

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB HCR 10-03 Reorganization of the Department of Health  
**SPONSOR(S):** Health Care Regulation Policy Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Health Care Regulation Policy Committee	11 Y, 2 N	Quinn	Calamas
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

PCB HCR 10-03 reorganizes and focuses the mission of the Department of Health (DOH) from 13 statutory responsibilities to seven responsibilities related to: surveillance of communicable disease; implementation of interventions that prevent or limit the spread of disease; preparedness functions related to public health emergencies; regulation of environmental activities impacting the state; administration of health and related services to target populations; collection and management of vital statistics data; and regulation of health care practitioners. The PCB requires DOH to submit a proposal to the Legislature by November 1, 2010 for a new department structure based upon these responsibilities that includes a reduction in the number of divisions (11, currently), bureaus, and executive positions, a description of programs inconsistent with the new responsibilities and a job description of all bureau chief or division director positions. Additionally, the PCB repeals broad legislative intent language related to DOH’s public health mission, revises some of its statutory duties consistent with the revised responsibilities, and defines DOH’s role in managing and coordinating emergency preparedness and disaster response functions.

The bill sunsets all departmental divisions on July 1, 2011, unless reviewed and reenacted by the Legislature DOH is authorized to establish multi-county service areas for its County Health Departments. The PCB removes provisions authorizing DOH to use state and federal funds to administer a variety of promotional programs and public health campaigns, and a provision authorizing DOH to hold copyrights, trademarks, and service marks. Beginning in fiscal year 2010-2011, DOH is precluded from initiating or commencing new programs, including federally-funded or grant-supported programs, without express legislative authority. This does not affect grants initiated or commenced prior to July 1, 2010.

The PCB amends the definition of group care facilities regulated in the DOH environmental health program and redefines “food service establishment” for purposes of its food service program. Under the new definition, food service inspections are limited to detention facilities, public or private schools, migrant labor camps, assisted living facilities, adult family-care homes, adult day care centers, short term residential treatment centers, residential treatment facilities, crisis stabilization units, hospices, prescribed pediatric care centers, intermediate care facilities for the developmentally disabled, boarding schools, civic or fraternal organizations, bars and lounges, and vending machines dispensing potentially hazardous foods. The PCB authorizes DOH to advise other agencies about food service inspections, and makes conforming changes elsewhere in statute.

Finally, the bill repeals the Office and Officer of Women’s Health Strategy, the statewide injury prevention program, and the defunct Children’s Early Investment Act and related sections.

The PCB has an indeterminate fiscal impact (See Fiscal Comments).

The PCB has an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Department of Health**

Prior to 1991, most of Florida's health and human services programs were administered by a single state agency, the Department of Health and Rehabilitative Services (DHRS). From 1991 through 1997, the Legislature subdivided the programmatic functions of DHRS, now the Department of Children and Families, and created four new agencies to achieve more effective program management.

By 1997, the Department of Children and Families, and the four new agencies – the Department of Elder Affairs, the Agency for Health Care Administration, the Department of Juvenile Justice, and the Department of Health<sup>1</sup> - were responsible for administering a vast majority of Florida's health and human services programs.

The Department of Health (DOH) is established pursuant to s. 20.43, F.S. Since being established in 1996, DOH's mission has persistently grown and diversified. Currently, DOH's statutory mission is comprised of the following<sup>2</sup>:

- Prevent the occurrence and progression of communicable and noncommunicable diseases and disabilities.
- Maintain a constant surveillance of disease occurrence and accumulate health statistics in order to establish disease trends and design health programs.
- Conduct special studies of the causes of diseases and formulate preventive strategies.
- Promote the maintenance and improvement of the environment as it affects public health.
- Promote the maintenance and improvement of health in the residents of the state.
- Provide leadership, in cooperation with the public and private sectors, to establish statewide and community public health delivery systems.
- Provide health care and early intervention services to infants, toddlers, children, adolescents, and high-risk perinatal patients who are at risk for disabling conditions or have chronic illnesses.
- Provide services to abused and neglected children through child protection teams and sexual abuse treatment programs.

<sup>1</sup> Created by s. 8, Ch. 96-403, Laws of Florida.

<sup>2</sup> s. 20.43(1), F.S.

- Develop working associations with all agencies and organizations involved and interested in health and health care delivery.
- Analyze trends in the evolution of health systems, and identify and promote the use of innovative, cost-effective health delivery systems.
- Serve as the statewide repository of all aggregate data accumulated by state agencies related to health care; analyze that data and issue periodic reports and policy statements, as appropriate; require that all aggregated data be kept in a manner that promotes easy utilization by the public, state agencies, and all other interested parties; provide technical assistance as required; and work cooperatively with the state's higher education programs to promote further study and analysis of health care systems and health care outcomes.
- Include in the department's strategic plan developed under s. 186.021 an assessment of current health programs, systems, and costs; projections of future problems and opportunities; and recommended changes that are needed in the health care system to improve the public health.
- Regulate health practitioners, to the extent authorized by the Legislature, as necessary for the preservation of the health, safety, and welfare of the public.

Generally, the State Surgeon General has statutory authority to: be the leading voice on wellness and disease prevention efforts through specified means; advocate on health lifestyles; develop public health policy; and build collaborative partnerships with other entities to promote health literacy.<sup>3</sup>

DOH has 11 statutory divisions: Administration, Environmental Health, Disease Control, Family Health Services, Children's Medical Services Network, Emergency Medical Operations, Medical Quality Assurance, Children's Medical Services Prevention and Intervention, Information Technology, Health Access and Tobacco, and Disability Determinations<sup>4</sup> DOH operates numerous programs, provides administrative support for 29 statutory health care boards and commissions, contracts with an unknown number of vendors, oversees 67 county health departments, and performs a variety of regulatory functions.

DOH is authorized to use state and federal funds to protect and improve the public health by administering health education campaigns; providing health promotional items such as shirts, hats, sports items, and calendars; planning and conducting promotional campaigns to recruit health professionals to work for DOH or participants for DOH programs; or providing incentives to encourage health lifestyles and disease prevention behaviors.<sup>5</sup>

When DOH was created in 1996, it received a total appropriation of \$1.4 billion, including \$384 million of general revenue, and had approximately 14,000 FTEs.<sup>6</sup> In Fiscal Year 2009-2010, DOH received more than \$470 million in general revenue and is authorized to spend a total of \$2.9 billion. Today, more than 17,000 persons are employed by DOH.<sup>7</sup>

### **Office of Women's Health Strategy**

In 2004, the Legislature passed CS/SB 2448, creating the Women's Health Strategy (the "Strategy").<sup>8</sup> The Strategy is administered by a Women's Health Officer and is intended to focus on the unique health care needs of women.

The Officer of Women's Health Strategy is tasked with<sup>9</sup>:

- Ensuring state policies and programs are responsive to sex and gender differences and women's health needs;
- Organizing an interagency Committee for Women's Health with DOH, the Agency for Health Care Administration, the Department of Education, the Department of Elderly Affairs, the

<sup>3</sup> S.20.43(2), F.S.

<sup>4</sup> s. 20.43(3), F.S.

<sup>5</sup> s. 20.43(7), F.S.

<sup>6</sup> This figure includes County Health Department staff.

<sup>7</sup> Including County Health Department staff.

<sup>8</sup> s. 381.04015, F.S. (Ch. 2004-350, Laws of Florida).

<sup>9</sup> s. 381.04015(4), F.S.

Department of Corrections, the Office of Insurance Regulation and the Department of Juvenile Justice in order to integrate women's health into current state programs;

- Collecting and reviewing health data and trends to assess the health status of women;
- Reviewing the state's insurance code as it relates to women's health issues;
- Working with medical school curriculum committees to integrate women's health issues into course requirements and promote clinical practice guidelines;
- Organizing statewide Women's Health Month activities;
- Coordinating a Governor's statewide conference on women's health;
- Promoting research, treatment, and collaboration on women's health issues at universities and medical centers in the state;
- Promoting employer incentives for wellness programs targeting women's health programs.
- Serving as the primary state resource for women's health information;
- Developing a statewide women's health plan emphasizing collaborative approaches to meeting the health needs of women;
- Promoting clinical practice guidelines specific to women;
- Serving as the state's liaison with other states and federal agencies and programs to develop best practices in women's health; and
- Developing a statewide, web-based clearinghouse on women's health issues and resources.
- Promoting public awareness campaigns and education on the health needs of women.

The Women's Health Officer provides an annual report to the Governor and presiding officers of the Legislature that includes recommended policy changes for implementing the Strategy.<sup>10</sup> According to the National Conference on State Legislatures, at least 18 states have created either offices or commissions dedicated to women's health, while three states – Florida, Illinois and Maine have designated a women's health officer or coordinator.<sup>11</sup>

## Food Safety Programs

Three state departments operate food safety programs in Florida: the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, and DOH. The three agencies carry out similar regulatory activities, but have varying statutory authority, regulate separate sectors of the food service industry, and are funded at different levels due to statutory fee caps.<sup>12</sup> Each agency issues food establishment licenses or permits, conducts food safety inspections and enforces regulations through fines and other disciplinary actions.<sup>13</sup>

Each agency has authority over specific types of food establishments. In general, DOH licenses facilities that serve high-risk populations such as hospitals, nursing homes, group care facilities, child care facilities, detention centers, and schools.<sup>14</sup> The Department of Business and Professional Regulation licenses restaurants, clubs, theaters, truck stops and gas stations.<sup>15</sup> The Department of Agriculture and Consumer Services regulates grocery stores and supermarkets, food packaging and processing plants.<sup>16</sup> While these agencies do not perform duplicate inspections, a single establishment with multiple food operations could be licensed or have food permits from multiple departments.<sup>17</sup>

Of the food establishments regulated by DOH, several hold licenses issued by other departments, such as the Agency for Health Care Administration (AHCA) or the Department of Children and Family

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<sup>10</sup> s. 381.04015(2)(p), F.S.

<sup>11</sup> "Laws and Initiatives on Women's Health," National Conference of State Legislatures (Updated February 2010); located at <http://www.ncsl.org/default.aspx?tabid=14377> (last viewed on March 17, 2010).

<sup>12</sup> Office of Program Policy Analysis & Government Accountability, State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, Report No. 08-67 (December 2008).

<sup>13</sup> Office of Program Policy Analysis & Government Accountability, State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, Report No. 08-67 (December 2008).

<sup>14</sup> Section 381.0072, F.S.

<sup>15</sup> Section 509, F.S.

<sup>16</sup> Section 500, F.S.

<sup>17</sup> Office of Program Policy Analysis & Government Accountability, State Food Safety Programs Should Improve Performance and Financial Self-Sufficiency, Report No. 08-67 (December 2008).

Services (DCF), which include some food service regulations and inspections. For example, nursing homes licensed and regulated by AHCA have a federal food safety requirement, which requires a complete kitchen inspection by a surveyor who has been trained, passed the Surveyor Minimum Qualifications Test and is qualified to conduct a Quality Indicator Survey Process.<sup>18</sup> AHCA also uses hospital surveyors to inspect sanitary conditions in hospitals under the Condition of Infection Control using the FDA Food Code.

DCF licenses or certifies and inspects child care facilities, as well as family day care and large family day care homes. DOH also inspects child care facilities.<sup>19</sup> On December 30, 2009, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued a memorandum which highlighted the overlap in agency regulatory functions for child care facilities and determined that both DOH and DCF inspect 66 percent of the licensed child care establishments (DCF alone inspects the remaining 34 percent) for a variety of environmental health issues.<sup>20</sup> With regard to food service inspections, the two agencies consider the following:

Department of Children and Families <sup>21</sup>	Department of Health <sup>22</sup>
<ul style="list-style-type: none"> <li>• Cleanliness/sanitary conditions</li> <li>• Handwashing</li> <li>• Drinking water</li> <li>• Types of meals provided – Nutrition &amp; Menu</li> <li>• Proper refrigeration</li> <li>• Proper use of single service items (forks and spoons)</li> </ul>	<ul style="list-style-type: none"> <li>• Source/wholesomeness of food</li> <li>• Food storage</li> <li>• Equipment/Preparation</li> <li>• Sanitizing</li> <li>• Handwash sink</li> <li>• Hot and cold water</li> <li>• Temperatures</li> <li>• Other</li> </ul>

DCF also certifies and regulates Florida’s 42 certified domestic violence centers. Most centers have kitchen areas which are equipped with basic supplies and tools residents may use to prepare their own meals; however, they do not provide meals for the residents. Only one center provides meals to residents.<sup>23</sup>

### Emergency Management

The Florida Department of Emergency Management has designated DOH the lead agency for Emergency Support Function – 8 (ESF-8), which concerns medical and health issues. ESF-8, through DOH and at least 12 other support agencies such as AHCA, DCF and the American Red Cross, oversees medical and health-related preparedness, recovery, mitigation, and response efforts in the event of a major natural or man-made disaster. ESF-8 agencies coordinate and manage overall public health response, triage, treatment and transportation of victims of a disaster, including transporting people out of a potentially affected area prior to an event. These agencies provide immediate support to hospitals and nursing homes, provide emergency behavioral health services and crisis counseling for victims, and assist in reestablishing health and medical systems post-event.<sup>24</sup>

### Statewide Injury Prevention Program

In 2004, the Legislature tasked DOH with establishing an injury prevention program (the “program”) to provide for statewide coordination and expansion of injury-prevention activities.<sup>25</sup> Pursuant to the program, DOH is required to collect data, provide surveillance, provide education, and promote interventions related to injury prevention, including<sup>26</sup>:

<sup>18</sup> Email correspondence with AHCA staff on file with the Health Care Regulation Policy Committee (March 16, 2010).  
<sup>19</sup> The report also analyzed the overlap in regulation between DCF and the Agency for Workforce Innovation, which also inspects child care facilities.  
<sup>20</sup> Child Care Services Placement Options for Legislative Consideration, OPPAGA Research Memorandum (December 30, 2009)  
<sup>21</sup> DCF Child Care Facility Standards Classification Summary, CF-FSP Form 5316 (October 2007).  
<sup>22</sup> DOH County Health Department Child Care Facility Inspection Report.  
<sup>23</sup> Department of Children and Family Services Staff Analysis and Economic Impact for House Bill 295 (November 5, 2009).  
<sup>24</sup> Florida Field Operations Guide, Chapter 16; located at <http://www.floridadisaster.org/FOG/Final%202005Chapter%2016%20111205.pdf> (last visited on March 19, 2010).  
<sup>25</sup> s. 401.243, F.S. (created in CS/HB 2448; Ch. 2004-350, Laws of Florida).  
<sup>26</sup> s. 401.243, F.S.

- Provide communities, county health departments, and other state agencies with expertise and guidance in injury prevention;
- Seek, receive, and expend funds received from grants, donations, or contributions from public or private sources for program purposes; and
- Develop, and revise as necessary, a comprehensive state plan for injury prevention.

The program collaborates with other state agencies regarding injury prevention issues and administers the following:

- Florida Bicycle Helmet Promotion Program
- Florida Special Needs Occupant Protection Program
- Drowning Prevention Awareness Campaign
- Public Information, Education and Relations for EMS Program; and
- Safe Kids Florida

### **Children's Early Investment Program**

In 1989, the Legislature created the Children's Early Investment Program (program).<sup>27</sup> The program targeted young children who are at risk of developmental dysfunction or delay and for their families. The services provided were to enhance family independence and provide social and educational resources needed for healthy child development. According to DOH, the Children's Early Investment Act was created as a pilot initiative that was executed through a contract with The Ounce of Prevention Fund of Florida.<sup>28</sup> The pilot initiative and all funding ceased over ten years ago.<sup>29</sup>

### **Effect of the Bill**

PCB HCR 10-03 amends s. 20.43, F.S., to modify the current responsibilities of DOH and reduce its responsibilities - through combining some functions and deleting others - from 13 responsibilities to the following seven:

- Identifying, diagnosing, investigating and conducting surveillance of communicable diseases in the state;
- Implementing interventions that prevent or limit the impact and spread of disease in the state;
- Maintaining and coordinating preparedness and response for public health emergencies in the state;
- Regulating environmental activities that have a direct impact on public health in the state;
- Administering and providing health and related services for targeted populations in the state;
- Collecting, managing, and analyzing vital statistics data in the state; and
- Regulating health practitioners, to the extent authorized by the Legislature, as necessary for the preservation of the health, safety, and welfare of the public

The PCB requires DOH to submit a proposal to the President of the Senate, Speaker of the Florida House of Representatives, and the appropriate substantive legislative committees by November 1, 2010 for a new department structure based upon the seven revised responsibilities. The proposal must include reductions in the number of departmental bureaus and divisions and a limit on the number of executive positions pursuant to the new responsibilities assigned to DOH. DOH must identify existing functions and activities that are inconsistent with its responsibilities and provide a job description of all bureau chief or division director positions proposed for retention.

The PCB amends the State Surgeon General's statutory authority to provide that the State Surgeon General must manage the department in carrying out its delegated responsibilities.

<sup>27</sup> Section 411.232, F.S.

<sup>28</sup> Email correspondence with Department of Health staff on file with the Health Care Regulation Policy Committee (March 9, 2010)

<sup>29</sup> *Id.*

The PCB sunsets all 11 departmental divisions on July 1, 2011 unless reviewed and reenacted by the Legislature. Additionally, the PCB modifies DOH authority to establish service areas to carry out the duties of the County Health Departments. Currently, DOH is limited to establishing 15 service areas which are statutorily required to have the same boundaries as the DCF service districts established in s. 20.19, F.S., and, to the extent practicable, the boundaries of the jobs and education regional boards. The PCB removes the 15-area limit and does not specify the boundaries for such service areas.

The PCB removes a provision that authorizes division directors to appoint ad hoc advisory committees. Additionally, the PCB removes subsection (7) of s. 20.43, F.S, which provides DOH with the authority to use state and federal funds to protect and improve the public health through: providing incentives for encouraging healthy lifestyles, disease prevention behaviors, and patient compliance with medical treatments; planning and conducting health campaigns to protect and improve health, including purchasing promotional items and advertising for certain health-related behaviors; and planning and conducting promotional campaigns to recruit health professionals and participants in departmental programs.

The PCB deletes a subsection allowing DOH to hold copyrights, trademarks, and service marks, and enforce its rights with respect to those interests. Beginning in fiscal year 2010-2011, the PCB precludes DOH from initiating or commencing new programs, including federally funded or grant-supported programs or making changes in existing programs without express legislative authority. This does not prohibit DOH from continuing grants initiated or commenced prior to July 1, 2010.

Additionally, the PCB repeals s. 381.001, which provides legislative intent language related to DOH's public health mission. Legislative intent language does not convey legal duties or functions, thus repeal of this language would have no substantive legal effect on DOH's statutory duties or programs. The PCB also amends s. 381.011, F.S., relating to the duties and powers of DOH. Generally, the duties are amended to comply with the revised departmental responsibilities. In this section, the PCB also expands upon DOH's role in managing and coordinating emergency preparedness and disaster response functions by providing that DOH:

- Investigate and control the spread of disease
- Coordinate the availability and staffing of special needs shelters
- Support patient evacuation
- Assure the safety of food and drugs
- Provide critical incident stress debriefing
- Provide surveillance and control of radiological, chemical, biological, and other environmental hazards

The PCB requires that the DOH strategic long-term plan relate to its delegated responsibilities. The PCB clarifies that DOH can continue to issue health alerts and advisories, after conducting a workshop in non-emergency situations, but removes a provision authorizing DOH to disseminate information to the public about general prevention, control and cure of diseases, illnesses, and hazards to human health. Furthermore, the PCB removes from the list of duties, authorization for DOH to cooperate with other entities for "the improvement and preservation of public health" and to maintain a statewide injury prevention program. DOH's authority to cooperate with other entities is either specified statutory programs delegated to DOH to administer or implied by general operation of a state agency. The PCB prohibits DOH from writing rules to inspect buildings or facilities it is not authorized to inspect by law.

The PCB amends s. 381.006, F.S., relating to DOH's environmental health program. For purposes of this program, s. 381.006(16), F.S. defines group care facilities to include:

[a] public or private school, housing, building or buildings, section of a building, or distinct part of a building or other place, whether operated for profit or not, which undertakes, through its ownership or management, to provide one or more personal services, care, protection, and supervision to persons who require such services and who are not related to the owner or administrator.

The PCB amends this definition to specifically reference the following facilities: public or private schools; assisted living facilities; adult family-care homes; adult day care centers; short term residential treatment centers; residential treatment facilities; home for special services transitional living facilities; crisis stabilization units; hospices; prescribed pediatric extended care centers; intermediate care facilities for persons with developmental disabilities (ICF/DDs); or boarding schools. The PCB limits DOH's rulemaking authority to these entities, except that the Department of Education shall develop rules related to public and private schools in consultation with DOH.

The PCB also amends s. 381.0072, F.S. relating to food service protection. The PCB amends the definition of "food service establishment." Currently, food service establishments are defined, in part, as:

[a]ny facility, as described in this paragraph, where food is prepared and intended for individual portions service, and includes the site at which individual portions are provided. The term includes any such facility regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food

The PCB amends the definition of "food service establishment" to the following specific entities: detention facilities, public or private schools, migrant labor camps, assisted living facilities, adult family-care homes, adult day care centers, short term residential treatment centers, residential treatment facilities, crisis stabilization units, hospices, prescribed pediatric care centers, ICF/DDs, boarding schools, civic or fraternal organizations, bars and lounges, and vending machines dispensing potentially hazardous foods at facilities these facilities. The PCB authorizes DOH to advise Agency for Health Care Administration (AHCA), Department of Business and Professional Regulation, Department of Agriculture and Consumer Services, and Department of Children and Families (DCF) concerning procedures related to the storage, preparation, serving and display of food at any building, structure or facility not expressly included in this section that may be inspected, licensed or regulated by those agencies. Additionally, the bill exempts civic organizations and facilities not regulated by DOH under this section from the requirement to have a certified food manager.

The bill amends s. 381.0101, F.S., relating to environmental health professionals. Current law authorizes DOH to determine which programs are essential for providing basic environmental and sanitary protection to the public. The PCB limits this authority to programs the department is expressly authorized in statute to administer, which are the food protection at food service establishments and onsite sewage treatment and disposal system evaluations.

In order to conform with the amended definition of food service establishments, the PCB amends s. 509.013, F.S., to provide that any facility licensed or certified by AHCA or DCF or other similar place regulated under s. 381.0072 are exempt from the definitions of "public lodging establishments" and "public food service establishment" for purposes of inspections conducted by the Department of Business and Professional Regulation. This will ensure that hospitals, nursing homes, group homes, child care facilities, and domestic violence centers will not fall under the purview of DBPR for food service inspections because they are no longer included in the definition of "food service establishments" under s. 381.0072, F.S.

Finally, the bill repeals s. 381.04015, relating to the Office and Officer of Women's Health Strategy; s. 401.243, F.S. relating to the statewide injury prevention program; and ss. 411.23-232, F.S. relating to the now defunct Children's Early Investment Act.

## B. SECTION DIRECTORY:

- Section 1.** Amends s. 20.43, F.S. relating to the Department of Health.
- Section 2.** Repeals s. 381.001, F.S. relating to legislative intent; public health system.
- Section 3.** Amends s. 381.0011, F.S., relating to duties and powers of the Department of Health.
- Section 4.** Amends s. 381.006, F.S., relating to environmental health.
- Section 5.** Amends s. 381.0072, F.S., relating to food service protection.
- Section 6.** Amends s. 381.0101, F.S. relating to environmental health professionals.



- Section 7.** Repeals s. 381.04015, F.S. relating to Women's Health Strategy; legislative intent; duties of Officer of Women's Health Strategy; other state agency duties.
- Section 8.** Repeals s. 401.243, F.S., relating to injury prevention.
- Section 9.** Repeals s. 411.23, F.S., relating to short title.
- Section 10.** Repeals s. 411.231, F.S., relating to legislative intent; purpose.
- Section 11.** Repeals s. 411.232, F.S., relating to Children's Early Investment Program.
- Section 12.** Amending s. 509.013, F.S., relating to definitions.
- Section 13.** Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
See Fiscal Comments.
2. Expenditures:  
See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:  
None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce the number of inspections at certain facilities in the state, which will reduce duplicative regulatory burdens on private facilities.

### D. FISCAL COMMENTS:

The bill has an indeterminate fiscal impact. DOH included the following in its bill analysis<sup>30</sup>:

A fiscal not has not been conducted due to the short timeframe for analysis. A fiscal estimate will be more meaningful after the DOH and Legislature make final decisions relating to the reauthorization of Divisions, functions, and role.

The PCB provides that these decisions will not be made until the 2011 Legislative Session; however, the PCB has an immediate impact on food service inspections currently conducted by DOH. There is a cost to County Health Departments to perform annual or quarterly facility inspections, for which they may receive a fee depending on how fees may be shared among multiple inspecting entities. The bill reduces the number of facilities that County Health Departments will inspect and reduces the fees that come from them. It is possible that the bill will reduce costs and result in a positive fiscal impact.

DOH indicated in its analysis that AHCA will now be responsible for regulating certain facilities such as hospitals and nursing homes; however AHCA already regulates both facility types. Nursing homes licensed and regulated by AHCA have a federal food safety requirement, which requires a complete kitchen inspection by a surveyor who has been trained, passed the Surveyor Minimum Qualifications Test and is qualified to conduct a Quality Indicator Survey Process.<sup>31</sup> AHCA also uses hospital

<sup>30</sup> Department of Health Bill Analysis, Economic Statement and Fiscal Note for PCB-HCR-10-03 (March 19, 2010).

<sup>31</sup> Email correspondence with AHCA staff on file with the Health Care Regulation Policy Committee (March 16, 2010).

surveyors to inspect sanitary conditions in hospitals under the Condition of Infection Control using the FDA Food Code.

DOH also has indicated the PCB could affect the Department of Education because it will take a “greater role in school health regulation.” It is unclear to which bill provision this relates.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

#### B. RULE-MAKING AUTHORITY:

The bill modifies DOH’s existing rulemaking authority. DOH has sufficient rulemaking authority to implement the provisions of the bill.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

In its analysis, DOH indicates that the PCB “does not appear to” include DOH’s current role related to non-communicable diseases by narrowing its responsibilities to infectious disease control; however, the PCB provides that DOH will be responsible for “implementing interventions that prevent or limit the impact and spread of disease in the state.” Accordingly, the PCB does not narrow DOH’s authority strictly to infectious disease, and would not eliminate DOH’s ability to address chronic diseases.

DOH states that programs such as early intervention services and child abuse have been deleted from its mission; however, the PCB provides that DOH is responsible for “Administering and providing health and related services to targeted populations in the state.” Because children requiring early intervention services, services through child protection teams related to abuse, or other health and related services through Children’s Medical Services are “targeted populations,” DOH’s statutory duties in this regard have not been minimized.

Finally, the bill does not eliminate DOH’s specific authority to administer a vast majority of the programs it currently administers. Some examples include:

- Children’s Medical Services – authorized by Chapter 391, F.S.
- Child Protection Teams – authorized by s. 39.303, F.S.
- Early Intervention Program – authorized by s. 391.308, F.S.
- Coordination with schools related to child immunizations – 1003.22, F.S.
- Chronic Disease Prevention and Control Program – Chapter 381, F.S.

Instead, the bill requires DOH to develop a proposal by November 1, 2010 that provides how these programs fit within the new mission. If programs are inconsistent with the revised mission, then DOH must indicate this information to the Legislature for potential, future consideration.

DOH further states in its analysis that the elimination of s. 381.001, F.S., which is purely legislative intent language, “reduces the Department’s scope of authority.” Legislative intent language does not convey a legal duty or authority upon an agency. Instead, it may guide an agency in understanding the purpose of specific legislative directives or programs. Because s. 381.001, F.S. consists solely of legislative intent language, repeal of this language should have no substantive effect on DOH’s current programs or legislative directives.

DOH also indicates that the revised duties in s. 381.0011, F.S., “limits the Department’s authority to establish new programs, including any new federally funded or grants supported initiative, or make changes to current programs unless expressly authorized by the Legislature.” The PCB limits DOH in this way in order to provide direct legislative oversight for activities that may result in costs to the state or have the potential to dilute DOH’s capacity to fulfill core functions.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2010, the Health Care Regulation Policy Committee adopted five amendments to PCB HCR 10-03.

- The first amendment changed the date DOH must submit its reorganization proposal to the Legislature from December 1, 2010 to November 1, 2010.
- The second and third amendments removed “summer 24-hour camps” from the list of entities inspected as part of DOH’s environmental and food service inspections, respectively.
- Amendments four and five added facilities certified or licensed and regulated by DCF to the list of entities exempt from Department of Business and Professional Regulation public lodging and public food service establishment regulations, respectively, avoid duplicate inspections.

The PCB was reported favorably with amendments. The analysis reflects the amended PCB.