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 Appropriations

BILL:	PCS/CS/SB 876 (926878)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Young and others
SUBJECT:	Programs for Impaired Health Care Practitioners
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Loe	Williams	AHS	**Recommend: Fav/CS**
3.	Loe	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 876 revises multiple statutory provisions relating to treatment programs for impaired health care providers. Primarily, it clarifies in law the roles and responsibilities of the parties involved in the program, including the Department of Health (DOH), consultant, evaluator, treatment provider, and impaired practitioner. The bill removes the current authority granted to the DOH to specify by rule the manner in which consultants must work with the DOH in intervening, evaluating, treating, monitoring, providing continuing care, or expelling a professional from the program. This will now be governed by a contract between the DOH and each consultant. The bill defines certain terms relating to impaired practitioner programs, and provides that a licensee may report an impaired practitioner to a consultant who operates an impaired practitioner program, rather than to the DOH, under certain circumstances.

The bill authorizes the DOH to issue or renew a license for an individual convicted of, or entered a plea of guilty or nolo contendere to, a disqualifying offense before July 1, 2009, when the licensure disqualification law was enacted. The bill authorizes the DOH to issue or renew the license of an individual convicted of, or enters a plea of guilty or nolo contendere to, a disqualifying felony if the applicant successfully completes a pretrial diversion program and the plea has been withdrawn or the charges have been dismissed.

The bill requires a licensed midwife or health care provider to report any adverse incident resulting from an attempted or completed planned birth performed at a birthing center or otherwise off the premises of a hospital, to the DOH within 15 days.

The bill has no impact on state revenues or expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Treatment Programs for Impaired Practitioners

Section 456.076, F.S., provides resources to assist licensees[1] in health care professions[2] who are impaired as a result of the misuse or abuse of alcohol or drugs, or as a result of any mental or physical condition, which could affect the licensees' ability to practice with skill and safety.[3] For professions that do not have impaired practitioner programs provided for them in their practice acts, the DOH designate**s** approved impaired practitioner programs**.**

The DOH is required to retain one or more impaired practitioner consultants licensed under the jurisdiction of the Division of Medical Quality Assurance (MQA) within the DOH and who is a licensed physician or nurse; or an entity that employs a medical director who is a licensed physician, or an executive director who is a licensed nurse.

There are currently two department-approved treatment consultants for the impaired practitioner programs in Florida: the Professionals Resource Network (PRN) and the Intervention Project for Nurses (IPN).[4]

The PRN provides evaluations, treatment referrals, and monitoring for all health professions, except nursing and certified nursing assistants.[5,6] The IPN provides these services to nurses and certified nursing assistants.[7] These consultants initiate interventions, recommend evaluations, and refer impaired licensees to treatment programs or treatment providers approved by the DOH, and monitor the progress of impaired licensees. The PRN and IPN do not provide medical services. They act as liaisons between the DOH and approved treatment programs and providers. The DOH is not responsible for paying for the care provided by approved treatment providers or a consultant.

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[1] Licensee is defined in s. 456.001(6), F.S., to include any permit, registration, certificate, or license, including a provisional license, issued by the DOH.
[2] Profession is defined in s. 456.001(7), F.S., to include any activity, occupation, profession, or vocation regulated by the DOH in the Division of MQA. *See also* s. 20.43(1)(g), F.S.
[3] The provisions of s. 456.076, F.S., also apply to veterinarians under s. 474.221, F.S., and radiological personnel under s. 468.315, F.S.
[4] *See* Professionals Resource Network, *available at* http://www.flprn.org/ *and* http://www.ipnfl.org/ (last visited Mar. 7, 2017).
[5] Professionals Resource Network, *About Us, available at* http://www.flprn.org/about (last visited Mar. 9, 2017).
[6] The PRN also provides evaluations, treatment referrals, and monitoring for harbor pilots and deputy harbor pilots regulated by the Board of Pilot Commissioners in the Department of Business and Professional Regulation. *See* s. 310.102, F.S.
[7] Intervention Project for Nurses, *IPN History, available at* http://www.ipnfl.org/ipnhistory.html (last visited Mar. 9, 2017)

A medical school, nursing program, or other health professional school may also contract with the PRN or IPN to provide services to an enrolled student if the student is allegedly impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition.[8]

The IPN and PRN, if requested, also serve as consultants to the DOH in cases that come before the practice boards or the DOH, including credentialing and monitoring of applicants, and assisting in the development of plans for licensee practice in a structured environment. They must also be available to testify in administrative hearings and other legal proceedings on behalf of the DOH.

Whenever a consultant, licensee, or approved treatment provider makes a disclosure of confidential information regarding a licensee to the DOH pursuant to law, that individual is not subject to civil liability for such disclosure or its consequences. If the contract with the consultant contains specified provisions, the consultant, the consultant's officers and employees, and those acting at the direction of the consultant are considered agents of the DOH for purposes of s. 768.28, F.S., relating to sovereign immunity.

The Department of Financial Services is required to defend the consultant, its officers and employees, and those acting at the direction of the consultant for the limited purpose of an emergency intervention when the consultant is unable to perform the intervention, from any legal action brought as a result of the consultant's duties under the DOH contract.[9]

When the DOH receives a legally sufficient[10] complaint alleging that a licensee is impaired, and no other complaint against the licensee exists, the reporting of such information does not constitute grounds for discipline if certain conditions are met.[11] Those conditions include findings by the appropriate board's probable cause panel,[12] or the DOH, if there is no board, that the licensee:

- Acknowledged the impairment problem;
- Enrolled in an appropriate, approved treatment program;
- Voluntarily withdrew from practice, or limited the scope of his or her practice, until he or she successfully completed the treatment program; and
- Released his or her medical records to the consultant.

If the DOH has not received a legally sufficient complaint, other than impairment, and the licensee agrees to withdraw from practice until such time as the consultant determines the

[8] Section 456.076(1)(c)2., F.S.
[9] Section 456.076(8), F.S.
[10] A complaint is legally sufficient if it contains ultimate facts that show the occurrence of a violation of a practice act, ch. 456, F.S., or a rule adopted by the DOH or a board. *See* s. 456.073(1), F.S.
[11] Section 456.076(4)(a), F.S.
[12] A probable cause panel is a panel designated by rule of each regulatory board that reviews investigative information related to a complaint to determine whether probable cause exists that a health care practitioner violated statutes governing the practice of the licensee's profession. If probable cause exists, the probable cause panel will direct DOH to file a formal complaint against the licensee. *See* s. 456.073(4), F.S.

licensee has satisfactorily completed an evaluation and approved treatment program, if appropriate, neither the probable cause panel nor the DOH will become involved in the case.[13]

If an impaired licensee fails to complete, or satisfactorily progress in, a treatment program, the consultant must follow specific procedures set forth in the contract with the DOH, up to and including, sending notification to the DOH of the dismissal of a licensee from the program and for the DOH to initiate disciplinary action.[14] When a licensee is dismissed from a treatment program, the consultant provides an evaluation of the licensee's impairment condition to the DOH. The evaluation is used by the DOH to determine if the licensee poses an immediate and serious danger to the public for the purpose of issuing an emergency order restricting or suspending his or her license to practice.

A licensee is required to report to the appropriate board or the DOH, if there is no board, any person who the licensee knows is in violation of ch. 456, F.S., the chapter regulating the alleged violator, or the rules of the department or the board.[15] This requirement also includes any person unable to practice with reasonable skill and safety to patients due to the misuse or abuse of alcohol or drugs, or as a result of any mental or physical condition.

Section 401.411, F.S., sets forth disciplinary guidelines for the DOH to take action against emergency medical technicians (EMTs), paramedics and emergency medical services (EMS) personnel. The guidelines include a penalty for failure to report any person known to be in violation of s. 401.411, F.S.[16] The guidelines also include a penalty for practicing as an EMT, paramedic, or EMS personnel without reasonable skill and without regard for the safety of the public because of illness, drunkenness, or the use of drugs, narcotics, chemicals, or any other substance, or as a result of any mental or physical condition.[17]

Disqualification from Licensure

In 2009, a law was enacted that prohibited the DOH from issuing or renewing the license of an individual who was convicted of, or entered a plea of nolo contendere to, regardless of adjudication of certain felonies related to Medicaid, Medicare, fraud, or controlled substances.[18] In 2012, the law was amended to create a tiered system of exclusions based on the severity of the crime and the amount of time elapsed between the crime and the application for licensure and provided an exception.[19]

Current law prohibits a board or the DOH, if there is no board, from allowing a person to sit for an examination or issue a license, certificate, or registration, if the applicant has been convicted of a felony under ch. 409, F.S., relating to social and economic programs, including Medicaid; ch. 817, F.S., relating to fraud; or ch. 893, F.S., relating to controlled substances; or a similar

[13] Section 456.076(4)(b), F.S.
[14] *See* s. 456.072(1)(hh), F.S.
[15] Section 456.072(1)(i), F.S.
[16] Section 401.411(1)(l), F.S.
[17] Section 401.411(1)(k), F.S.
[18] Chapter 2009-223, Laws of Florida, codified at s. 456.0635, F.S. If the sentences or any probation for a conviction ended more than 15 years before the date of application, DOH was not required to deny the license.
[19] Chapter 2012-64, Laws of Florida.

felony offense committed in another jurisdiction unless the individual successfully completed a drug court program for the felony and the plea was withdrawn or the charges were dismissed. A board or the DOH, if there is no board, may allow an applicant to sit for an examination or issue a license, certificate, or registration if the sentence or any related period of probation for a conviction ended:

- More than 15 years before the date of application for felonies of the first or second degree;
- More than 10 years before the date of application for felonies of the third degree, except for those under s. 893.13(6)(a), F.S.;[20] or
- More than 5 years before the date of application for felonies of the third degree under s. 893.13(6)(a), F.S.

These exclusions also apply to an applicant who:

- Has been convicted of, or entered a plea of guilty or no contest to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970 or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such convictions or plea ended more than 15 years before the date of application; or
- Is listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

Additionally, a board or the DOH is prohibited from renewing a license, certification, or registration if the applicant or candidate falls under the same restrictions established for initial licensure, certification, or registration. The same exceptions to the restrictions on initial licensure, certification, or registration apply for renewal applications; however, the renewal applicant or candidate must show that he or she is currently enrolled in a drug court program, rather than showing successful completion, as required of initial applicants. This disqualification from licensure – for felony convictions or pleas of guilty or no contest of the specified violations – did not apply until 2016 to applicants for initial licensure or certification, who were enrolled in a recognized training or education program as of July 1, 2009, and who applied for initial licensure after July 1, 2012. In 2016, this exception to the disqualification was repealed because individuals who were denied renewal based on one of the offenses, regardless of the date it was committed, were able to reapply and obtain new licenses based on the exemption.

Midwifery in Florida

The practice of midwifery in Florida provides expectant mothers and their families the freedom to choose the manner, cost, and setting for giving birth. The DOH regulates the practice of midwifery to ensure the proper care of mothers and their infants throughout the prenatal, intrapartum, and postpartum periods of pregnancy, labor, and delivery.[21] Accordingly, individuals wishing to practice midwifery in this state must be licensed by the DOH.[22]

[20] Section 893.13(6)(a), F.S., makes it unlawful for a person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription, or order, of a practitioner while acting the course of his or her professional practice; or to be in actual or constructive possession of a controlled substance except as otherwise authorized under ch. 893, F.S. Any person who violates this provision commits a felony in the third degree.
[21] Chapter 467, F.S.
[22] See sections 467.006 and 467.011, F.S.

A midwife's scope of practice includes providing care for only those mothers who are expected to have a normal pregnancy, labor, and delivery. A midwife may provide collaborative prenatal and postpartum care to pregnant women not at low risk in their pregnancy, labor, and delivery, within a written protocol from a physician[23] who maintains supervision of the midwife for directing the specific course of medical treatment. [24] Midwives are required to keep records of each patient served for at least five years. A midwife must submit a completed birth certificate for each birth attended to the registrar of vital statistics within five days following birth; and report all maternal deaths, newborn deaths, and stillbirths to the medical examiner immediately.[25] There is currently no requirement for midwives or other health professionals to report adverse incidents that occur within the midwives' scope of practice to the DOH.

Mandatory Reporting of Adverse Incidents

Under current law, certain professions, organizations, and facilities licensed or certified by the DOH and the Agency for Health Care Administration (AHCA) are required to report adverse incidents to the DOH or AHCA[26] within a specified period.[27]

The term "adverse incident" is defined according to the specific statute or rule governing the particular profession, organization, or facility,28 but generally means an event in which the professional, organization, or facility personnel could exercise control, rather than as a result of the condition of the patient or resident for which such intervention occurred, and which results in death or serious injury29 to the patient or resident.

III. Effect of Proposed Changes:

Section 1 amends s. 456.076(1), F.S., to define the terms: "impaired practitioner," "impairment," "inability to progress," "material noncompliance," and "practitioner." Defining these terms provides clarification to the DOH for contractual purposes and in legal proceedings.

This section deletes the provisions authorizing the DOH to adopt, by rule, the manner in which consultants work with the DOH in interventions, in evaluating and treating professionals, in providing and monitoring continued care of impaired professionals, and in expelling professionals from the program.

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[23] Licensed under ch. 458 or 459, F.S.
[24] Section 467.015, F.S.
[25] Section 467.019, F.S.
[26] Section 395.0197, F.S., (hospitals and ambulatory surgical centers); section 400.147, F.S., (nursing homes); s. 429.23, F.S., (assisted living facilities); sections 458.351 and 459.026, F.S. (physicians and physician assistants); s. 466.017, F.S., (dentists and dental hygienists); and s. 641.55, F.S. (health maintenance organizations and prepaid health clinics).
[27] *Id.* All of these professions, organizations, and facilities – with the exception of dentists and dental hygienists, health maintenance organizations (HMOs), and prepaid health clinics – are required to report an adverse incident to DOH or AHCA within 15 days. HMOs and prepaid health clinics are required to report the adverse incident to the AHCA within 3 working days after its first occurrence, and must submit a more detailed report within 10 days after the first report. Pursuant to Rule 64B5-14.006, F.A.C., dentists and dental hygienists are required to report the adverse occurrence that occurs in the dentist's outpatient facility within 48 hours, and must submit a more detailed report within 30 days, of its first occurrence.
[28] *Id.*
[29] Depending on the profession, organization, or facility, serious injury includes brain or spinal damage; permanent disfigurement; limitation of neurological, physical, or sensory function; or a fracture or dislocation of bones or joints.

This section requires that, if the DOH elects to retain one or more consultants to operate its impaired practitioner program, the terms and conditions of the impaired practitioner programs must be specified by the contract between the DOH and consultant, which must contain the following agreements:[30]

- Accept referrals;
- Arrange for evaluation and treatment of impaired practitioners when the consultant deems it necessary;
- Monitor the impaired practitioner's recovery process until monitoring is no longer needed or the practitioner is terminated for material non-compliance[31] or an inability to progress,[32] and
- Not directly evaluate, treat, or otherwise provide patient care to a practitioner in the program.

This section requires the consultant to execute a participant contract with an impaired practitioner that addresses, among other things, the terms of the monitoring. The consultant may modify the terms of the monitoring if the consultant concludes that extended, additional, or amended terms are needed to protect the health, safety, and welfare of the public.

This section provides that when the DOH receives a legally sufficient complaint alleging that a practitioner has an impairment, and no complaint exists other than impairment, the DOH must refer the practitioner to the consultant, along with all information in the DOH's possession relating to the impairment. The impairment does not constitute grounds for discipline pursuant to s. 456.072, F.S., or the applicable practice act, if the practitioner:

- Has acknowledged the impairment;
- Becomes a participant in an impaired practitioner program and successfully completes a participant contract;
- Has voluntarily withdrawn from practice, or has limited the scope of his or her practice, if required by the consultant;
- Has provided to the consultant, or has authorized the consultant to obtain, all records and information relating to the impairment from any source and all other medical records of the practitioner requested by the consultant; and
- Has authorized the consultant, in the event of the practitioner's termination from the impaired practitioner program, to report the termination to the DOH and provide the department with copies of all information in the consultant's possession relating to the practitioner.[33]

This section provides an exception to the mandatory referral of practitioners by the DOH to the consultant for EMTs, paramedics, and EMS personnel certified by the DOH and employed by a governmental entity if the practitioner is under a referral to an employee assistance program offered by his or her employer through the governmental entity.[34] If the practitioner fails to

[30] See s. 456.076(3) F.S., of the bill.
[31] The bill defines "material noncompliance" to mean an act or omission by a participant in violation of his or her participant contract as determined by the department or consultant.
[32] "Inability to progress" means a determination by a consultant based on a participant's response to treatment and prognosis that the participant is unable to safely practice despite compliance with the treatment requirement and his or her participant contract.
[33] See s. 456.076(10)(a), F.S., of the bill.
[34] Section 70.001(3)(c), F.S., defines "governmental entity" as an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that

complete the employee assistance program or is terminated by his or her employer, the employer is required to immediately notify the DOH, which must then refer the practitioner to the consultant pursuant to the terms of the impaired practitioner program and contract.

Under current law, probable cause panels reviewing complaints against a licensee may work directly with a consultant to determine if an impairment played a role in the complaint against a licensee, and what, if any, disciplinary action needs to be taken. This section requires the consultant to assist the DOH and licensure boards in matters involving impaired practitioners, including a determination of whether a practitioner is in fact impaired, rather than this process taking place before probable cause panels.

The mandatory requirement that the practitioner release all records and information relating to the impairment from any source, and all other medical records of the practitioner requested by the consultant, may be broader than the release requirement under current law.[35] Current law requires the practitioner to authorize the release of all records of evaluations, diagnoses and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant.

This section modifies when a consultant must report an impaired practitioner in a treatment program to the DOH. Unless authorized by the participant, the consultant may not provide information to the DOH relating to a self-referring participant if the consultant has no knowledge of a pending DOH investigation, complaint, or disciplinary action against the participant, and if the participant is in compliance with the terms of the impaired practitioner program and contract.[36]

When a referral or participant is terminated from the impaired practitioner program for a material noncompliance with a participant contract, an inability to progress, or any other reason than completion, the consultant is required to disclose all information in the consultant's possession relating to the practitioner to the DOH. Such disclosure constitutes a complaint that the DOH will then investigate. Whenever the consultant concludes that impairment affects a practitioner's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, the

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independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority.

[35] For example, in 2016, the Legislature enacted Senate Bill 964 authorizing, among other things, an impaired practitioner consultant indirect access to the Florida Prescription Drug Monitoring Program (PDMP) for the purpose of reviewing the database information of an impaired practitioner program participant or a referral who has separately agreed in writing to the consultant's access to and review of such information. *See* ss. 893.055(7)(c)5 and 893.0551(3)(h), F.S. This potentially creates a coercive method of requiring the practitioner to give up his or her PDMP records to the consultant, and by extension, to the DOH for disciplinary action. In order to attempt to avoid discipline for the practitioner, the bill requires the practitioner to release any information that relates to the practitioner's impairment, and any other records the consultant requests. The PDMP records would be medical records related to the impairment that the consultant would request the practitioner to release. Were the practitioner then to be terminated from the impaired practitioner program for any reason, the consultant would be required to turn those records over to the DOH. The DOH does not have authority to access these PDMP records, either directly or indirectly.

[36] See s. 465.076(9)(b), F.S., of the bill

consultant is required to immediately communicate such conclusion to the DOH and provide all information in the consultant's possession relating to the practitioner to the DOH.[37]

A consultant may request of an approved evaluator, treatment program, or treatment provider, with the authorization of the practitioner when required by law, all information in its possession regarding a referral or participant. Failure to provide such information to the consultant is grounds for withdrawal of approval by the DOH of such evaluator, treatment program, or treatment provider.[38]

The confidential or exempt information obtained by the consultant retains its confidential or exempt status.[39] However, the bill does not provide any protection for the information once sent to the DOH, or obtained by an evaluator or treatment provider, from a public records request.

This section protects the consultant, or a director, officer, employee, or agent of a consultant, from financial liability or any other cause of action for damages related to making a disclosure, or for any action or omission, against a license, registration, or certification.[40] Under current law a consultant, the consultant's officers and employees, and those acting at the direction of the consultant are considered agents of the DOH, and have sovereign immunity while acting within the course and scope of their contract.[41] The bill extends that protection to include directors, officers, employees or agents of a consultant.[42] The provisions of s. 766.101, F.S., apply to any consultant and the consultant's directors, officers, employees, or agents in regards to providing information relating to a participant to a medical review committee if the participant authorizes such disclosure.[43]

This section directs the Department of Financial Services to defend the consultant, consultant's directors, officers, employees and agents against any claim, suit, action, or proceeding for injunction, affirmative, or declaratory relief, as the result of any action or omission relating to the impaired practitioner program.[44]

This section provides that, if another state agency retains a consultant under contract with the DOH, the provisions of the contract between the DOH and the consultant applies to the consultant's operation of an impaired practitioner program for that agency.

A consultant may disclose to a referral or participant, or to the legal representative of the referral or participant, the documents, records, or other information from the consultant's file, including information received by the consultant from other sources, and information on the terms required for the referral's or participant's monitoring contract, the referral's or participant's progress or inability to progress, the referral's or participant's discharge or termination, information supporting the conclusion of material noncompliance, or any other information required by law.

[37] See s. 456.076(11)(b), F.S., of the bill.
[38] See s. 456.076(11)(a), F.S., of the bill.
[39] See s 456.016(2), F.S., of the bill.
[40] See s. 456.076(13), F.S., of the bill.
[41] See s. 456.076(15)(a), F.S., of the bill.
[42] *Supra* note 38.
[43] See s. 456.076(14), F.S., of the bill.
[44] See s. 456.076(15)(b), F.S., of the bill.

If a consultant discloses information to the DOH in accordance with this program, a referral or participant, or his or her legal representative, may obtain a complete copy of the consultant's file from the consultant or the DOH.[45]

Section 2 amends s. 401.411(1)(l), F.S., to authorize emergency medical personnel that become aware of an individual in their profession that is impaired due to illness, the use of alcohol or drugs, or as a result of a mental or physical condition, to report the individual to the consultant rather than the DOH, as required under current law, without facing disciplinary action.

Section 4 amends s. 456.0635(2)-(3), F.S., to exempt individuals convicted of, or entered a plea of guilty or nolo contendere to, disqualifying offenses prior to July 1, 2009, from being disqualified for licensure, preventing retroactive applicability. This section also authorizes the DOH to allow an individual to sit for an examination or issue or renew a license, certificate, or registration for a person who is convicted of, or enters a plea of guilty or nolo contendere, to a disqualifying felony if the applicant successfully completes a pretrial diversion program and provides proof that the plea has been withdrawn or the charges have been dismissed.

Sections 5 through 13, 15 through 18, 20, and 21 amend s. 456.072, F.S., and various statutes,[46] to authorize a practitioner to report another impaired professional to a consultant, rather than the DOH or applicable regulatory board, without facing disciplinary action.

Section 22 requires a licensed midwife or health care provider to report any adverse incident resulting from an attempted or completed planned birth performed at a birthing center or otherwise off the premises of a hospital, to the DOH within 15 days. This section requires the DOH to adopt rules establishing guidelines for reporting adverse incidents, which shall at a minimum include:

- Intrapartum and postpartum[47] maternal deaths;
- Transfers of maternal or infant patients to a hospital intensive care unit (ICU) under certain conditions;[48]
- Maternal patients who experience hemorrhagic shock or require a blood transfusion;[49] and
- Fetal or infant deaths, including stillbirths,[50] associated with obstetrical deliveries.

Section 23 provides for the bill to take effect upon becoming a law.

[45] See s. 456.076, (17), F.S., of the bill.
[46] Section 457.109, F.S., (acupuncture); s. 458.331, F.S., (medical practice); s. 459.015, F.S., (osteopathic medicine); s. 460.413, F.S., (chiropractic medicine); s. 461.013, F.S., (podiatric medicine); s. 462.14, F.S., (naturopathy); s. 463.016, F.S., (optometry); s. 464.018, F.S., (nursing); s. 465.016, F.S., (pharmacy); s. 466.028, F.S., (dentistry, dental hygiene, and dental laboratories); s. 467.203, F.S., (midwifery); s. 468.217, F.S.; (occupational therapy); s. 474.221, F.S., (veterinary medicine); and s. 483.825, F.S. (clinical laboratory personnel).
[47] Section 456.0495(2)(a), F.S., of the bill, specifies up to 42 days postpartum.
[48] Section 456.0495(2)(e)-(f), F.S., of the bill, specifies transfers of infants to a neonatal ICU due to a traumatic physical or neurological birth injury, including any degree of a brachial plexus injury, or within the first 72 hours after birth if the infant remains in the ICU for more than 72 hours.
[49] Section 456.0495(2)(e)-(f), F.S., of the bill, specifies transfusions of more than four units of blood or blood products.
[50] Section 467.003(14), F.S., defines "stillbirth" to mean the death of a fetus of more than 20 weeks' gestation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill protects the confidential or exempt information obtained by the consultant from a public records request; but the bill does not protect any of the information sent to the DOH, or obtained by an evaluator or treatment provider, from a public records request.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill's definitions of, "inability to progress," and "material noncompliance," may create due process issues as conclusive presumptions.[51]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Due to the expansion of individuals who are afforded a defense by the Department of Financial Services for claims, actions, suits, or proceedings, there may be an insignificant indeterminate negative fiscal impact on the Risk Management Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[51] A "conclusive presumption" is one in which proof of a basic fact renders the existence of the presumed fact conclusive and irrevocable regardless of any evidence to the contrary. Black's Law Dictionary, 6th Ed., 1992.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.076, 401.411, 455.227, 456.0635, 456.072, 457.109, 458.331, 459.015, 460.413, 461.013, 462.14, 463.016, 464.018, 464.204, 465.016, 466.028, 467.203, 468.217, 468.3101, 474.221, and 483.825.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Health and Human Services on April 18, 2017:
The recommended PCS to CS/SB 876:

- Requires licensed midwives and health care providers to report adverse incidents resulting from an attempted or completed planned birth within 15 days to the DOH.
- Prohibits the DOH from initially referring EMTs, paramedics, and EMS personnel to an impaired practitioner program consultant if certain conditions are met.
- Clarifies provisions relating to disqualification for licensure.

CS by Health Policy on March 14, 2017:
The CS:

- Amends the definition of referral to make clear that it includes self-referrals, referrals of one practitioner by another, and referrals reported by the DOH.
- Condenses and reorganizes the section which provides for contract terms and conditions with a consultant, but makes no substantive changes.
- Changes the terms "certify" and "decline to certify," to "approve" and "deny," respectively, to more accurately describe the actions.
- Clarifies that the consultant is not required to disclose information to the DOH on self- referring practitioners if the consultant has no knowledge of a complaint.
- Reinstates and amends the language that specifies that the consultant is an agent of the state for purposes of sovereign immunity when acting pursuant to its contract.
- Authorizes disclosure to the referral, participant or the legal representative of either, the documents and information received by the consultant pertaining to and supporting the participant's discharge or termination from an impaired practitioner program; and any information the consultant discloses to the DOH.
- Amends the provisions relating to disqualification for licensure, and provides an exception for pretrial diversion.

B. Amendments:

None.