HEALTH CARE PRACTITIONER REGULATION

CS/SB 366 — Health Care Practitioners

by Health Care Committee and Senators Peaden, Wise, Fasano, and Lynn

The bill amends the grounds for disciplinary action applicable to health care practitioners regulated under the Division of Medical Quality Assurance within the Department of Health to make a practitioner liable for discipline if the practitioner is terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensed practitioner, or for not successfully completing any drug-treatment or alcohol-treatment program.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 112-0

CS/SB 478 — Podiatric Medicine

by Health Care Committee and Senator Clary

The bill authorizes a registered resident podiatric physician to prescribe medicinal drugs described in schedules set out in ch. 893, F.S., and pursuant to the practice of podiatric medicine, if the resident is authorized by the hospital or teaching hospital to use an institutional Drug Enforcement Administration number issued to the hospital, prescribes only in the normal course of employment, and is identified by a discrete suffix appended to the institution's Drug Enforcement Administration number. The use of the institution's identification number and the resident's suffix must conform to the requirements of the Drug Enforcement Administration.

The bill requires each hospital that has a podiatric residency program to submit a list of podiatric residents annually, rather than semiannually, to the Board of Podiatric Medicine. The bill revises from 2 to 3 years the period during which a residency program may allow a podiatric physician resident to continue as an unlicensed resident. The bill provides that podiatric physicians registered under the Board of Podiatric Medicine to practice as residents are subject to disciplinary provisions applicable to the practice of podiatric medicine. The Board of Podiatric Medicine is required to adopt rules as necessary to administer the requirements of the bill.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 115-0

CS/SB 1180 — Practice of Medicine

by Health Care Committee and Senator Campbell

The bill revises conditions of appointment to and composition of, the Board of Medicine by increasing the number of consumer members on the board from three to five. The bill requires physician members on the board to be Florida licensed in good standing, Florida residents, and to have been engaged in the active practice or teaching of medicine in Florida with a full and unrestricted medical license for at least five, rather than four, years immediately preceding their appointment. Five consumer members must be Florida residents who have lived in Florida for at least five years immediately preceding their appointments, have never been licensed as a health care practitioner under ch. 456, F.S., or the applicable practice act, and do not have a substantial personal, business, professional, or pecuniary connection with a licensed health care practitioner or with a medical education or health care facility, except as patients or potential patients.

If any member of the Board of Medicine ceases to meet the requirements for appointment to the board, that person must be removed and a new qualified member appointed to the board. The bill's revisions to conditions for appointment to the Board of Medicine do not end the term of any member of the Board of Medicine who has been appointed to the board on the effective date of the bill. The term of office of the two new consumer members begins November 1, 2005.

The bill allows a medical physician licensure applicant to enroll in a 2-year externship in a licensed nonstatutory teaching hospital approved by the Board of Medicine in lieu of completing the required 1-year residency for licensure and the academic year of supervised clinical training for foreign medical graduates. Although the Department of Health may develop procedures for such applicants to meet postgraduate training requirements by completion of a 2-year externship, the Board of Medicine may adopt rules to implement the externship requirements, including the implementation of fees to cover costs.

The bill requires probable cause panels of the Board of Medicine and the Board of Osteopathic Medicine, when considering discipline against a physician assistant, to include a physician assistant designated by the Council of Physician Assistants, unless a physician assistant is not available.

Notwithstanding any law to the contrary, a medical physician or physician assistant has as a defense to any alleged violation, by a preponderance of the evidence, that the practitioner relied in good faith on the representations made to the practitioner by a drug manufacturer or its representatives and that the practitioner had no intent to violate the law.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 118-0

HB 1651 — Chiropractic Education

by Rep. Patterson and others (SB 2640 by Senator Geller)

The bill amends the "Health Care Clinic Act" to provide an exemption from the clinic licensure requirements for clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

The bill provides that the chiropractic practice act does not apply to a chiropractic student enrolled in a chiropractic college accredited by the Council on Chiropractic Education and participating in a chiropractic college clinical internship under the direct supervision of a doctor of chiropractic medicine who is a full-time, part-time, or adjunct faculty member of a chiropractic college that is located in Florida and accredited by the Council on Chiropractic Education. The faculty member who supervises the chiropractic student must also hold a current active Florida chiropractor's license. The bill defines "chiropractic college clinical internship" to mean a program in which a student who is enrolled in a chiropractic college that is located in Florida and accredited by the Council on Chiropractic Education obtains clinical experience, pursuant to the college's curriculum, in a classroom or chiropractic clinic operated by the college according to the teaching protocols for the clinical practice requirements of the college.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 113-0

SB 2268 — Athletic Trainers

by Senator Fasano

The bill revises the licensure and license renewal requirements for athletic trainers. The bill revises the violations and penalties relating to practicing athletic training so that it would be a misdemeanor of the first degree for a person to practice athletic training without holding an active license to practice athletic training or an exemption to the athletic training practice act, irregardless of whether or not there is compensation. An exemption to the athletic training practice act for a person employed as a teacher apprentice trainer I, a teacher apprentice trainer II, or a teacher athletic trainer under s. 1012.46, F.S., is deleted.

The bill revises provisions that authorize a school district to establish and implement athletic injuries prevention and treatment program, which includes specified employment classification and advancement schemes for a "first responder" and a "teacher athletic trainer," to delete references to first responders and teacher athletic trainers. The school district employment classification and advancement scheme is revised to specify that to qualify as an "athletic trainer," rather than a "teacher athletic trainer," a person must be licensed as an athletic trainer and may possess a professional, temporary, part time, adjunct, or substitute teaching certificate.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 117-0

SB 2452 — Pharmacy Technicians

by Senator Aronberg

The bill allows a pharmacy technician to initiate or receive requests for original prescriptions for nonhuman use if this is done under the direct supervision of a licensed pharmacist. The number of pharmacy technicians that a licensed pharmacist may supervise in dispensing prescriptions for nonhuman use is limited to five pharmacy technicians.

The bill authorizes a pharmacy to dispense a prescription for nonhuman use pursuant to a facsimile prescription without receipt of the original prescription.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 108-7

SB 2574 — Dentistry

by Senators Atwater and Crist

The bill exempts certain dental instructors from the requirements of the dental practice act. The dental practice act does not apply to practices, acts, and operations of instructors in dental programs that prepare persons holding D.M.D. or D.D.S. degrees for specialty board certification wherein such programs have U.S. accreditation by January 1, 2005, in the same manner as the Board of Dentistry recognizes accreditation for Florida schools of dentistry but that are not otherwise affiliated with a Florida school of dentistry. The exemption to such instructors in Florida schools of dentistry, accredited dental specialty programs, dental hygiene or dental educational programs are conditioned on the instructor performing regularly assigned instructional duties under the curriculum of such schools. A full-time dental instructor at a dental school or dental program approved by the Board of Dentistry may be allowed to practice dentistry at the teaching facilities of such school or program, upon receiving a teaching permit issued by the Board of Dentistry. The practice of dentistry by these instructors must be performed in strict compliance with such rules as are adopted by the board pertaining to the teaching permit and with the established rules and procedures of the dental school or program as recognized in s. 466.002(6), F.S.

The bill limits the number of years that a member of the Board of Dentistry may serve on the board to a total of 10 years. The bill provides an exception to the requirement for national examinations under ch. 456, F.S., for certain examinations for dentists.

The bill requires dentists and unlicensed persons used by dentists to construct, alter, repair, or duplicate dentures, bridge splints, or orthodontic or prosthetic appliances to keep work order

records for 4 rather than 2 years and eliminates the requirement for such records to be maintained in permanent files. The bill corrects a glitch in current law to allow the Department of Health to issue temporary certificates to graduates of accredited dental schools, rather than dentists, to practice under the general supervision of Florida-licensed dentists in a state or county facility.

The bill revises the manner of appointment of members to the Council on Dental Hygiene (council) to require that the three dental hygienist members who are actively engaged in the practice of dental hygiene in Florida be recommended by the Florida Dental Hygienists Association. The bill requires the council to meet at least three times each calendar year. The Board of Dentistry must consider rule and policy recommendations of the council at its next regularly scheduled meeting in the same manner as it considers rule and policy recommendations from designated subcommittees of the board. Any rule or policy proposed by the board pertaining to dental hygiene must be referred to the council for a recommendation before final action by the board. The Board of Dentistry may take final action on rules pertaining to dental hygiene without a council recommendation if the council fails to submit a recommendation in a timely fashion as prescribed by the board.

The bill revises the information that an applicant who is a graduate of a dental school or college must submit to the Board of Dentistry in order to take the dental hygiene examination.

The bill revises continuing education requirements for dentists, to authorize the Board of Dentistry to allow up to three hours of credit every two years for a practice management course.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 115-0

HEALTH CARE FACILITY AND SERVICES REGULATION

HB 189 — Hospice Facilities

by Rep. McInvale and others (SB 112 by Senator Constantine)

This bill requires the construction and renovation of hospice residential and inpatient facilities and units to be governed by the Florida Building Code. In keeping with this change, the bill deletes a requirement for the Department of Elderly Affairs to adopt rules for physical plant standards for hospice residential and inpatient facilities and units. The bill directs the Agency for Health Care Administration to provide technical assistance to the Florida Building Commission in updating the Florida Building Code to include hospice facilities.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 38-0; House 114-0

SB 266 — Nursing Home Facilities

by Senators Saunders and Bullard

This bill deletes the expiration date, and thereby makes permanent, the exception that has been granted to the state-designated teaching nursing home and its affiliated assisted living facilities to the requirement that nursing home facilities maintain general and professional liability insurance coverage. In lieu of maintaining general and professional liability insurance coverage, the teaching nursing home may demonstrate proof of financial responsibility in a minimum amount of $750,000 by either maintaining an escrow account consisting of certain cash or assets or obtaining an irrevocable, nontransferable and nonassignable letter of credit.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 112-0

CS/SB 474 — Nurse Home Visits

by Health Care Committee and Senator Saunders

This bill repeals the requirement that, when a nurse registry contracts to provide services to a patient, a registered nurse must make monthly visits to the patient's home to assess the patient's condition and the quality of care. The bill requires, instead, that when a certified nursing assistant or home health aide is referred to a patient's home by a nurse registry, the nurse registry must advise the patient, the patient's family, or a person acting on behalf of the patient of the availability of registered nurses to visit the patient's home to assess the patient's condition at an additional cost.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 102-9

CS/SB 484 — Health Care/Nursing

by Health Care Committee and Senators Peaden and Lynn

This bill revises laws governing home health agencies and nurse registries. Under a revised definition, a home health agency is an organization providing home health services and staffing services that involves more than one health care professional discipline, a health care professional and a home health aide or certified nursing assistant, more than one home health aide, more than one certified nursing assistant, or a home health aide and a certified nursing assistant. The bill revises nurse supervision requirements for nurse registries by eliminating required monthly nurse visits to patients receiving home health aide or certified nursing assistant services from nurse registries and instead requires a nurse registry to notify patients receiving those non-skilled services that optional nurse supervisory visits are available at an additional cost. The bill also permits advanced registered nurse practitioners and physician assistants to give orders for skilled care to be provided by home health agencies and nurse registries as is

permitted in other health care settings. Home health agency and nurse registry licenses will be issued for a two-year period, instead of one year, with commensurate fee increases in keeping with the longer time period.

The bill increases fines and penalties for operating an unlicensed home health agency or nurse registry and authorizes the Agency for Health Care Administration to institute injunction proceedings to restrain or prevent the operation and maintenance of an unlicensed home health agency or nurse registry. The bill requires the Agency for Health Care Administration to accept accrediting organization surveys, in lieu of conducting its own licensure surveys of home health agencies, under specified conditions.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 103-10

CS/CS/SB 662 — Studies of Hurricane Damage to Hospitals and Related Topics

by Governmental Oversight and Productivity Committee; Community Affairs Committee; and Senators Clary and Lynn

This bill creates a commission to study hospitals that serve indigent populations and that sustained significant damage to their facilities during the 2004 hurricane season. The bill establishes the composition of the commission and provides for reimbursement for per diem and travel expenses of its members. The commission must identify all hospitals that currently are not able to comply with the Florida Building Code, hospitals that are located within 10 miles of the coastline, and hospitals that are located within a designated flood zone. The commission must make recommendations that will allow these facilities to find alternative methods of complying with the Florida Building Code.

By December 1, 2005, the commission must report to the Legislative Budget Commission regarding the types of structural damage caused by hurricanes in 2004 to not-for-profit hospitals' facilities and the cost of each type of damage suffered by each facility. By January 1, 2006, the commission must make recommendations for statutory changes and for possible funding to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill also creates a 13-member study group to review the use and appropriateness of high-deductible health insurance plans, including health savings accounts and health care reimbursement arrangements. The group must study the effect of high deductibles on access to health care services, utilization and overutilization of health care services, and the ability of hospitals and physicians to collect deductibles and co-payments. The group must also study issues relating to the assignment of benefits by insureds, standardization of identification cards and claim edits, and the provision of comparative cost information to subscribers and insureds

before service delivery. The group must submit recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2006.

The bill requires the Legislature's Office of Program Policy and Government Accountability to conduct two studies—one to evaluate whether Florida should join the Nurse Licensure Compact and a second to analyze the impact of hospices on the delivery of care to terminally ill patients. A report on the Nurse Licensure Compact must be presented to legislative leaders by February 1, 2006, and must address the potential impact on the state's nursing shortage, benefits to the state, implementation barriers and any fiscal impact. The study on hospice care must be presented to the Legislature no later than January 1, 2006, and must address various issues related to for-profit hospices, the reason for regional monopolies, penetration rates of hospice services by hospice service areas, and a comparison of hospice services to the minimum service requirements of Medicare and Medicaid.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 117-0

CS/SB 720 — Personal Care Attendants

by Health and Human Services Appropriations Committee and Senator Wise

This bill repeals the requirement that, when a nurse registry contracts to provide services to a patient, a registered nurse must make monthly visits to the patient's home. The bill also repeals the reporting requirement associated with the visits.

The bill makes permanent, and potentially expands statewide, the program to provide personal care attendants to persons participating in the brain and spinal cord injury program in the Department of Health. The bill changes the eligibility criteria for the program to include persons who are presently employed but, because of a loss of a caregiver, will lose employment and could potentially return to a nursing home. The Department of Health must establish an oversight workgroup with specified membership for the program. The bill increases from 25 to 50 percent, the percentage of collections from the tax collection enforcement diversion program that are deposited with the Florida Endowment Foundation for Vocational Rehabilitation to fund the personal care attendant program and to contract with the state attorneys participating in the tax collection enforcement diversion program in an amount of not more than $50,000 per state attorney. The bill deletes an obsolete statutory provision that increased the percentage of collections available to the personal care attendant pilot program for FY 2004-2005.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 110-5

HB 763 — Critical Access Hospitals

by Rep. Troutman and others (CS/CS/SB 1472 by Health and Human Services Appropriations Committee; Health Care Committee; and Senator Peaden)

The bill defines critical access hospital to be a hospital that meets specified federal requirements and is certified by the Secretary of the U.S. Department of Health and Human Services. Under the federal requirements, a critical access hospital is not required to provide surgery and obstetrical services; thus, the bill creates an exception in Florida's hospital licensure law for Florida's 11 critical access hospitals for these services. Critical access hospitals are in rural areas of the state.

The bill also extends the moratorium on the authorization of hospital off-site emergency departments to July 1, 2006. The bill deletes an obsolete requirement for the Agency for Health Care Administration to recommend to the Legislature whether it is in the public interest to allow a hospital to operate an emergency department off the premises of the hospital. The report was presented to the Legislature in 2004.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 117-0

HB 1041 — Women's Health and Safety Act

by Rep. Bean and others (CS/SB 1862 by Judiciary Committee and Senators Dockery, Fasano, Villalobos, Baker, Sebesta, Atwater, Alexander, Wise, Constantine, Webster, Haridopolos, Pruitt, Diaz de la Portilla, Posey, Peaden, Clary, Campbell, Bullard, and Siplin)

This bill creates the "Women's Health and Safety Act," to require the Agency for Health Care Administration to adopt separate rules for licensed abortion clinics that perform abortions only during the first trimester of pregnancy and for those licensed abortion clinics that perform abortions after the first trimester of pregnancy. The rules may not impose an unconstitutional burden on a woman's freedom to decide whether to terminate her pregnancy.

The rules for abortion clinics that perform abortions after the first trimester of pregnancy must address an abortion clinic's physical facilities, clinic supplies and equipment standards, clinic personnel, medical screening and evaluation of each abortion clinic patient, abortion procedure, recovery room standards, follow-up care, and incident reporting. These rules must require an abortion clinic to designate a medical director who is licensed in Florida and who has admitting privileges at a licensed hospital or has a transfer agreement with a licensed hospital within reasonable proximity of the clinic. The rules must require that a physician, registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant be available to all patients throughout the abortion procedure. A registered nurse, licensed practical nurse advanced registered nurse practitioner, or physician assistant who is trained in the management of the recovery area must remain on the premises of the abortion clinic until all

patients are discharged. The rules must require an abortion clinic to report to the Agency for Health Care Administration, in writing within 10 days of the occurrence, each incident that results in serious injury to a patient or a viable fetus at an abortion clinic. If a patient death occurs, other than a fetal death properly reported pursuant to law, the abortion clinic must report it to the agency no later than the next workday.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 30-9; House 97-19

HB 1559 — Respite Care/Intergenerational Program

by Rep. Joyner and others (CS/SB 1516 by Health Care Committee and Senator Wilson)

This bill requires the Agency for Health Care Administration to create a pilot project for an assisted living facility that will provide respite care for a maximum period of 14 days for children and adults who have disabilities and for elderly persons having special needs. The project must be located in Miami-Dade County and operated by a not-for-profit entity. The pilot project will last for 5 years, and AHCA must report to the Legislature after 4 years regarding the effectiveness of the project.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 115-0

CS/SB 1868 — Poison Control Centers

by Health Care Committee and Senators Atwater and Wilson

The bill amends provisions relating to poison control centers to require the three regional poison control centers to be "certified" rather than "accredited." The bill requires a licensed hospital, ambulatory surgical center, mobile surgical facility, or health care practitioner to release to a regional poison control center, upon request, any patient information that is relevant to the episode under evaluation for purposes of treatment or that is necessary for case management of poison cases. They must also release other patient information that is necessary to comply with the data-collection and reporting requirements of s. 395.1027, F.S., and the professional organization that certifies poison control centers in accordance with federal law.

The bill amends provisions relating to the confidentiality of hospital patient records and records created by specified health care practitioners to authorize the release of otherwise confidential hospital patient records, without the patient's written authorization, to a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data-collection and reporting requirements of s. 395.1027, F.S., and the professional organization that certifies poison control centers in accordance with federal law.

The bill extends the moratorium on the authorization of hospital off-site emergency departments to July 1, 2006.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

ELDER SERVICES

HB 1525 — Elderly Affairs

by Rep. Lopez-Cantera and others (CS/SB 2364 by Health Care Committee and Senators Fasano, Lynn, and Posey)

This bill deletes the requirement for the Agency for Health Care Administration in consultation with the Department of Elder Affairs to integrate the Frail Elder Option program into the Nursing Home Diversion program. The bill also deletes the requirement for the agency and the department to integrate the Aged and Disabled Adult Medicaid waiver and the Assisted Living for the Elderly Medicaid waiver into one waiver program.

The bill revises the eligibility requirements relating to financial solvency for entities providing services in the Nursing Home Diversion program. It requires the agency to use a federally approved, actuarially certified rate methodology to develop reimbursement rates for the long-term care community diversion pilot project.

The bill allows the department to move forward on implementation of the pilot program allowing Community Care for the Elderly lead agencies to transition over a period of time into full providers of service under the nursing home diversion program.

The bill deletes the requirement for the department's Comprehensive Assessment Review and Evaluation Services (CARES) program staff to annually review at least 20 percent of case files of Medicaid nursing home residents.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

PUBLIC HEALTH

HB 151 — Health Care Act/Access/Poverty Level

by Rep. Sorenson and others (SB 1032 by Senators Bennett, Dawson, Rich, and Wilson)

The bill revises the definition of "low income" under the Access to Health Care Act, to extend eligibility for volunteer, uncompensated health care services to persons who are without health insurance and whose family income does not exceed 200 percent, rather than 150 percent, of the federal poverty level.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 113-0

CS/CS/SB 186 — Sexually Transmissible Disease

by Judiciary Committee; Health Care Committee; and Senator Lynn

The bill revises the circumstances under which a positive preliminary HIV test result may be released, to include the results of rapid testing technologies. The results of rapid testing technologies must be considered preliminary and may be released in accordance with the manufacturer's instructions as approved by the federal Food and Drug Administration. The bill eliminates the prohibition against the release of preliminary test results for the purpose of routine identification of HIV-infected individuals or when HIV testing is incidental to the preliminary diagnosis or care of a patient.

The bill authorizes the HIV testing of pregnant women pursuant to s. 384.31, F.S., without meeting the specific informed consent requirements for HIV testing outlined in s. 381.004(3)(a), F.S.

The bill clarifies that each laboratory that performs a test that concludes with a positive report for a sexually transmissible disease or a result indicative of HIV or AIDS must report such facts as may be required by the Department of Health by rule, within a time period as specified by rule of the department, but in no case to exceed 2 weeks. The department must adopt rules specifying the maximum, rather than a minimum, time period for reporting a sexually transmissible disease, including but not limited to, HIV/AIDS. References to the HIV/AIDS Reporting System developed by the Centers for Disease Control and Prevention of the U.S. Public Health Service are deleted to allow the use of a system for reporting of HIV/AIDS which is developed by the Centers for Disease Control and Prevention or an equivalent system.

The Department of Health must adopt rules requiring each physician and laboratory to report any newborn or infant up to 18 months of age who has been exposed to HIV.

The bill eliminates the required reporting of physician-diagnosed cases of AIDS based upon diagnostic criteria from the Centers for Disease Control and Prevention. Reports of HIV infection identified on or after the effective date of the department's administrative rule which required reporting are eliminated, which in effect would no longer exempt reports of HIV infection identified before the effective date of such administrative rules. Certain university-based medical research protocols would no longer be exempt from HIV reporting.

The bill eliminates requirements for the Department of Health to submit an annual report to the Legislature by February 1 of each year relating to all information obtained pursuant to its duties for HIV reporting.

The bill revises statutory requirements relating to testing of pregnant women, to require every medical physician, osteopathic physician, or midwife attending a pregnant woman to cause the woman to be tested for sexually transmissible diseases, including HIV, as required by rule of the department. Requirements for the tests to be done with a blood sample are eliminated. The pregnant woman must be notified that the tests for sexually transmissible diseases, including HIV, will be conducted, and of her right to refuse testing. If a pregnant woman objects to testing, a written statement of objection, signed by the woman, must be placed in the woman's medical record and testing may not occur. Provisions that require the health care provider to obtain a blood sample from the pregnant woman and to offer HIV testing and counseling are deleted. The bill eliminates requirements that make a medical physician, osteopathic physician, or midwife who attends a pregnant woman who objects to HIV testing immune from liability arising out of or related to the contracting of HIV infection or AIDS by the child from the mother, to conform to the changes in the section that require all pregnant women to be tested for HIV.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 108-2

CS/CS/SB 626 — Portable Restroom Contracting

by Health and Human Services Appropriations Committee; Health Care Committee; and Senators Constantine and Campbell

This bill provides for the regulation of portable restroom contractors. The bill requires portable restroom contractors to be registered by the Department of Health; authorizes the department to develop rules for these contractors; provides for suspension or revocation of registration; requires the department to establish fees for registration as a portable restroom contractor; provides that the department may impose a fine for violations under the portable restroom contracting regulations; gives the department the authority to regulate, permit, and inspect the use of portable restrooms, mobile restrooms, mobile shower trailers and associated wastewater holding tanks; gives the department the authority to issue citations for violations of these regulations and gives the department the authority to reduce or waive the fine imposed by the citation; and requires the

department to deposit any fines it collects in the county health department trust fund for use in providing portable restroom contracting services.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 111-0

HB 869 — Crohn's and Colitis Disease Research

by Rep. Sobel and others (CS/SB 1926 by Health Care Committee and Senators Margolis and Wilson)

This bill requires the Department of Health, in conjunction with the University of Florida College of Public Health and Health Professions, to conduct an epidemiological study of inflammatory bowel disease to gain a better understanding of the prevalence of the disease in the state, the demographic characteristics of the patient population, and the role that family history and environment play in the disease. The department is authorized to convene a study group to conduct the epidemiological study, and the membership is specified in the bill. The department must report its findings to the Governor and Legislature by February 1, 2006.

The bill requires the Agency for Health Care Administration to conduct a chronic disease study on coverage standards provided by Medicaid for inflammatory bowel disease therapies and report its findings to the Governor and Legislature by February 1, 2006.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 113-0

CS/CS/SB 874 — Sale and Distribution of Prescription Drugs

by Health and Human Services Appropriations Committee; Health Care Committee; and Senator Peaden

The bill revises provisions relating to the wholesale distribution of prescription drugs in Florida. The bill revises the definition of "pedigree paper" to provide that a pedigree paper is a document in either paper or electronic form. The definition is also revised to include additional information that must be included on a legend drug's pedigree paper and to clarify that the pedigree papers must include a certification that the recipient wholesaler has authenticated the pedigree papers. If the manufacturer or repackager has uniquely serialized the individual legend drug unit, that identifier must also be included on the pedigree.

The bill revises the definition of "wholesale distribution" to exempt the sale, purchase, or trade of a prescription drug between pharmacies because of a sale, transfer, merger, or consolidation of all or part of the business of the pharmacies from or with another pharmacy, whether accomplished as a purchase and sale of stock or of business assets.

The bill deletes the expiration date of July 1, 2006, for provisions relating to requirements for wholesale drug distributors to provide pedigree papers so that chain drug store warehouses and repackaging operations, including retail pharmacies within an affiliated group that distributes drugs only to members of their affiliated group, would continue to be exempt from passing the pedigree papers.

The bill prohibits the Agency for Health Care Administration from reviewing or using certain violations relating to recordkeeping for prescription drugs to deny or withhold Medicaid payments to pharmacies or to audit pharmacies' records.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 115-1

CS/SB 1094 — Blood Donor Protection Act

by Governmental Oversight and Productivity Committee and Senator Smith

The bill creates the "Blood Donor Protection Act" to provide that a blood bank, subsidiary or affiliate of a blood bank, an employee or agent of a blood bank, or a subsidiary or affiliate of an agent or employee of a blood bank, may not be compelled to disclose the identity or any identifying characteristics of a person who donates blood or any blood component. The prohibition against compelling a blood bank or its agent to disclose the identity or any identifying characteristics of a person who donates the blood or blood component does not apply if written consent is obtained from the donor to disclose the donor's identity or any identifying characteristics of the donor. The prohibition does not preclude disclosure to a local, state, or federal governmental public health authority as required by law.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 116-0

HB 1347 — Controlled Substances

by Rep. Evers and others (CS/SB 2352 by Criminal Justice Committee and Senators Peaden, Posey, and Lynn)

The bill amends the Florida Comprehensive Drug Abuse Prevention and Control Act to revise the listed precursor chemicals and the listed essential chemicals that may be used to manufacture controlled substances in violation of ch. 893, F.S., to conform to federal requirements for precursor or essential chemicals used to manufacture controlled substances.

The bill makes it unlawful for any person to manufacture methamphetamine or phencyclidine, or to possess any listed chemical with intent to manufacture methamphetamine or phencyclidine, and to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of an assisted living facility. The bill increases

penalties for the manufacture of methamphetamine or phencyclidine or the possession of any listed chemical with intent to manufacture methamphetamine or phencyclidine if the offense occurs in a structure or conveyance where any child under 16 years of age is present. The bill makes it unlawful to possess 14 grams or more of pseudoephedrine, such as Sudafed®, in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine and the offense is subject to the felony penalties of the drug trafficking provisions under ch. 893, F.S.

The bill makes it unlawful for any person to store anhydrous ammonia in a container that is not approved by the U.S. Department of Transportation to hold anhydrous ammonia or is not constructed in accordance with sound engineering, agricultural, or commercial practices.

The bill makes it unlawful for a person to knowingly deliver in any single retail over-the-counter sale any number of packages of any drug containing a sole active ingredient that contains a combined total of more than 9 base grams of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, or more than three packages in any single retail over-the-counter sale, regardless of weight, containing any such sole active ingredient. Additionally, no person shall knowingly display and offer for retail sale packages of such drug other than behind a checkout counter where the public is not permitted or other such location that is not otherwise accessible to the general public. Also, no person who is the owner or primary operator of a retail outlet where such drug is available for sale shall knowingly allow an employee to engage in the retail sale of such products unless the employee has completed an employee training program that shall include, at a minimum, basic instruction on state and federal regulations relating to the sale and distribution of such products. The initial violation of these restrictions is a second degree misdemeanor, punishable by a fine. A second violation is a first degree misdemeanor, a third or subsequent violation is a third degree felony.

The requirements relating to the marketing, sale, or distribution of ephedrine, pseudoephedrine, or phenylpropanolamine products supersede any local ordinance or regulation passed by a county, municipality, or other local governmental authority.

If approved by the Governor, these provisions take effect July 1, 2005 and apply to offenses committed on or after that date.
Vote: Senate 39-0; House 114-0

SB 1450 — Arthritis Prevention and Education

by Senator Klein

The bill creates the "Arthritis Prevention and Education Act," to require the Department of Health to establish an arthritis prevention and education program and to conduct a needs assessment to identify research on arthritis, the needs of persons with arthritis, and services

available to persons with arthritis. The department must establish and coordinate a statewide partnership on arthritis to collaborate on and address arthritis issues in Florida, and use strategies consistent with existing national and state efforts to raise public knowledge on the causes and nature of arthritis, personal risk factors, the value of prevention and early detection, ways to minimize preventable pain through evidence-based self-management interventions, and options for diagnosing and treating the disease. The department must establish, promote, and maintain an arthritis prevention and education program and carry out other related duties, to the extent that funds are specifically made available to implement the bill. The bill authorizes the Secretary of Health to accept grants, services, and property from various sources to fulfill the obligations of the program and to seek any federal waiver that may be necessary to maximize funds from the federal government.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 117-0

PUBLICLY FUNDED HEALTH CARE COVERAGE

HB 569 — Florida KidCare Program

by Rep. Garcia and others (CS/SB 1324 by Health Care Committee and Senators Rich, Lynn, Wilson, Hill, Atwater, Klein, Dawson, Bennett, Miller, Dockery, Peaden, Villalobos, and Bullard)

This bill allows continuous, year-round enrollment in the Florida KidCare program by removing statutory language restricting open enrollment to January and September of each year. The bill also provides that a KidCare application is valid for a period of 120 days from the date it was received. At the end of the 120-day period, if the applicant has not been enrolled in the program, the application is rendered invalid and the applicant must be notified of the action. The applicant may then resubmit the application after notification.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 40-0; House 115-0

CS/CS/SB 838 — Medicaid

by Ways and Means Committee; Health Care Committee; and Senators Peaden, Atwater, Campbell, Carlton, Rich, Saunders, and Lynn

The bill contains both short and long-term Medicaid reform activities, demonstration projects, and studies designed to improve efficiency and achieve sustainable growth in Florida's Medicaid program. Specifically, the bill:

- Requires the Agency for Health Care Administration (AHCA) to contract with a vendor to identify and counsel providers whose clinical practice patterns are outside normal practice patterns to improve patient care and reduce inappropriate utilization.

- Authorizes AHCA to use more single-source contracting to reduce costs, without limiting access to care.

- Requires AHCA to determine if purchasing medical equipment is less expensive than rental and authorizes AHCA to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse.

- Requires that provider service network contracts currently in effect shall be extended for a period of 3 years and provides a definition for a provider service network.

- Directs AHCA to pilot test an integrated, fixed payment long-term care delivery system in two, nondesignated areas of the state, with one site having voluntary participation and one site having mandatory participation. The bill specifies the types of long-term care funds to be combined under the system and the types of health plans that can participate in the system. Implementation of the long-term care delivery system is contingent upon the approval of the federal waiver by the Legislature. The Office of Program Policy Analysis and Government Accountability (OPPAGA) is directed to evaluate the long-term care pilot program.

- Requires AHCA to consider business cases for changing reimbursement rates for certain services if the change reduces costs in other parts of the Medicaid program.

- Requires the Comprehensive Assessment and Review for Long-term Care Services (CARES) staff to identify Medicare patients in nursing homes who are being inappropriately disqualified from coverage under Medicare and assist with appeal of the disqualification, contingent on whether this authority is determined to be a reimbursable service under Medicaid rules.

- Requires AHCA to contract with an entity to develop a real-time utilization tracking system or electronic medical record for Medicaid recipients.

- Requires AHCA to develop emergency department diversion programs in conjunction with those being developed in the private sector as a result of HB 1629 from the 2004 Legislative Session.

- Modifies the Medicaid prescription drug utilization program to permit dispensing practitioners to participate in the Medicaid pharmacy network regardless of their proximity to other dispensing entities. The bill requires AHCA to implement a prescription-drug-management system to coordinate proper clinical practices among

physicians and pharmacists. The bill requires AHCA to study whether its reuse program can be expanded to reduce the unnecessary destruction of drugs.

- Allows mental health crisis care to be provided in licensed crisis-stabilization facilities if it is less costly.

- Specifies waiver authority for AHCA to establish a statewide Medicaid reform initiative contingent upon federal approval to preserve the upper-payment-limit funding mechanism for hospitals and contingent upon protection of the disproportionate share program authorized pursuant to ch. 409, F.S. It further provides that phase one of this demonstration project shall be implemented in two geographical areas. One site shall include only Broward County, a second site shall initially include Duval County and shall be expanded to include Baker, Clay, and Nassau Counties within 1 year after the Duval County program becomes operational. Upon completion of the evaluation, after 24 months of operation of the pilot projects, AHCA may request statewide expansion. Statewide phase-in to additional counties is contingent upon review and approval of the Legislature.

The bill enumerates the powers, duties, and responsibilities AHCA shall have with respect to the development of the demonstration program. AHCA is required to:

1. Include the delivery of all mandatory services specified in s. 409.905, F.S., and optional services specified in s. 409.906, F.S., as approved by the Centers for Medicare and Medicaid Services and the Legislature. Services to recipients under plan benefits are required to include emergency services;
2. Recommend Medicaid-eligibility categories to be included in the program;
3. Determine and recommend actuarially sound, risk-adjusted capitation rates;
4. Determine and recommend program standards and credentialing requirements for health plans to participate in the program including allowing federally-qualified health centers, federally qualified rural health clinics, county health departments, and other public providers to participate in the reform program if willing;
5. Develop a system for assisting recipients in choosing among health plans in the program (choice counseling), including types of materials that must be provided, multi-lingual requirements, anti-fraud and recipient recruiting requirements, verification requirements that a recipient received choice counseling; and authority to allow the agency to contract for the service;
6. Develop a grievance procedure for recipients and providers;
7. Develop and recommend a monitoring system to prevent fraud and abuse by plans, their providers, and recipients;
8. Develop a system where plans compensate school districts for services they must provide to their students on Medicaid; and
9. Develop a system that addresses special needs of children with chronic medical conditions, persons with developmental disabilities, and children in foster care.

10. Provide an opt-out option to allow recipients to purchase employer-sponsored coverage, but allows a recipient to reenroll in Medicaid within a certain timeframe if the opt-out option was not the best choice for the individual.

The bill requires AHCA to post all waiver applications to implement this program on its Internet website 30 days prior to submission to the federal government. All waiver applications must be provided to the House and Senate 10 days before submission to the federal government and all waivers approved by the federal government may not be implemented without review and approval of the Legislature as a whole.

The bill requires OPPAGA and the Auditor General to conduct an evaluation of the pilot to be provided to the Governor and the Legislature no later than June 30, 2008, to consider statewide expansion.

- Requires that Medicaid lung transplants be reimbursed using a global payment methodology and appropriates funds for these services.

- Requires that at least 5 percent of Medicaid audits to detect Medicaid funds lost to fraud and abuse be conducted on a random basis.

- Requires Medicaid recipients to be provided explanations of benefits.

- Requires AHCA to study the legal and program barriers to enforcing copayments in the Medicaid program.

- Requires AHCA to develop recommendations to improve third-party liability recoveries and ensure that Medicaid is the payor of last resort.

- Requires OPPAGA to study and confirm the value of nursing home diversion programs.

- Requires AHCA to study mechanisms for collecting patient-responsibility payments from persons in the diversion programs.

- Requires OPPAGA to conduct a study of Medicaid buy-in programs, and whether the Medically Needy program can be redesigned to be a Medicaid buy-in program.

- Requires OPPAGA, in consultation with the Attorney General's Medicaid Fraud Control Unit and the Auditor General, to study potential fraud and abuse by pharmaceutical manufacturers in their pricing and rebate practices in Medicaid. Requires the report to be submitted to the Legislature and Governor by January 1, 2006.

The bill repeals provisions of SB 404, the Health Appropriations Conforming bill, that changes the agency's rule-making authority related to rate setting in ch. 120, F.S., removes rates from

provider contracts, allows the agency to adjust Medicaid rates in provider contracts with only a 48-hour notice, and removes a provider's right to an administrative hearing under ch. 120, F.S. Instead, the bill requires the Senate Select Committee on Medicaid Reform to study how provider rates are established and modified.

The bill also provides Medicaid HMOs a 2.8 percent rate increase.

The sums of $7,129,241 in recurring General Revenue Funds, $9,076,875 in nonrecurring General Revenue Funds, $8,608,242 in recurring funds from the Administrative Trust Fund, and $9,076,874 in nonrecurring funds from the Administrative Trust Fund are appropriated and 11 full time equivalent positions are authorized for the purpose of implementing this act.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-1; House 88-24

SB 1122 — Third Party Liability

by Senator Saunders

This bill authorizes the Department of Revenue to provide the Agency for Health Care Administration with estate tax information for purposes of determining recoveries through the state's Medicaid Estate Recovery Act. The bill also reenacts the existing confidentiality provisions relating to this information. The bill requires third-party administrators and pharmacy benefits managers to provide data to the agency for purposes of determining Medicaid third party liability and requires a copy of a death certificate to be included with any notice to creditors served on the agency.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 39-0; House 118-0

CS/SB 1208 — Long-Term Care Partnership Program

by Health Care Committee and Senators Peaden, Fasano, Klein and Lynn

The bill directs the Agency for Health Care Administration to establish the Florida Long-term Care Partnership Program to provide incentives for individuals to purchase long-term care insurance. A person who participates in the partnership is able to qualify for coverage for the costs of long-term care under Medicaid without first being required to substantially exhaust or "spend down" his or her assets. The amount of countable assets for purposes of determining eligibility for Medicaid would be reduced by $1 for each $1 of benefits paid by an individual's long-term care partnership program policy.

Prior to the next legislative session, the agency is required to develop a plan for implementation of the Florida Long-Term Care Partnership Program in the form of recommended legislation.

The bill would take effect upon becoming law, except that the amendments relating to Medicaid eligibility are effective contingent upon action by Congress to amend section 1917(b)(1)(c) of the federal Social Security Act.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 116-0

PUBLIC RECORDS AND MEETINGS EXEMPTIONS

HB 185 — Child Abuse Death Review/Public Records and Meetings Exemptions

by Rep. Harrell and others (CS/SB 676 by Governmental Oversight and Productivity Committee and Senator Saunders)

The bill creates public records and public meetings exemptions for the State Child Abuse Death Review Committee and local committees. The bill makes any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by the State Child Abuse Death Review Committee or a local committee, or a panel or committee assembled by the state committee or a local committee, confidential and exempt from the Public Records Law. The bill also exempts those portions of meetings of the State Child Abuse Death Review Committee or a local committee, or a panel or committee assembled by the state committee or a local committee, at which such confidential and exempt information is discussed.

The bill makes the exemptions subject to Open Government Sunset Review and provides a statement of public necessity justifying the creation of the public records and public meetings exemptions.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 112-0

CONSTITUTIONAL AMENDMENTS

CS/SB 938 — Adverse Medical Incidents

by Health Care Committee and Senators Peaden and Crist

This bill implements s. 25, Art. X, of the State Constitution, which provides patients access to records of adverse medical incidents. The bill provides a popular title, the "Patients' Right-to-Know About Adverse Medical Incidents Act." The act requires hospitals, ambulatory surgical centers, mobile surgical facilities, medical physicians, osteopathic physicians, and

podiatric physicians to provide access to records of adverse medical incidents that occurred on or after November 2, 2004. An adverse medical incident means medical negligence, intentional misconduct, or any other act, neglect, or default of a health care facility or health care provider, which caused, or could have caused, injury or death to a patient. A patient may have access to a final adverse medical incident report of the facility or provider of which he or she is a patient, which involves the same, or substantially similar, condition, treatment, or diagnosis as that of the patient requesting access. A patient must request adverse medical incident records in writing and must provide his or her name; address; the last four digits of his or her social security number; a description of his or her condition, treatment, or diagnosis; and the name of the health care providers whose records are being sought.

The act prohibits the disclosure of the identity of patients involved in an adverse medical incident report. The records of adverse medical incidents obtained by a patient under this act are not discoverable or admissible into evidence in any civil or administrative action against a health care facility or provider, unless otherwise provided by the an act of the Legislature. The act establishes fees that may be charged for copies of records.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-2; House 110-3

CS/SB 940 — Repeated Medical Malpractice

by Health Care Committee and Senators Peaden and Crist

The bill implements s. 26, Art. X of the State Constitution, which provides that "[n]o person who has been found to have committed three or more incidents of medical malpractice shall be licensed or continue to be licensed by the State of Florida to provide health care services as a medical doctor." The bill applies the constitutional provision to allopathic and osteopathic physicians. Only incidents that occurred on or after November 2, 2004, may be considered for purposes of the prohibition on licensure for repeated medical malpractice. The Board of Medicine and the Board of Osteopathic Medicine, when revoking a license, or granting or denying a license must review the facts supporting an incident of medical malpractice using a clear and convincing standard of evidence. The time for the boards to review physician licensure applications is extended from 90 to 180 days. Acts of medical malpractice, gross medical malpractice, or repeated malpractice, as grounds for which an allopathic or osteopathic physician may be disciplined, are redefined to implement s. 26, Art. X of the State Constitution. Incident is defined to include a single act of medical malpractice, regardless of the number of claimants. Multiple findings of medical malpractice arising from the same act or acts associated with the treatment of the same patient must count as only one incident.

Beginning July 1, 2005, the Department of Health must verify each physician's disciplinary history and medical malpractice claims at initial licensure and licensure renewal using the

National Practitioner Data Bank. The physician profiles must reflect the disciplinary action and medical malpractice claims as reported by the National Practitioner Data Bank.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 35-3; House 113-0

HB 1659 — Parental Notice of Abortion Act

by Rep. Kottkamp and others (CS/SB 1908 by Judiciary Committee and Senators Dockery, Fasano, Webster, Bullard, Peaden, Lawson, King, Garcia, Haridopolos, Diaz de la Portilla, Saunders, Pruitt, Wise, Alexander, Atwater, Lynn, Argenziano, Jones, Bennett, Sebesta, Baker, Villalobos, and Posey)

This bill will implement s. 22, Art. X, State Constitution, which authorizes the Legislature to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The bill requires a physician to give actual notice in person or by telephone 48 hours before the termination of a minor's pregnancy. If actual notice is not possible after a reasonable effort has been made, the physician performing the termination of pregnancy or the referring physician must give constructive notice in writing, signed by the physician, and mailed at least 72 hours before the termination of the minor's pregnancy to the last known address of the parent or legal guardian. Constructive notice must be sent by certified mail, return receipt requested, with delivery restricted to the parent or legal guardian. After the 72 hours have passed, delivery of the constructive notice is deemed to have occurred. Violation of the notification requirement constitutes grounds for disciplinary action against the physician under the physician's practice act.

Notice is not required if: a medical emergency exists and there is insufficient time for the physician to comply with the notice requirements; the person entitled to notice waives in writing his or her right to notice; the minor is or has been married or is emancipated; the minor waives notice because she has a minor child dependent on her; or notice is waived by the judicial waiver procedure that is established in the bill.

A minor may petition any circuit court in a judicial circuit within the jurisdiction of the District Court of Appeal in which she resides for a waiver of the notice requirement, and she may file the petition under a pseudonym or through the use of initials, as provided by court rule. The court must advise the minor that she has a right to court-appointed counsel and must provide her with counsel upon her request at no cost to the minor. The court must rule within 48 hours unless the 48-hour limitation has been extended at the request of the minor. If the court does not rule within 48 hours and the limit has not been extended, the petition is granted and the notice requirement is waived.

If the court finds by clear and convincing evidence that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court must issue an order authorizing the minor to

consent to the termination of pregnancy without notification of a parent. If the court finds by a preponderance of the evidence that there is evidence of child abuse or sexual abuse of the petitioner by a parent or guardian, or that the notification of a parent or guardian is not in the best interest of the minor, the court must issue an order authorizing the minor to consent to the termination of pregnancy without notification of a parent or guardian. If the court does not find one of the following — that the minor is sufficiently mature to decide, that there is evidence of child abuse or sexual abuse of the minor by a parent or guardian, or that notification of a parent or guardian is not in the best interest of the petitioner — the court must dismiss the petition.

The bill requires a written transcript of all testimony and proceedings and requires confidentiality of the proceedings under s. 390.01116, F.S. A separate public records bill, CS/SB 798 amended s. 390.01116, F.S., to apply the public records exemption to the provisions of this bill. (See Session Summary by the Judiciary Committee.)

The bill requires an expedited and confidential appeal, provides for waiver of filing fees and court costs, and provides that counties are not required to pay for court-appointed counsel. The bill requests the Supreme Court to adopt rules and forms for petitions, including provisions addressing confidentiality; and requires the Supreme Court to report annually to the Governor and the Legislature on the number of petitions filed, and the timing and manner of disposal of the petitions.

If approved by the Governor, these provisions take effect upon adoption of rules and forms by the Supreme Court, but no later than July 1, 2005.
Vote: Senate 36-3; House 96-14

CIVIL LIABILITY

HB 1019 — Asbestos and Silica Compensation Fairness Act

by Rep. Pickens and others (CS/SB 2562 by Judiciary Committee and Senators Webster and Clary)

The bill creates the "Asbestos and Silica Compensation Fairness Act" (act). The act specifies a legislative purpose, provides definitions, and imposes requirements on litigants who wish to file an asbestos or silica claim. The act requires plaintiffs to make a prima facie showing that actual physical impairment has occurred based on criteria specified in the bill for: a nonmalignant asbestos claim; if a smoker, an asbestos claim based upon cancer of the lung, larynx, pharynx, or esophagus; an asbestos claim based upon cancer of the colon, rectum, or stomach; silicosis claim; or other silica claim. The act provides that no prima facie showing of an impairment due to asbestos exposure is required for: an asbestos claim by a nonsmoker based on cancer of the lung, larynx, pharynx, or esophagus; or an asbestos claim based upon mesothelioma.

In any civil action alleging an asbestos or silica claim, the plaintiff must file a written report and supporting tests to support his or her prima facie evidence of physical impairment with a court. A plaintiff may bring a claim in Florida only if the plaintiff is domiciled in this state or if exposure to asbestos or silica occurred in Florida. Any plaintiff with a claim pending on or after the effective date of the act must file the written report with the court no later than 30 days prior to setting a date for trial. The claim must be dismissed without prejudice if a finding is made of failure to make the required prima facie showing.

In addition to the written report, such plaintiffs must file a: verified written report disclosing the total amount of any collateral source payments received within 60 days after the effective date of the bill for pending asbestos or silica claims, or at least 30 days before trial; and a sworn information form that contains specified information. The court must permit setoff, based on the collateral source payment information that the plaintiff provides, in accordance with the laws of this state as of the effective date of the bill.

Notwithstanding any other law, with respect to any asbestos or silica claim not barred as of the effective date of this act, the statute of limitations does not begin to run until the exposed person discovers, or through the exercise of reasonable diligence should have discovered, that he or she is physically impaired by an asbestos related condition. Damages may not be awarded for fear or risk of cancer in a civil action asserting an asbestos or silica claim. A settlement of a nonmalignant asbestos or silica claim concluded after the effective date may not require, as a condition of settlement, release of any future claim for asbestos-related or silica-related cancer.

The act establishes the rules for liability for product sellers, renters, and lessors of asbestos or silica products in a civil action. A court may not award any punitive damages in any civil action alleging an asbestos or silica claim. The act does not affect the rights of any party in bankruptcy proceedings. The act may not be interpreted to prevent any person from bringing or maintaining an asbestos claim based on nonoccupational exposure where such person would be otherwise able to bring or maintain a claim under this bill.

The act specifies that because the act expressly preserves the right of all injured persons to recover full compensatory damages for their loss, it does not impair vested rights. The act applies to any civil action asserting an asbestos or silica claim in which trial has not commenced as of the effective date of this act.

If approved by the Governor, these provisions take effect July 1, 2005.
Vote: Senate 32-8; House 103-13