or omission by any of the consultant's officers and
211 employees and those acting under the direction of the consultant
212 for the limited purpose of an emergency intervention on behalf
213 of a licensee or student as described in subsection (2) when the
214 consultant is unable to perform such intervention when such act
215 or omission arises out of and in the scope of the consultant's
216 duties under its contract with the department.

217 (8) An impaired practitioner consultant is the official
218 custodian of records concerning any impaired licensee monitored
219 by that consultant. The consultant may not, except to the extent
220 necessary for carrying out the consultant's duties under this
221 section, disclose to the impaired licensee or his or her
222 designee any information that is disclosed to or obtained by the
223 consultant and is confidential under paragraph (5) (a). If a
224 disciplinary proceeding is pending, an impaired licensee may

CS/HB 393

2011

225 | obtain such information from the department under s.

226 | 456.073(10).

227 | Section 6. This act shall take effect July 1, 2011.