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 Committee on Rules

BILL: SB 604

INTRODUCER: Senator Bean

SUBJECT: Practitioners

DATE: March 29, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Favorable**
2.	Munroe	Cibula	JU	**Favorable**
3.	McElheney	Phelps	RC	**Pre-meeting**
4.				
5.				
6.				

I. Summary:

SB 604 reorganizes the provisions relating to fees for organizations licensed or permitted and persons certified under part III of ch. 401, F.S., relating to medical transportation services. The bill directs fees collected for certification of emergency medical technicians (EMTs) and paramedics to be deposited into the Medical Quality Assurance Trust Fund, rather than the Emergency Medical Services Trust Fund.

The bill clarifies that the Department of Financial Services (DFS) must defend any claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief against an impaired practitioner consultant involving emergency interventions on behalf of impaired practitioners or students.

The bill expands access to the prescription drug monitoring program database to an impaired practitioner consultant upon consent of the impaired practitioner for the purpose of reviewing the impaired practitioner’s controlled substance prescription history.

This bill substantially amends the following sections of the Florida Statutes: 401.34, 456.076, 893.055, and 893.0551.

II. Present Situation:

Emergency Medical Services

Part III of ch. 401, F.S., pertains to medical transportation services. Among other things, this part provides for the certification of a person to act as an EMT, paramedic, or 911 public safety

telecommunicator; licensing of an organization to provide basic life support (BLS) service, advanced life support (ALS) service, or air ambulance service; and permitting of vehicles to be operated as a basic support or advance support transport vehicle or an ALS nontransport vehicle providing BLS or ALS. Organizationally, this program is under the Division of Emergency Preparedness and Community Support (EPCS) within the Department of Health (DOH).

Fees for certification, licensing, and permitting must be deposited into the Emergency Medical Services Trust Fund and applied solely for salaries and expenses of the department incurred in implementing and enforcing part III of ch. 401, F.S.[1]

Currently, the fees are used to:

- Process EMT and paramedic certification, recertification and testing;
- Fund 66 percent of the state EMS medical director's contracted salary; and
- Fund a portion of the salaries of 10 EMS staff members to:
  - License, permit, and inspect 274 ALS, BLS, and air medical service providers having 4,335 permitted vehicles;
  - Approve and inspect 71 EMT and paramedic training programs;
  - Oversee 32 EMT and paramedic recertification training programs; and
  - Provide administrative support.

The 10 EMS staff, through additional funding sources, also investigate complaints and discipline EMS providers, training programs, and 911 public safety telecommunicators. According to the DOH, funding provided by county courts per s. 318.21(2)(b), F.S., which is intended to fund 100 percent of the 10 EMS positions and the state EMS medical director, is inadequate to support these positions. Revenue from licensing fees for the 2-year, 2010-2012 licensure cycle totaled $2,518,750 while expenses were approximately $3,860,354.[2]

The EPCS and the Division of Medical Quality Assurance (MQA) have a Memorandum of Understanding in effect which authorizes the MQA to charge EPCS for services relating to the licensure of EMTs and paramedics. The charges derived from the MQA regulatory functions exceed the amount of funding EPCS receives from licensing revenues of EMTs and paramedics. The DEPCS reimburses MQA with available funding.[3]

Medical Quality Assurance Trust Fund

Funds credited to the Medical Quality Assurance Trust Fund consist of fees and fines related to the licensing of health care professionals. Funds must be used for the purpose of providing administrative support for the regulation of health care professionals and for other such purposes as may be appropriate pursuant to legislative appropriation.[4]

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[1] See ss. 401.34 and 401.465(3), F.S.
[2] Department of Health Bill Analysis for SB 604 (March 1, 2013) (on file with the Senate Committee on Judiciary).
[3] *Ibid.*
[4] Section 20.435 (4), F.S.

Impaired Practitioner Treatment Program

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; use of alcohol, drugs, narcotics, chemicals or any other type of material; or as the result of any mental or physical condition. The impaired practitioner 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.[5] 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 practitioner treatment program consultant.[6]

Section 456.076, F.S., requires the DOH to retain one or more impaired practitioner consultants to assist in determining whether a practitioner is impaired and to monitor the treatment of the impaired practitioner. An impaired practitioner consultant may also contract for services to be provided by a school for students enrolled in schools for licensure as allopathic physicians, physicians assistants, osteopathic physicians, nurses, or pharmacists who are alleged to be impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition.

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 who is so licensed. Consultants must refer impaired practitioners to department-approved treatment programs and providers.[7] 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 for impaired practitioner consultant services.

The relationship of PRN and IPN to the practitioner involves monitoring only and there is no doctor-patient relationship, therefore PRN and IPN consultants have no authority to access the Prescription Drug Monitoring Program database.

An impaired practitioner consultant, the consultant's officers and employees, and those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of

[5] Section 456.076(3)(a), F.S.
[6] *Id.*
[7] *See* s. 456.076, F.S.

a licensee or student when the consultant is unable to perform the intervention are considered agents of the DOH for purposes of s. 768.28, F.S., (related to sovereign immunity) while acting within the scope of the consultant's duties under the contract with the DOH.[8] The DFS currently defends any claim, suit, action or proceeding against the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student when the consultant is unable to perform the intervention if the act or omission arises out of and is in the scope of the consultant's contractual duties.[9]

Prescription Drug Monitoring Program

Chapter 2009-197, L.O.F, established the Prescription Drug Monitoring Program (PDMP) in s. 893.005, F.S. The PDMP is a comprehensive electronic system to monitor the prescribing and dispensing of certain controlled substances. Dispensers of certain controlled substances must report specified information to the PDMP, including the patient's name to whom the controlled substance is dispensed and other dispensing information.

Direct access to the PDMP is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists. Indirect access to the PDMP is provided to: (1) the DOH or its relevant health care regulatory boards; (2) the attorney general for Medicaid fraud cases; (3) a law enforcement agency; and (4) a patient or the legal guardian or designated health care surrogate of an incapacitated patient.

Section 893.0551, F.S., enacted at the same time, provides a public records exemption for personal information of a patient and certain information concerning health care professionals outlined in the statute. This section sets forth enumerated exceptions for disclosure of this information after the DOH ensures the legitimacy of the person's request for the information.

III. Effect of Proposed Changes:

Section 1 amends s. 401.34, F.S., reorganizing the provisions relating to license fees for EMTs and paramedics. All license fees for EMTs and paramedics that are currently deposited into the EMS trust fund will instead be deposited into the MQA trust fund.

Section 2 amends s. 456.076, F.S., providing that the DFS defend any claim suit, action, or proceeding, *including injunctive, affirmative, or declaratory relief*, against an impaired practitioner consultant involving emergency interventions on behalf of impaired practitioners when the consultant is unable to perform the intervention if the act or omission arises out of and is in the scope of the consultant's contractual duties. Thus, if an action for injective, affirmative, or declaratory relief is filed against an impaired practitioner consultant, the DFS has clear statutory authority to defend the action.

Sections 3 and 4 amends s. 893.055 and s. 893.0551, F.S., respectively, to define "impaired practitioner consultant" and expand access to the PDMP to impaired practitioner consultants upon consent of the impaired practitioner for the purpose of reviewing the impaired

[8] Section 456.076(7)(a), F.S.
[9] Section 456.076(7)(b), F.S.

practitioner's controlled substance prescription history. The bill authorizes impaired practitioner consultants to have direct access to the PDMP for the purpose of reviewing the controlled substance prescription history of an impaired practitioner who has agreed to be evaluated or monitored through the PDMP by the consultant.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because this bill provides for release of information that is already confidential and exempt under s. 893.0551, F.S., to an impaired practitioner consultant, the bill is not subject to the requirements of s. 24, Article I of the State Constitution and ch. 119, F.S., related to creating or expanding a public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill deposits fees into the MQA trust fund which currently are deposited into the EMS trust fund. The bill does not specify what the funds will be used for or otherwise revise specific duties and responsibilities of the EMS program or the MQA. Revenue from licensing fees for 2010-2011 and 2011-2012 totaled $2,518,750. Expenditures are currently $3,860,354 (average from 2006-2012) for a 2-year period. Revenue and expenditures vary dramatically during a recertification year so the revenue and expenditure amounts reflect a 2-year period to show appropriate numbers.[10]

B. Private Sector Impact:

If an action for injective, affirmative, or declaratory relief is filed against an impaired practitioner consultant, the DFS has clear statutory authority to defend the action.

Impaired practitioners in the impaired practitioner treatment program will be able to authorize the consultant to use the PDMP as another tool to monitor the practitioner's progress in the treatment program.

[10] *Supra*, fn 2

C. Government Sector Impact:

The licensure fees transferred to MQA under the bill will not be available to fund the salaries of the EMS positions and other expenses currently being incurred.

The DOH indicates that its rule pertaining to access the PDMP will need to be amended to address access to the database by impaired practitioner consultants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the impaired practitioner consultant to access the PDMP for an impaired practitioner; however, it does not specifically authorize access for a student who is participating in the impaired practitioner treatment program. Given the sensitive nature of access to the PDMP, specifically including students participating in the impaired practitioner program might be appropriate.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.