

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1019 Treatment Programs for Impaired Professionals

SPONSOR(S): Health & Human Services Quality Subcommittee; Renuart

TIED BILLS: **IDEN./SIM. BILLS:** SB 1286

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|---------|--|
| 1) Health & Human Services Quality Subcommittee | 14 Y, 0 N, As CS | Holt | Calamas |
| 2) Business & Consumer Affairs Subcommittee | | | |
| 3) Appropriations Committee | | | |
| 4) Health & Human Services Committee | | | |

SUMMARY ANALYSIS

Currently, health care practitioners who are impaired as a result of drug or alcohol, abuse, or because of mental or physical conditions which could affect their ability to practice with skill and safety, are eligible for services provided by the impaired practitioner treatment program (program). By entering and successfully completing the impaired practitioner treatment program, a practitioner may avoid formal disciplinary action. Currently, the Department of Health (DOH) contacts with the Professionals Resource Network (PRN) to provide program services to impaired health care practitioners. In Fiscal Year 2010-2011, there were a total of 2,867 participants in the program at a cost of \$1,166 per participant.

The bill expands the eligibility criteria for the program by permitting emergency medical technicians (EMTs), paramedics, and radiologic technologists to utilize treatment services offered by PRN. Currently, the DOH contract with PRN provides covered services to all legislatively-added health care professions to include radiology technologists. The bill prohibits DOH from being charged for the cost incurred from adding the EMTs and paramedics.

The bill establishes the custodian of treatment records, specifies that an entity providing consultant services employ a medical director who is a physician and allows a entity who treats only nurses to hire a nurse or nurse practitioner as the executive director, and specifies that the medical director or executive director does not have to possess a license as a substance abuse provider or a mental health provider if the entity hires appropriately trained staff to provide the treatment or evaluation of an impaired individual.

The bill will have an insignificant negative recurring impact to the Medical Quality Assurance Trust Fund within the Department of Health (See Fiscal Analysis).

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Healthcare Professions

Department of Health (DOH) regulates most health care professions, and each profession has an individual practice act that licensees are required to abide by. Ch. 456 provides general provisions for all health care practitioners within the Division of Medical Quality Assurance (MQA) 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).

This definition does not include emergency medical technicians, paramedics¹ or radiology technologists² and thus these professions are not governed by ch. 456, F.S, and are not within MQA.

The Impaired Practitioner Program – Department of Health

The impaired practitioner treatment program (program) was created to help rehabilitate health care practitioners regulated by the MQA, within the DOH.³ Health care practitioners (practitioners) who are impaired as a result of drugs or alcohol, abuse, or because of mental or physical conditions, which could affect their ability to practice with skill and safety are eligible for the program.⁴ By entering and successfully completing the impaired practitioner treatment program, a practitioner may avoid formal disciplinary action, if the only violation of the licensing statute under which the practitioner is regulated is the impairment.⁵ If the practitioner is unable to complete the program, DOH has authority to issue an emergency order suspending or restricting the license practitioner.⁶

DOH is authorized⁷ to contract with impaired practitioner consultants for services relating to intervention, evaluation, referral, and monitoring of impaired practitioners who have voluntarily agreed to treatment through a program.⁸ The cost of the actual treatment is the responsibility of the impaired person. Currently, there are two vendors under contract with DOH to support the program: the Intervention Project for Nurses (IPN)⁹ and the Professionals Resource Network (PRN)¹⁰ The PRN provides services to all eligible professions except nurses. The PRN program is a subsidiary of the Florida Medical Association.¹¹

¹ EMT and paramedics are governed by part III of ch. 401, F.S.

² Radiation technologists are governed by part IV of ch. 468, F.S

³ Section 456.076, (1), F.S.

⁴ Section 456.076 (3)(a)

⁵ Section 456.076(3)(a), F.S.

⁶ Section 456.074, F.S.

⁷ Section 456.076, F.S.

⁸ 64B31-10.10.001 and 64B31-10.002, F.A.C.

⁹ Department of Health, Bill Analysis, Economic Statement and Fiscal Note on HB 1019, dated January 23, 2012.

¹⁰ Department of Health, Bill Analysis, Economic Statement and Fiscal Note on HB 1019, dated January 23, 2012.

¹¹ Florida Medical Association, available at: http://www.flmedical.org/Layout_1Column.aspx?pageid=2752 (last viewed January 27, 2012).

Currently, the DOH licenses over 40 health care professions¹² and has a contract with PRN to provide services to the following professions:¹³

| | |
|---------------------------|--------------------------------|
| Medical Doctors | Chiropractic Physicians |
| Physician Assistants | Clinical Social Workers |
| Osteopathic Physicians | Marriage and Family Therapists |
| Pharmacists | Mental Health Counselors |
| Podiatric Physicians | Optometrists |
| Psychologists | Nursing Home Administrators |
| Dentists | Medical Physicists |
| Opticians | Dieticians |
| Occupational Therapists | Nutritionists |
| Physical Therapists | Respiratory Therapists |
| Electrologists | Midwives |
| Acupuncturists | Speech Language Pathologists |
| Audiologists | Clinical Laboratory Personnel |
| Massage Therapists | Athletic Trainers |
| Orthotists | Orthotists |
| Prosthetists | Hearing Aid Specialists |
| Radiologic Technologists, | Pharmacy Technicians |
| Anesthesia Assistants | |

Moreover, the DOH contract with PRN states that the vendor agrees to include all legislatively added professions to the list of practitioners served and recognizes any contract entered into by the vendor with a school for enrolled students in a health practitioner profession is within the scope of the vendor's duties under the contract with the DOH.¹⁴ The budget outlined in the contract is \$1.8M annually.¹⁵

Referrals to the program must be based upon at least one of the following criteria:¹⁶

- An identified informant has observed specific behavior of a licensee or has knowledge of other evidence suggesting impairment of the licensee.
- The informant identifies a witness who knows the licensee and has observed the licensee's behavior and that witness corroborates the information provided.
- Admission of impairment by the licensee and that corroborates the information provided.

Once in the program, the licensee is monitored by an impairment consultant. The consultant is required to monitor the practitioner's participation and ensure compliance.¹⁷ Consultants do not provide medical treatment, nor do they have the authority to render decisions relating to licensure of a particular practitioner. However, the consultant is required to make recommendations to DOH regarding a practitioner patient's ability to practice.¹⁸

In Fiscal Year 2010-2011, there were approximately 2,867 practitioners or students enrolled in the program.¹⁹

¹² Department of Health, Medical Quality Assurance, Annual Report, July 2010-June 2011, *available at* <http://www.doh.state.fl.us/Mqa/reports.htm> (last visited January 26, 2012)

¹³ Department of Health Contract with PRN, signed July 01, 2010, on file with Health & Human Services Quality Subcommittee staff.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 64B31-10.002, F.A.C.

¹⁷ Department of Health Contract with PRN, signed July 01, 2010, on file with Health & Human Services Quality Subcommittee staff.

¹⁸ Section 456.076(5)(a), F.S.

¹⁹ Department of Health, Bill Analysis, Economic Statement and Fiscal Note on HB 1019, dated January 23, 2012.

Veterinary Medicine

Currently, the Board of Veterinary Medicine and the Board of Pilot Commissioners, within the Department of Business and Professional Regulation (DBPR), provide impaired practitioner treatment programs for licensees.

Section 474.221, F.S., provides that licensed veterinarians shall be governed by the treatment of impaired practitioner provisions as if they were under the jurisdiction of the Division of Medical Quality Assurance at DOH.

Currently, DBPR has a contract with PRN to provide consultant services for impaired veterinarians. In 2011, the DBPR contract with PRN was \$48,132 annually. In Fiscal Year 2009-2010, an average of 29 licensees participated in the program.²⁰

Records

DOH rule requires that consultants within impaired practitioner programs serve as the official records custodians of the licensees they monitor.²¹ An approved treatment provider must provide information regarding the impairment of a licensee and the licensee's participation in a treatment program to a consultant on request. The information obtained by the consultant is confidential and exempt from public records requirements.²² If a treatment provider fails to provide such information to the consultant, the treatment provider may no longer provide services under the program.²³ Recently, there was litigation in the Sixth Circuit, in which a medical doctor sued PRN for the production of the investigative file relation to the practitioner's participation in a treatment program.²⁴ The court held that because there was not a disciplinary proceeding by the board against the practitioner, the release of information was prohibited and the claim was dismissed with prejudice in October, 2010.²⁵

Effect of Proposed Changes

The bill expands the eligibility of the program allowing EMTs, paramedics, radiologic technologists to utilize treatment services offered by PRN. Currently, the DOH contract with PRN provides covered services to all legislatively-added health care professions and also includes radiology technologists. The bill prohibits DOH from being charged for the cost incurred from adding the EMTs and paramedics. However, the contract with PRN expires June 30, 2013, and the contract may be renegotiated at a higher rate regardless of this provision.

The bill establishes the custodian of treatment records, specifies that an entity providing consultant services employ a medical director who is a physician and allows a entity who treats only nurses to hire a nurse or nurse practitioner as the executive director, and specifies that the medical director or executive director does not have to possess a license as a substance abuse provider or a mental health provider if the entity hires appropriately trained staff to provide the treatment or evaluation of an impaired individual.

The bill clarifies that impaired practitioner consultants shall serve as record custodians for any licensee they monitor, and any records they maintain shall not be shared with the impaired licensee or a designee unless a disciplinary proceeding is pending.

B. SECTION DIRECTORY:

Section 1. Creating s. 401.466, F.S., relating to the treatment program for impaired emergency medical technicians and paramedics.

²⁰ DBPR Office of Legislative Affairs 2011 Legislative Analysis Form SB 1742 (2011).

²¹ Rules 64B31-10.10.004, F.A.C.

²² Section 456.076(5)(a), F.S.

²³ *Id*

²⁴ *Doe, M.D., v. Rivernbark*, case no. 10-6495-CI-21 (Fla. 6th Cir. Ct.) (2010)

²⁵ *Id.*

- Section 2.** Amends s. 456.076, F.S., relating to treatment programs for impaired practitioners
Section 3. Creates s. 468.315, F.S., relating to the treatment program for impaired radiological personnel.
Section 4: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments.
2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None identified.
2. Expenditures:
None identified.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Approved treatment providers may experience an increase in demand for services with the additional eligibility groups who may receive in services offered by a program. Based on impairment contracts for licensed practitioners, an impaired person may be required to enter into a contract with a program for up to 5-years.

While in an impairment program a participant is required to pay for all treatment services such as initial evaluations, urinalysis testing and ongoing psychotherapy. Initial evaluations can range from \$300-\$500 and up to \$1000 if chronic pain evaluation is required. The average cost is \$42 per urinalysis, the number per month varies depending upon the recovery process. The cost of four group therapy meetings per month can range from \$50-\$150 per month. If the impairment is found to be physical, then the cost may be nominal. All participants are required to have a primary care physician, but no visits are required. The PRN program offers a loan forgiveness option to eligible participants.

All treatment services are paid directly to the provider or third party administrator and not through the PRN program.

D. FISCAL COMMENTS:

The costs of the impaired practitioner program are twofold: The cost incurred by the impaired practitioner (person receiving treatment services); and the cost incurred by DOH to implement the program (monitoring and enforcement). The bill increases the number of persons eligible to seek treatment offered by the program by adding EMTs and paramedics; however, the bill prohibits the associated costs to be charged to the department. The bill also adds radiologic technologist as an eligible group; however, they are currently included in the current contract with PRN. For this reason, it is expected that there will be no fiscal impact to DOH. However, the contract with PRN expires June 30, 2013, and the contract may be renegotiated at a higher rate regardless of this provision.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provision of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Health & Human Services Quality Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all:

- Removes the expansion provisions to provide program services to all professions regulated by DBPR;
- Removes the expansion to provide program services to all students enrolled in a school that leads to licensure as a health care practitioner;
- Removes the expansion of the types of court cases DFS must defend; and
- Provides that an entity that provides treatment services must employ a medical director who is a physician, but an entity that provides treatment services only to nurses may employ an executive director who is a nurse or a nurse practitioner.

This analysis is drafted to the committee substitute.