

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

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BILL: CS/SB 1052

INTRODUCER: Health Policy Committee and Senator Brandes

SUBJECT: Florida Right to Try Act

DATE: April 1, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	<b>Fav/CS</b>
2.	Brown	Pigott	AHS	<b>Pre-meeting</b>
3.			FP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1052 creates the “Florida Right to Try Act,” which provides a framework in which an eligible patient with a terminal illness may access investigational drugs, biological products, and devices from the manufacturer after phase-one clinical trials.

The bill prohibits actions against a physician’s license based solely on his or her recommendation regarding access to or treatment with an investigational drug, product, or device under the bill. Action also may not be taken against a health care institution’s state license or its Medicare certification based on its participation in the treatment in or with investigational drugs, biological products, or devices under the bill.

The bill establishes a clearinghouse for compassionate and palliative care plans for state residents. The Agency for Health Care Administration (AHCA) is directed to establish and maintain the site, either independently or through a national or private clearinghouse. The AHCA is also directed to disseminate information about the clearinghouse once available.

Lastly, the bill recognizes a Physician Order for Life Sustaining Treatment (POLST) in law and directs the Department of Health to develop the form by rule.

The bill has a negative fiscal impact on the AHCA of \$350,000 general revenue for the 2015-2016 fiscal year and a recurring negative impact of \$140,000 general revenue.

The bill takes effect July 1, 2015.

## II. Present Situation:

The U.S. Food and Drug Administration (FDA) has wide regulatory authority over what drugs are marketed and sold within the United States. Prescription drugs and over-the-counter drugs are regulated by the FDA's Center for Drug Evaluation and Research.<sup>1</sup> If a drug company wants approval to sell a new prescription drug in the United States, it must be tested in several steps. The first step is testing in the laboratory and on animals.<sup>2</sup> Next, the drug is tested for safety and efficacy when used to treat or diagnose a disease in humans.<sup>3</sup>

Clinical trials are part of clinical research which look at new ways to prevent, detect, or treat disease through new combinations of drugs, new surgical procedures, or devices, or new ways to use existing treatments.<sup>4</sup> Clinical trials are part of clinical research which is conducted as part of protocol. A protocol describes:

- Who is eligible to participate in the trial;
- Details about tests, procedures, medications, and dosages; and
- The length of the study and what information will be gathered.<sup>5</sup>

Clinical trials are typically run by a principal investigator, usually a medical doctor, and are approved and monitored by an Institutional Review Board (IRB), an independent committee of experts usually consisting of physicians and non-physicians in hospitals and research institutions.<sup>6</sup> The IRB's role is to ensure that the safety and rights of the participants are protected and to periodically review the research.<sup>7</sup>

Informed consent is a critical component of the clinical research and trial process as it provides participants with important information about the trial before they decide to participate. The informed consent form includes information on the expected benefits and risks of participation and that as a volunteer, the participant may withdraw at any time. Withdrawal of too many participants, however, may make the research team ineligible to continue the study.<sup>8</sup>

When testing is complete, the company sends an application to the FDA called a New Drug Application (NDA). If a drug is made out of biologic materials, a company submits a different

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<sup>1</sup> U.S. Food and Drug Administration, *What is the approval process for a new prescription drug?* (last updated August 12, 2013) <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm192696.htm> (last visited Mar. 14, 2015).

<sup>2</sup> U.S. Food and Drug Administration, *What is the approval process for a new prescription drug?* (last updated April 11, 2014) <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194949.htm> (last visited Mar. 14, 2015).

<sup>3</sup> Id.

<sup>4</sup> U.S. Department of Health and Human Services, National Institutes of Health, *NIH Clinical Research Trials and You*, (last reviewed February 5, 2015) <http://www.nih.gov/health/clinicaltrials/basics.htm> (last visited Mar. 14, 2015).

<sup>5</sup> Id.

<sup>6</sup> U.S. Food and Drug Administration, *The FDA's Drug Review Process: Ensuring Drugs are Safe and Effective*, (last updated November 6, 2014) <http://www.fda.gov/drugs/resourcesforyou/consumers/ucm143534.htm> (last viewed Mar. 14, 2015).

<sup>7</sup> U.S. Department of Health and Human Services, National Institutes of Health, *NIH Clinical Research Trials and You*, (last reviewed February 5, 2014) <http://www.nih.gov/health/clinicaltrials/basics.htm> (last visited Mar. 15, 2015).

<sup>8</sup> Id.

application, a Biologics License Application (BLA). Regardless of the type of application used, both require similar elements:

- The drug's test results;
- Manufacturing information to demonstrate the company can properly manufacture the drug; and
- The company's proposed label for the drug which must provide necessary information about the drug, including the conditions for which it has shown to be useful.<sup>9</sup>

There are different types of clinical trials, and the National Institutes of Health (NIH) classifies them into these categories:

- Natural history studies, which provide valuable information about how disease and health progress;
- Prevention trials, which look for better ways to prevent disease in people who have never had the disease or to prevent the disease from returning;
- Screening trials, which test the best way to detect certain diseases or health conditions;
- Diagnostic trials, which determine better tests or procedures for diagnosing a particular disease or condition;
- Treatment trials, which test new treatments, new combinations of drugs, or new approaches to surgery or radiation therapy; and
- Quality of Life trials, which explore and measure ways to improve the comfort and quality of life of people with chronic illness.

All clinical trials are conducted in phases. Prior to receiving the FDA's approval for human testing, the organization must show the FDA results of pre-clinical testing in laboratory animals and their proposal for human testing. The FDA must decide if it is reasonably safe for the organization to begin testing the drug in humans.<sup>10</sup> This approval process is based on an investigational new drug (IND) application. Most drugs that undergo pre-clinical (animal) testing never make it to human testing and review by the FDA.<sup>11</sup>

When an IND application is approved, an IRB established, the protocol approved, and the consent received from study participants, the organization can begin the process:

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<sup>9</sup> U.S. Food and Drug Administration, *What is the approval process for a new prescription drug?* (last updated April 11, 2014) <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm194949.htm> (last visited Mar. 14, 2015).

<sup>10</sup> U.S. Food and Drug Administration, *The FDA's Drug Review Process: Ensuring Drugs are Safe and Effective*, (last updated November 6, 2014) <http://www.fda.gov/drugs/resourcesforyou/consumers/ucm143534.htm> (last viewed Mar. 14, 2015).

<sup>11</sup> *Id.*

Clinical Trial Phases <sup>12</sup>			
Phase	Activities	Approx. Time <sup>13</sup>	# of Participants
One	Test drug with healthy human volunteers. Determine drug's most frequent side effects. Determine how the drug is metabolized and excreted. Determine the correct dosing. Move to Phase Two if drug does not show unacceptable toxicity.	1 year	20-80
Two	Test drug with small number of targeted patients. Test drug is compared with those receiving a placebo, or a different drug (if a controlled trial). Evaluate safety and short-term side effects. Decide scope of Phase Three with FDA; drug must have shown effectiveness to move to Phase Three.	2 years	100-300
Three	Implement large scale study for effectiveness and safety. Study different populations and different dosages and using the drug in combination with other drugs. Review logistics of creating a large supply. Once complete, can complete New Drug Application (NDA).	3 years	300-3,000
Four	Post-market requirement and commitment studies must be agreed to by the sponsoring organization and are conducted after a product has been approved for sale. Information used to gather additional data about product's safety, efficacy, or optimal use.	n/a	n/a

When an NDA is received by the FDA, the FDA has 60 days to decide whether to file so it can be reviewed.<sup>14</sup> The FDA can refuse to file an application if it is incomplete. If the FDA determines that the drug's benefits outweighs its risks and the drug can be manufactured in a manner that ensures a quality product, the drug can be approved for marketing in the United States.<sup>15</sup> The company receiving approval must continue, under Phase Four, to monitor short-term and long-term results of the drug and submit those findings to the FDA. If the company wants the drug approved for another purpose, it must also receive FDA approval.<sup>16</sup>

<sup>12</sup> Id.

<sup>13</sup> FierceBiotech, *FDA Approval Process* [http://www.fiercebiotech.com/topics/fda\\_approval\\_process.asp](http://www.fiercebiotech.com/topics/fda_approval_process.asp) (last visited Mar. 14, 2015).

<sup>14</sup> U.S. Food and Drug Administration, *The FDA's Drug Review Process: Ensuring Drugs are Safe and Effective*, (updated November 6, 2014) <http://www.fda.gov/drugs/resourcesforyou/consumers/ucm143534.htm> (last viewed Mar. 14, 2015).

<sup>15</sup> Id.

<sup>16</sup> FierceBiotech, *FDA Approval Process*, [http://www.fiercebiotech.com/topics/fda\\_approval\\_process.asp](http://www.fiercebiotech.com/topics/fda_approval_process.asp) (last visited Mar. 14, 2015).

Accelerated approval is granted by the FDA to some new drugs for serious and life-threatening illnesses that lack other treatment options.<sup>17</sup> This option allows drugs to be approved without measures of effectiveness that are usually required ahead of time.

The FDA established regulations allowing expanded access to, or “compassionate use” of, experimental drugs, biological products, or devices in 1987, and individual patient “emergency use” expanded access in 1997. These regulations provide access to:

- Individuals on a case-by-case basis, known as “individual patient access”;<sup>18</sup>
- Intermediate-sized groups of patients with similar treatment needs who otherwise do not qualify to participate in a clinical trial;<sup>19</sup> and
- Large groups of patients who do not have other treatment options available.<sup>20</sup>

### Compassionate Use

“Expanded access” or “compassionate use” refers to the use of an investigational medical product outside of a clinical trial, meaning that the medical product has not yet been approved by the FDA.<sup>21</sup> The FDA prefers that patients seek out the use of an investigational medical product through clinical trials.<sup>22</sup> Clinical trials help generate the necessary data to support approval or disapproval of medical products, investigational drugs, and devices. However, under the federal Food, Drug, and Cosmetic Act, an individual may seek individual patient access to investigational products if the following conditions are met:

- The individual’s physician determines that there is no comparable or satisfactory alternative therapy available to diagnose, monitor, or treat the person’s disease or condition, and the probable risk to the person from the investigational product is not greater than the risk from the disease or condition;
- The FDA determines that there is sufficient evidence of the safety and effectiveness of the investigational product to support its use in the particular circumstance;
- The FDA determines that providing the investigational product will not interfere with the initiation, conduct, or completion of clinical investigations to support marketing approval;
- The sponsor or the clinical investigator submits a clinical protocol that is consistent with FDA’s statute and applicable regulations for INDs or investigational device exemption applications, describing the use of the investigational product.<sup>23</sup>

Additionally, in order for the expanded access or compassionate use request to move forward:

- Both the patient and his or her licensed physician must be willing to participate;
- The patient must have a serious or immediately life-threatening disease or condition;

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<sup>17</sup> U.S. Food and Drug Administration, *FDA’s Drug Review Process: Continued, Accelerated Approval*, (updated November 6, 2014) <http://www.fda.gov/Drugs/ResourcesForYou/Consumers/ucm289601.htm#accelerated> (last visited Mar. 15, 2015).

<sup>18</sup> U.S. Food and Drug Administration, *Expanded Access Coverage for Drugs*, (last updated February 18, 2015) <http://www.fda.gov/ForPatients/Other/default.htm> (last visited Mar. 15, 2015)

<sup>19</sup> 21 U.S.C. §312.315

<sup>20</sup> 21 U.S.C. §312.320

<sup>21</sup> U.S. Food and Drug Administration, *Expanded Access (Compassionate Use)* (last updated February 18, 2015) <http://www.fda.gov/newsevents/publichealthfocus/expandedaccesscompassionateuse/default.htm> (last visited Mar. 15, 2015).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

- The patient must have no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the disease or condition; and
- The patient must be unable to obtain the investigational drug under another IND or to participate in a clinical trial.<sup>24</sup>

To apply for expanded access or compassionate use under a single patient IND, the application must be made by the physician.<sup>25</sup> The physician must also have his patient's informed consent. If applicable, the physician should also ask the medical product company for a Letter of Authorization (LOA). The LOA allows the physician to satisfy some of the requirements for submission by relying on information that the medical product company has already submitted to the FDA.

For non-emergency requests, treatment may begin 30 days after the FDA receives the request if the treating physician fails to hear from the FDA. For emergencies, once authorization is received from the FDA, the physician may begin treatment within five working days.<sup>26</sup>

On February 10, 2015, the FDA released draft guidance for comment that would revise the expanded access process. The federal Office of Management and Budget (OMB) estimates that the current process takes physician approximately eight hours to request for non-emergency situations and 16 hours for emergency cases. For the new process, OMB estimates the process for both emergent and non-emergent situations will take 45 minutes.<sup>27</sup>

Once the FDA has approved a patient for expanded access, the drug manufacturer must still agree to provide the product. There may also be only a limited amount of a drug available under a company's expanded access programs.<sup>28</sup> Generally, under expanded access, the drug is provided free of charge, but not always. However, the other costs associated with care related to the patient's disease and condition would be the responsibility of the patient and any available insurance coverage.

### **Right to Try**

Several states have implemented "Right to Try" laws that allow terminally ill patients access to investigational drugs that have completed basic safety testing. More than 60 percent of

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<sup>24</sup> Id.

<sup>25</sup> The form's questions include whether the request is an emergency, the patient's clinical history, a proposed treatment plan, the informed consent form. See *U.S. Food and Drug Administration, How to Complete Form FDA 1571 and Form FDA 1572*, (last updated February 3, 2015) <http://www.fda.gov/NewsEvents/PublicHealthFocus/ExpandedAccessCompassionateUse/ucm432757.htm> (last visited Mar. 15, 2015).

<sup>26</sup> *Supra* note 21.

<sup>27</sup> Individual Patient Expanded Access Applications: Form FDA 3926; Draft Guidance for Industry; Availability, 80 Fed. Reg. 7318 (proposed Feb. 10, 2015) (to be codified at 21 CFR pt. 312).

<sup>28</sup> American Cancer Society, *Compassionate Drug Use*, (last medical review July 9, 2013)

<http://www.cancer.org/treatment/treatmentsandsideeffects/clinicaltrials/compassionate-drug-use> (last visited Mar. 15, 2015).

investigational drugs in Phase I testing are deemed safe enough to move on to Phase II.<sup>29</sup> More than 30 percent then move on from Phase II testing to Phase III.

Federal legislation to change the expanded access policy has not been successful. Since 2008, at least four bills have been introduced in Congress, but none have had a committee or floor vote.<sup>30</sup> The Right to Try model legislation allows a patient access to investigational medication that have passed basic safety tests without governmental interference when the following conditions are met:

- The patient has been diagnosed with a terminal disease;
- The patient has considered all available treatment options;
- The patient's doctor has recommended that the investigational drug, device, or biological product represents the patient's best chance at survival;
- The patient or the patient's guardian has provided informed consent; and
- The sponsoring company chooses to make the investigational drug available to patients outside of the clinical trial.

As of March 15, 2015, seven states have Right to Try laws: Arkansas, Michigan, Colorado, Missouri, Louisiana, and Wyoming.<sup>31</sup>

### **End of Life Decision-Making**

There are a number of different advanced decision making documents an individual may use to express his or her end of life health care decisions. In Florida, state law defines advance directives as witnessed, oral statements or written instructions that express a person's desires about any aspect of his or her future health care, including the designation of a health care surrogate, a living will, or an anatomical gift.<sup>32</sup>

Resuscitation may also be withheld from an individual if a "do not resuscitate" order (DNRO) by the patient's physician is presented to the health care professional treating the patient. For the DNRO to be valid, it must be on the form adopted by the DOH, signed by the patient's physician and by the patient, or if the patient is incapacitated, the patient's health care surrogate or proxy, court-appointed guardian, or attorney in fact under a durable power of attorney.<sup>33</sup> Florida's form is printed on yellow paper.<sup>34</sup> It is the responsibility of the Emergency Medical Services provider to ensure that the DNRO form or the patient identification device, which is a miniature version of the form, accompanies the patient.<sup>35</sup> A DNRO may be revoked by the patient at any time, if

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<sup>29</sup> Michael Hay, et al, *Clinical development success rates for investigational drugs* (January 2014), *Nature Biotechnology* (see Figure 1- Phase success and LOA rates), <http://www.nature.com/nbt/journal/v32/n1/abs/nbt.2786.html> (last visited Mar. 15, 2015).

<sup>30</sup> Christina Corieri, *Everyone Deserves the Right to Try: Empowering the Terminally Ill to Take Control of their Treatment*, pg. 20, Goldwater Institute (February 11, 2014).

<sup>31</sup> Goldwater Institute, *Arkansas Governor Asa Hutchinson Signs "Right to Try" Bill Into Law* (2014) <http://goldwaterinstitute.org/en/work/topics/healthcare/right-to-try/arkansas-governor-asa-hutchinson-signs-right-to-tr> (last visited Mar. 15, 2015).

<sup>32</sup> *see* s. 765.101, F.S.

<sup>33</sup> *see* ss.395.1041, F.S., 400.142, F.S., 400.487, F.S., 400.605, F.S., 400.6095, F.S.; 401.35, F.S.; 401.45, F.S. , 429.255; 429.73; F.S.; 7665.205, F.S.

<sup>34</sup> Rule 64J-2.018, F.A.C.

<sup>35</sup> *Id.*

signed by the patient, or the patient's health care surrogate, or proxy, or court appointed guardian or a person acting under a durable power of attorney.<sup>36</sup>

A Physician Order for Life-Sustaining Treatment (POLST) documents a patient's health care wishes in the form of a physician order for a variety of end of life measures, including cardiopulmonary resuscitation (CPR).<sup>37</sup> A DNRO is limited to the withholding of CPR. The POLST form can only be completed by a physician and is then provided to the patient to be kept secured in a visible location for emergency personnel.<sup>38</sup> It is suggested that the form be completed when an individual has a serious illness, regardless of age, as the POLST serves as a medical order for a current illness.<sup>39</sup>

Some questions asked on other states' POLST forms include what level of care is wanted for CPR (attempt or do not attempt); medical intervention (comfort only, limited additional intervention, or full treatment); and artificially administered nutrition (none, trial, or long-term).

### III. Effect of Proposed Changes:

#### Florida Right to Try Act

This bill creates the "Florida Right to Try Act" under s. 385.213, F.S., and provides definitions.

An *eligible patient* is defined as an individual who:

- Has a terminal illness determined by the individual's physician and a consulting physician;
- Does not have any comparable or satisfactory Food and Drug Administration (FDA) - approved options available, as determined by his or her physician, and the probable risk from an investigational drug, biological product, or device is not greater than the disease or condition;
- Has received a prescription or recommendation from his or her physician for the investigational drug, biological product, or device;
- Has provided written, informed consent for the use of the investigational drug, biological product, or device, or if a minor or lacks the capacity to provide informed consent, a parent's or legal guardian's written, informed consent on the individual's behalf; and
- Has documentation from the individual's physician indicating that the individual has met all of the applicable requirements.

An *investigational drug, biological product, or device* is defined as a drug, biological product, or device that has successfully completed phase one of a clinical trial but has not yet been approved for general use by the FDA.

*Physician* means a physician licensed under ch. 458, F.S., or ch. 459, F.S., who provides the medical health treatment to the eligible patient for the terminal illness.

<sup>36</sup> Id.

<sup>37</sup> POLST.ORG, *About the National POLST Paradigm*, <http://www.polst.org/about-the-national-polst-paradigm/> (last visited: Mar. 17, 2015).

<sup>38</sup> POLST.ORG, *FAQ*, <http://www.polst.org/advance-care-planning/faq/> (last visited: Mar. 17, 2015).

<sup>39</sup> POLST.ORG, *POLST v. Advance Directives*, <http://www.polst.org/advance-care-planning/polst-and-advance-directives/> (last visited: Mar. 17, 2015).



*Terminal illness* means a disease or condition that, without life-sustaining procedures, will result in the patient's death in the near future or a state of permanent unconsciousness from which recovery is unlikely.

A manufacturer of an investigational drug, biological product, or device has the option to make an investigational drug, biological product, or device available to an eligible patient under the bill. Relating to the investigational drug, biological product, or device, a manufacturer may also:

- Provide without charge or require the eligible patient to pay the cost of, or the costs associated with, its manufacture; and
- Require an eligible patient to participate in data collection relating to the eligible patient's use.

The bill does not require an insurer, health plan, or government health care program to provide coverage for the cost of an investigational drug, biological product, or device, or the care or treatment that may be needed as result of an eligible patient's participation, unless it is part of a clinical trial. However, an insurer, health plan, or government health care program may elect to provide such coverage, if not part of a clinical trial.

The Department of Corrections and the Department of Juvenile Justice are not required to provide coverage for an investigational drug, biological product, or device for individuals in their custody.

Notwithstanding any other law, a state regulatory board or agency may not take any action against a physician's license based solely on the practitioner's recommendation regarding access to or treatment with an investigational drug, biological product, or device.

For health care institutions licensed in this state, a state regulatory board or agency may not take any action against an institution's license or its Medicare certification based solely on the institution's participation in or any other use or treatment with an investigational drug, biological product, or device.

If a clinical trial of an investigational drug, biological product, or device is not effective for a certain patient or condition and the trial is closed due to lack of efficacy, the manufacturer may continue to offer the investigational drug, biological product, or device for a different condition to the same patient or to new patients under the bill.

If the FDA or the safety committee for a clinical trial provides notice of information for an investigational drug, biological product, or device that is being taken by a patient outside of a clinical trial, the manufacturer or the patient's physician is required to notify the patient about the information. For example, the FDA may advise the public of a previously unknown side effect or hidden ingredient of a particular drug that is on the market for another condition or disease, but the drug is also part of a clinical trial for another purpose. The side effect or hidden ingredient could affect those patients taking the drug for another condition outside of a clinical trial.

Under the bill, a private cause of action is not created against a manufacturer of an investigational drug, biological product, or device or against an entity or individual involved in the care of an eligible patient for any harm to the patient resulting from use of the investigational

drug, biological product, or device, if the manufacturer, entity, or individual complied with the requirements of the bill in good faith, unless the manufacturer, entity or individual failed to exercise reasonable care.

An official, employee, or agent of the state may not block an eligible patient’s access to an investigational drug, biological product, or device that has been recommended by his or her physician unless it has been banned or removed from a clinical trial as unsafe by the FDA. If a person does block access, he or she commits a misdemeanor of the second degree.

**Clearinghouse for Compassionate and Palliative Care Plans**

The bill creates s. 408.064, F.S., and the Clearinghouse for Compassionate and Palliative Care Plans. The Agency for Health Care Administration (AHCA) is responsible for establishing and maintaining a reliable and secure database that will allow Florida residents to electronically submit their individual plans for compassionate and palliative care. This database is a clearinghouse of plan information that may be accessed by a health care provider who is treating the resident.

The AHCA is directed to seek input on the clearinghouse from state residents, compassionate and palliative care providers, and health care facilities for its development and implementation. The AHCA may also subscribe to or participate in a national or private clearinghouse that will accomplish the same goals in lieu of establishing an independent clearinghouse. Once clearinghouse information is available, the AHCA is required to publish and disseminate information regarding the availability of the clearinghouse to Floridians. The AHCA must also provide training to health care providers and health care facilities on how to access plans.

**Physician Orders for Life-Sustaining Treatment (POLST)**

Provisions in statute requiring health professional staff to honor “do not resuscitate” orders (DNROs) are revised to include recognition of a POLST document in the same manner. Under s. 404.45, F.S., a valid POLST is described as one completed on the form adopted by the Department of Health by rule, signed by the patient’s physician, and based on a consultation with the patient’s guardian or legally authorized proxy or surrogate.

The table below reflects the statutes impacted by these revisions.

<b>Statutory Revisions - Addition of POLTS Language</b>	
<b>F.S. Citation</b>	<b>Description</b>
§395.1041	Hospital Licensing and Regulation: Access to emergency services and care
§400.142	Nursing Homes; Emergency medication kits; DNROs
§400.487	Home Health Service Agreements; DNROs
§400.605	Hospices; Administration; forms; fees
§400.6095	Hospice; patient admission; assessment; plan of care; discharge; death
§401.35	Medical Transportation Services: Rules
§401.45	Denial of emergency treatment; civil liability

§429.255	Assisted Living Facilities; Use of personnel; emergency care
§429.73	Rules and standards relating to adult family-care homes

### Effective Date

The effective date of the bill is July 1, 2015.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

A separate public records exemption may be needed to keep the Compassionate and Palliative Care plans held by the Agency for Health Care Administration exempt from public records requests under ch. 119, F.S.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

CS/SB 1052 may increase the number of Floridians who have access to investigational drugs, biological products, and devices, but, under the bill, insurers are not required to cover these products or the treatment resulting from an insured's participation, unless the patient is part of a clinical trial.

#### C. Government Sector Impact:

The Agency for Health Care Administration estimates the costs for the Clearinghouse for Compassionate and Palliative Care Plans to be \$350,000 for the first year of implementation and \$140,000 per year for maintenance costs to participate in a national or private clearinghouse.<sup>40</sup>

<sup>40</sup> Agency for Health Care Administration, *Senate Bill 1052 Analysis* (February 20, 2015), pg. 4, (on file with the Senate Committee on Health Policy).

The Department of Health will incur nonrecurring costs for rulemaking but reports it has sufficient current budget authority to absorb those expected costs.<sup>41</sup> Additionally, indeterminate costs may be incurred for an increase in workload related to additional complaints, but these costs are likely to be absorbed within existing resources.<sup>42</sup>

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

The Agency for Health Care Administration (AHCA) notes a potential conflict with federal law and regulations. The bill prohibits the AHCA from taking action against a health care institution's Medicare certification based solely on a health care provider's recommendation to an eligible patient regarding access to an investigational drug, biological product, or device; however, the federal Centers for Medicare & Medicaid Services (CMS) could direct the AHCA to conduct a complaint investigation regarding such as an issue. The AHCA would be required to report its finding to federal CMS.<sup>43</sup>

The Department of Health (DOH) observed that the bill extends regulatory protection to a physician's *recommendation* of an investigational drug, biological product, or device, but not to the health care provider's *administration* of an investigational drug, biological product, or device. The DOH also advises that while the bill may provide protections to physicians and health care institutions from state regulatory actions, the bill cannot shield such providers from federal regulatory actions,<sup>44</sup> even though such federal actions are unlikely under the bill's constructs.

#### **VIII. Statutes Affected:**

This bill creates sections 385.213 and 408.064 of the Florida Statutes.

This bill substantially modifies sections 395.1041, 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, and 765.205 of the Florida Statutes.

#### **IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS by Health Policy - March 17, 2015**

The committee substitute:

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<sup>41</sup> Department of Health, Florida Board of Medicine, *Senate Bill 1052 Analysis* (February 25, 2015), pg. 5, (on file with the Senate Committee on Health Policy).

<sup>42</sup> *Id.*

<sup>43</sup> *Supra* note 40, at 5.

<sup>44</sup> *Supra* note 41, at 3.

- Recognizes Physician Orders for Life Sustaining Treatment (POLST) as evidence of a patient's health care wishes in the same circumstances as "do not resuscitate" orders when presented to a health care professional; and
- Requires a POLST document, in order to be considered valid, to be on a form adopted by the Department of Health and signed by the patient's physician based on a consultation with the patient, the patient's guardian, or a legally authorized proxy or surrogate.

B. Amendments:

None.