

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 349 Treatment Programs for Impaired Professionals

SPONSOR(S): Health Quality Subcommittee; Renuart

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--------------------------------------|---------------------|---------|--|
| 1) Health Quality Subcommittee | 13 Y, 0 N, As CS | Holt | O'Callaghan |
| 2) Health & Human Services Committee | 14 Y, 0 N | Holt | Calamas |

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 program, a practitioner may avoid formal disciplinary action. Currently, the Department of Health (DOH) contracts with the Professionals Resource Network (PRN) and the Impairment Project for Nurses (IPN) to provide program services to impaired health care practitioners.

The bill statutorily authorizes radiological personnel to utilize the services provided by a program under the jurisdiction of the Division of Medical Quality Assurance (MQA) within DOH. According to DOH, any person who holds a license issued by DOH is allowed to receive impairment services provided by a consultant under the current contract terms with PRN and IPN. According to DOH, authorizing radiological personnel to participate in the program will have no effect.

The bill expands the entities that a consultant may contract with to include programs for students enrolled in a school for licensure as a health care practitioner regulated under ch. 456, F.S., or a veterinarian under ch. 474, F.S. Section 456.076(2), F.S., provides that DOH is not responsible under any circumstances to pay for impairment services provided to students.

The bill specifies that an entity providing consultant services must employ either a medical director who is a physician or a nurse or nurse practitioner as the executive director. In addition, the bill specifies that the medical director or executive director does not have to possess a Florida 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.

The bill amends statutory construction to improve readability and conforms cross-references.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Medical Quality Assurance

The Department of Health (DOH) is created under the authority of s. 20.43, F.S., which outlines the composition of the agency structure to include the Division of Medical Quality Assurance (MQA). MQA is statutorily responsible for the following boards and professions established within the division:

- The Board of Acupuncture, created under chapter 457.
- The Board of Medicine, created under chapter 458.
- The Board of Osteopathic Medicine, created under chapter 459.
- The Board of Chiropractic Medicine, created under chapter 460.
- The Board of Podiatric Medicine, created under chapter 461.
- Naturopathy, as provided under chapter 462.
- The Board of Optometry, created under chapter 463.
- The Board of Nursing, created under part I of chapter 464.
- Nursing assistants, as provided under part II of chapter 464.
- The Board of Pharmacy, created under chapter 465.
- The Board of Dentistry, created under chapter 466.
- Midwifery, as provided under chapter 467.
- The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.
- The Board of Nursing Home Administrators, created under part II of chapter 468.
- The Board of Occupational Therapy, created under part III of chapter 468.
- Respiratory therapy, as provided under part V of chapter 468.
- Dietetics and nutrition practice, as provided under part X of chapter 468.
- The Board of Athletic Training, created under part XIII of chapter 468.
- The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.
- Electrolysis, as provided under chapter 478.
- The Board of Massage Therapy, created under chapter 480.
- The Board of Clinical Laboratory Personnel, created under part III of chapter 483.
- Medical physicists, as provided under part IV of chapter 483.
- The Board of Opticianry, created under part I of chapter 484.
- The Board of Hearing Aid Specialists, created under part II of chapter 484.
- The Board of Physical Therapy Practice, created under chapter 486.
- The Board of Psychology, created under chapter 490.
- School psychologists, as provided under chapter 490.
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.
- Emergency medical technicians and paramedics, as provided under part III of chapter 401.

DOH regulates most health care professions.¹ Each profession is governed by an individual practice act and by ch. 456, F.S., which is considered the core licensure statute for all health care practitioners within MQA.

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

¹ The Department of Business and Professional Regulation regulates veterinarians pursuant to ch. 474, F.S.

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).

The definition of health care practitioner does not include emergency medical technicians (EMTs), paramedics² or radiology technologists.³ However, s. 456.001, F.S., defines the term “profession” to mean any activity, occupation, profession, or vocation regulated by the DOH within MQA, and EMTs and paramedics are listed as a “profession” regulated by MQA under s. 20.43, F.S. Therefore, EMTs and paramedics are a profession governed by ch. 456, F.S. On the other hand, radiology technologists are not listed as a profession within MQA pursuant to s. 20.43, F.S., and are not governed by ch. 456, F.S.

Impaired Practitioner Treatment Program

The impaired practitioner treatment program (program) was created to help rehabilitate health care practitioners regulated by the MQA, within DOH.⁴ Health care practitioners (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 the program.⁵ For professions that do not have programs established within their individual practice act, DOH is required by rule, to designate an approved program.

Section 456.076, F.S., authorizes DOH 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.⁶ 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)⁷ and the Professionals Resource Network (PRN).⁸ The PRN provides services to all eligible professions except nurses. The PRN program is affiliated with the Florida Medical Association.

By entering and successfully completing the 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.⁹ If the practitioner is unable to complete the program, DOH has authority to issue an emergency order suspending or restricting the license of the practitioner.¹⁰

Currently, DOH licenses over 40 health care professions¹¹ and has a contract with PRN to provide services to the following professions:¹²

| | |
|------------------------|--------------------------------|
| Medical Doctors | Chiropractic Physicians |
| Physician Assistants | Clinical Social Workers |
| Osteopathic Physicians | Marriage and Family Therapists |
| Pharmacists | Mental Health Counselors |
| Podiatric Physicians | Optometrists |

² EMT and paramedics are governed by part III of ch. 401, F.S.

³ Radiation technologists are governed by part IV of ch. 468, F.S.

⁴ Section 456.076, (1), F.S.

⁵ Section 456.076 (3)(a), F.S.

⁶ Rules 64B31-10.10.001 and 64B31-10.002, F.A.C.

⁷ Department of Health, Bill Analysis, Economic Statement and Fiscal Note on HB 349, dated January 22, 2013.

⁸ *Id.*

⁹ Section 456.076(3)(a), F.S.

¹⁰ Section 456.074, F.S.

¹¹ 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 March 10, 2013).

¹² Department of Health Contract with PRN, signed July 01, 2010, on file with Health & Human Services Quality Subcommittee staff.

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|--------------------------|-------------------------------|
| 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 | |

Section 456.076(2), F.S., specifically states that DOH is not responsible under any circumstances for paying the costs of care provided by approved treatment providers, and DOH is not responsible for paying the costs of consultants' services provided for students. Moreover, a school that is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant or for any disciplinary action that adversely affects the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provide by a consultant.

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 DOH.¹³

Referrals to the program must be based upon at least one of the following criteria:¹⁴

- 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, which 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.¹⁵ 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.¹⁶

In Fiscal Year 2012-2013, there were approximately 1,088 practitioners enrolled in the PRN program.¹⁷ In the month of January, IPN had 1,648 individuals licensed under ch. 464, F.S., the Practice of Nursing, enrolled in the program.¹⁸

Currently, DOH has a 3-year contract with PRN to provide consultant services for impaired practitioners for \$5,415,615.00 for the contract term of July 1, 2010 to June 20, 2013. The current contract with IPN to provide consultant services to impaired nurses is for \$4,670,097.00 for the contract term of July 1, 2012 to June 30, 2015. The funds to support these contracts come from the Medical Quality Assurance Trust Fund which is supported by the collection of regulatory fees.

Veterinary Medicine – Department of Business and Professional Regulation

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

¹⁴ 64B31-10.002, F.A.C.

¹⁵ *Id.*

¹⁶ Section 456.076(5)(a), F.S.

¹⁷ Email correspondence with MQA staff dated March 1, 2013, on file with the Health Quality Subcommittee staff.

¹⁸ *Id.*

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 MQA at DOH.

Currently, DBPR has a contract with PRN to provide consultant services for impaired veterinarians. In 2012, the DBPR contract with PRN was \$48,132 annually. In Fiscal Year 2011-2012, an average of 25 licensees participated in the program.¹⁹ The contract is in the process of being amended to reflect an annual payment of \$42,121.20.²⁰

Records

A DOH rule requires that consultants utilized for these 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 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 relating 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 statutorily authorizes radiological personnel to utilize the services provided by a program under the jurisdiction of MQA. According to DOH, any person who holds a license issued by DOH is allowed to receive impairment services provided by a consultant under the current contract terms with PRN and IPN.²⁶ Authorizing radiological personnel regulated under part IV of ch. 468, F.S., to participate in the program will have no effect on MQA.²⁷

The bill expands the entities that a consultant may contract with to include programs for students enrolled in a school for licensure as a health care practitioner regulated under ch. 456, F.S., or a veterinarian under ch. 474, F.S. Current law, states that DOH is not responsible under any circumstances for paying the costs of care provided by an approved treatment provider or a consultant for services provided to students.²⁸

The bill specifies that an entity providing consultant services must employ either a medical director who is a physician or a nurse or nurse practitioner as the executive director. In addition, the bill specifies that the medical director or executive director does not have to possess a Florida 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.

¹⁹ Email correspondence with DBPR staff dated February 18, 2013, on file with the Health Quality Subcommittee staff.

²⁰ *Id.*

²¹ Rule 64B31-10.10.004, F.A.C.

²² Section 456.076(5)(a), F.S.

²³ *Id.*

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

²⁵ *Id.*

²⁶ Per telephone conversation with DOH staff.

²⁷ Department of Health Bill Analysis for HB 349 dated January 22, 2013, on file with Health Quality Subcommittee staff.

²⁸ Section 456.076(2), F.S.

The bill amends statutory construction to improve readability and conforms cross-references.

B. SECTION DIRECTORY:

Section 1. Amends s. 456.076, F.S., relating to treatment programs for impaired practitioners.

Section 2. Amends s. 458.331, F.S., relating to grounds for disciplinary action and action by the board and department.

Section 3. Amends s. 459.015, F.S., relating to grounds for disciplinary action and action by the board and department.

Section 4. Creates s. 468.315, F.S., relating to treatment program for impaired radiological personnel.

Section 5. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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 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. 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.

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:

There does not appear to be any statutory provision that prohibits an impaired practitioner consultant from directly contracting with a school to perform treatment services. It is unclear what the effect is of the bill expressly stating in statute that consultants may contract with a school to provide treatment services to enrolled students.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Health Quality Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Amends the catchline to s. 456.076, F.S., to capture health professionals and students.
- Deletes the requirement that DOH forward an applicant's information to the consultant when a legally sufficient complaint is received.
- Restructures Section 1 of the bill to improve readability and remove unnecessary words.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.