



Health & Human Services Committee

**Tuesday, February 21, 2012
10:30 AM – 12:30 PM
404 HOB**

**Dean Cannon
Speaker**

**Robert C. "Rob" Schenck
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Health & Human Services Committee

Start Date and Time: Tuesday, February 21, 2012 10:30 am
End Date and Time: Tuesday, February 21, 2012 12:30 pm
Location: 404 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/CS/HB 653 Health Care Fraud by Health Care Appropriations Subcommittee, Health & Human Services Quality Subcommittee, Cruz
HB 813 Eligibility for Temporary Cash Assistance and Food Assistance by Smith
CS/HB 1045 Mental Health by Criminal Justice Subcommittee, Schwartz
CS/HB 1081 Controlled Substances by Health & Human Services Quality Subcommittee, McBurney
CS/CS/HB 1163 Adoption by Appropriations Committee, Health & Human Services Access Subcommittee, Adkins
CS/CS/HB 1401 Public Assistance by Health Care Appropriations Subcommittee, Health & Human Services Access Subcommittee, Plakon

Workshop on the following:

Assisted Living Facilities and other Quality Initiatives

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, February 20, 2012.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, February 20, 2012.



NOTICE FINALIZED on 02/17/2012 16:16 by Iseminger.Bobbye

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 653 Health Care Fraud

SPONSOR(S): Health Care Appropriations Subcommittee; Health & Human Services Quality Subcommittee; Cruz

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 208

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 0 N, As CS	Poche	Calamas
2) Health Care Appropriations Subcommittee	14 Y, 0 N, As CS	Clark	Pridgeon
3) Health & Human Services Committee		Poche 	Gormley 

SUMMARY ANALYSIS

The bill alters current restrictions that prevent an individual who has been convicted of certain felonies, or plead guilty or no contest to certain felonies, from applying for an initial or renewal license, certification, or registration to become a health care professional. However, the bill provides exceptions to the license, certification or registration prohibitions. Currently, a person who has been convicted of, or plead guilty or no contest to, certain felonies cannot apply for a license, certificate or registration to become a health care professional within 15 years of the conviction or plea. The bill creates a tiered timeframe for applying for a license, certificate, or registration, depending on the degree of the violation: the lesser the felony or plea, the less time must pass between the felony or plea and the date of application.

The bill provides additional exceptions to licensing prohibitions in s. 456.0635, F.S. An individual convicted of certain felonies, or who plead guilty or no contest to certain felonies, may seek a license, certificate or registration if the individual successfully completed a pretrial intervention or drug diversion program. The bill excludes from the licensing prohibitions an applicant who was enrolled in an educational or training program, recognized by the Department of Health (DOH), on or before July 1, 2009 and applied for initial licensure after July 1, 2012. The bill allows an individual convicted of, or who plead guilty or no contest to, certain felonies under federal law to apply for a license, certificate, or registration if the violation occurred more than 15 years from the date of application. Lastly, the bill allows an individual to regain a renewal license, certificate or registration, denied under the provisions of the bill, by complying with the criteria established by the applicable board, or the DOH, for initial licensure. However, if an individual was denied a renewal license, certificate or registration under the provisions of section 24 of chapter 2009-223, Laws of Florida, the individual is not required to retake and pass any examination required for initial licensure.

The bill changes the title of s. 456.0635, F.S. from "Medicaid fraud" to "health care fraud", and expands the duty of a licensed practitioner to report an allegation of health care fraud. The bill also renders the surrender of a license due to an allegation of health care fraud or the anticipation of an allegation of health care fraud a permanent revocation of the license.

The bill has an indeterminate, but likely insignificant, fiscal impact.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Health Licensing Activities

The Department of Health (DOH) is responsible for the licensure of most health care practitioners in the state. Chapter 456, F.S., provides general provisions for the regulation of health care professions in addition to the regulatory authority in specific practice acts for each profession or occupation. Section 456.001, F.S., defines "health care practitioner" as any person licensed under:

- Chapter 457 (acupuncture);
- Chapter 458 (medical practice);
- Chapter 459 (osteopathic medicine);
- Chapter 460 (chiropractic medicine);
- Chapter 461 (podiatric medicine);
- Chapter 462 (naturopathy);
- Chapter 463 (optometry);
- Chapter 464 (nursing);
- Chapter 465 (pharmacy);
- Chapter 466 (dentistry);
- Chapter 467 (midwifery);
- Part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468 (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics);
- Chapter 478 (electrolysis);
- Chapter 480 (massage practice);
- Part III or part IV of chapter 483 (clinical laboratory personnel and medical physicists);
- Chapter 484 (dispensing of optical devices and hearing aids);
- Chapter 486 (physical therapy practice);
- Chapter 490 (psychological services); or
- Chapter 491 (clinical, counseling, and psychotherapy services).

The Division of Medical Quality Assurance is responsible for the preceding boards and professions within the DOH.¹ Chapter 456² and the practice acts regulating health care professions under the regulatory jurisdiction of the DOH contain provisions establishing grounds for which disciplinary action may be taken against licensed health care practitioners.

Medicaid Fraud

Medicaid fraud in the practice of a health care profession is prohibited.³ Licensed health care practitioners must report any allegation of Medicaid fraud to the DOH.⁴ The Legislature created s. 456.0635, F.S., in 2009 with the enactment of CS/CS/CS/SB 1986, a comprehensive bill designed to address systemic health care fraud in Florida.⁵ The bill, in part,:

¹ S. 20.43(3)(g), F.S.

² S. 456.072, F.S.

³ S. 456.0635(1), F.S.

⁴ S. 456.0635(3), F.S.

⁵ This specific section of CS/CS/CS/SB 1986 was published in section 24 of chapter 2009-223, Laws of Fla.

- Increased the Medicaid program's authority to address fraud, particularly as it relates to home health services.
- Increased health care facility and health care practitioner licensing standards to keep fraudulent actors from obtaining a health care license in Florida.
- Created disincentives for abusive Medicaid billing by increasing the administrative penalties, posting sanctioned and terminated Medicaid providers on the Agency for Health Care Administration (AHCA) website, and creating additional criminal felonies for committing health care fraud, and among other anti-fraud provisions.

Specifically, the law requires each board within the jurisdiction of the DOH, or the DOH if there is no board, to refuse to issue or renew a license, certificate, or registration if the applicant has been:

- Convicted of, entered a plea of guilty or no contest to, regardless of adjudication, a felony under ch. 409, F.S.,⁶ ch. 817, F.S.,⁷ ch. 893, F.S.,⁸ 21 U.S.C. ss. 801-970,⁹ or 42 U.S.C. ss. 1395-1396,¹⁰ unless the sentence and any subsequent probation ended more than 15 years prior to the date of application;
- Terminated for cause from the Florida Medicaid program pursuant to s. 409.913, F.S., unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;
- Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program or the federal Medicare program, unless the applicant has been in good standing with a state Medicaid program or the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of the application.

Since s. 456.0635, F.S., became effective, through January 12, 2012, boards and the DOH have denied, or caused to have withdrawn, 336 initial applications for licensure.¹¹ Of the total number of initial licensure denials or withdrawals, 262 were applications for Certified Nursing Assistant, 17 were applications for Licensed Practical Nurse, and 15 were applications for Registered Nurse. Also, 109 renewal denials have been issued in the same time period.¹² Of the total number of renewal denials, 30 were for renewal of Certified Nursing Assistant, 27 were for renewal of Registered Nurse, and 19 were for renewal of Licensed Practical Nurse.

Section 456.036, F.S., contains general provisions related to licensure and delinquent licenses of health care practitioners. Each board, or the DOH if there is no board, is required to charge fees for renewal of an active or inactive or license status.¹³ The law outlines the procedure for changing from an inactive license status to an active license status.¹⁴ The law also determines delinquency of a license, outlines the process a licensee must follow to bring current a delinquent license, and requires a fee to be paid to bring current a delinquent license.¹⁵ Lastly, the law provides the DOH with rule-making authority to ensure that licensees who have a delinquent, inactive or retired license status are competent to practice under the license upon application to change to an active license status.¹⁶

⁶ Chapter 409, F.S., relates to social and economic assistance.

⁷ Chapter 817, F.S., relates to fraudulent practices.

⁸ Chapter 893, F.S., relates to drug abuse prevention and control.

⁹ This section of the U.S. Code relates to federal controlled substance regulations.

¹⁰ This portion of the U.S. Code relates to public health, welfare, Medicare and Medicaid issues.

¹¹ Florida Department of Health, *456.0635 Status Report- January 12, 2012*, received Jan. 13, 2012 (on file with Health and Human Services Quality subcommittee staff).

¹² *Id.*

¹³ S. 456.036(3), F.S.

¹⁴ S. 456.036(4) and (5), F.S.

¹⁵ S. 456.036(5), (6), and (7), F.S.

¹⁶ S. 456.036(8) through (12), F.S.

Effect of Proposed Changes

The bill changes all references to Medicaid fraud in s. 456.0635, F.S., to health care fraud. As a result, the bill will require licensed health care practitioners to report allegations of health care fraud, rather than only allegations of Medicaid fraud. Also, the acceptance of a license by a licensing authority, offered by a licensee as a result of allegations of, or anticipation of allegations of, health care fraud, will be considered permanent revocation of the licensee.

The bill relaxes the current licensure exclusions by creating a tiered system of exclusions based on the severity of the crime and the amount of time elapsed between the crime and the date of application for licensure. The bill prohibits the department, and the boards within the department, to allow any person to sit for an examination or issue a new license, certificate, or registration to any applicant, if the applicant:

- Has been convicted of, or entered a plea of guilty or no contest to, regardless of adjudication, a felony under ch. 409, ch. 817, or ch. 893, F.S., or a similar felony offense committed in another state or jurisdiction, unless the applicant or candidate successfully completed a drug court program for the felony and provides proof that the plea was withdrawn or the charges were dismissed, or unless the sentence and any related period of probation for such conviction or plea ended:
 - For felonies of the **first or second degree**, more than **15 years** before the date of application;
 - For felonies of the **third degree**, more than **10 years** before the date of application, except for felonies of the third degree under s. 893.13(6)(a), F.S.¹⁷; and
 - For felonies of the **third degree under s. 893.13(6)(a), F.S.**, more than **5 years** before the date of application.
- Has been convicted of, or entered a plea of guilty or no contest to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970 or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such convictions or plea ended more than 15 years before the date of application; or
- Is listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

In addition, the bill prohibits the department, and the boards within the department, to renew a license, certification, or registration if the applicant or candidate falls under the same restrictions established for initial licensure, certification, or registration. The same exceptions to the restrictions on initial licensure, certification, or registration apply for renewal applications; however, the renewal applicant or candidate must show that she or he is currently enrolled in a drug court program, rather than showing successful completion, as required of initial applicants, above.

The bill eliminates reference to the federal Medicare program in s. 465.0635(2)(c), F.S., regarding termination for cause from that program as grounds for denying initial application for, or renewal of, a license, certification, or registration. According to AHCA, the phrase "termination for cause" does not exist in the federal Medicare program.¹⁸

The bill provides that the terms of disqualification for felony convictions or pleas of guilty or no contest of the specified violations do not apply to applicants for initial licensure or certification who were

¹⁷ S. 893.13(6)(a), F.S., states:

"It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony in the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."

¹⁸ Telephone conference between AHCA analyst and Health and Human Services Quality subcommittee staff on January 12, 2012.

enrolled in a recognized training or education program as of July 1, 2009 and who applied for initial licensure after July 1, 2012.

Lastly, the bill allows a person denied renewal of a license, certificate or registration under the provisions listed above to regain the license, certificate or registration by meeting the criteria established by the board or the DOH for initial licensure, certification or registration. However, if a person was denied renewal under the provisions of section 24 of chapter 2009-223, Laws of Florida, between July 1, 2009 and June 30, 2012, prior to enactment of the provisions of this bill, he or she will not be required to retake and pass any examinations required for initial licensure, certification or registration. This provision will impact, at least, the 109 applicants identified by the DOH as being denied renewal of a license due to the current law, enacted by the applicable section of the Laws of Florida, and any other applicants who are denied renewal of a license, certification or registration through June 30, 2012.

B. SECTION DIRECTORY:

Section 1: Amends s. 456.0635, F.S., relating to Medicaid fraud; disqualification for license, certificate, or registration.

Section 2: Amends s. 456.036, F.S., relating to licenses; active and inactive status; delinquency.

Section 3: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DOH anticipates an overall increase in workload that can be absorbed within existing department resources. Additionally, DOH will experience a non-recurring cost associated with rulemaking and modifications to the COMPAS licensure system, however these costs can be absorbed within current resources and budget authority.¹⁹

There is an indeterminate fiscal impact on AHCA to the extent that the Agency is asked by the DOH or the boards to compile background information on applicants for licensure, certification or registration; however, the impact is insignificant and can be absorbed within current Agency resources.²⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁹ Florida Department of Health, *HB 653 Bill Analysis, Economic Statement, and Fiscal Note*, page 6 (January 6, 2012).

²⁰ Telephone conference between AHCA Legislative Affairs analyst, AHCA Inspector General and Health Care Appropriations Subcommittee staff on January 26, 2012.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow individuals who wish to become a licensed, certified, or registered health care professional, who would otherwise be disqualified due to the current provision of s. 456.0635, F.S., the opportunity to obtain a license, certification, or registration to work in the health care field. The addition of licensed health care professionals to the job market will allow employers to fill open positions with qualified individuals, leading to the availability of qualified, licensed care to more members of the public.

D. FISCAL COMMENTS:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

Current law provides the Department of Health with necessary and appropriate rulemaking authority sufficient to implement the provisions of this bill.²¹

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Health and Human Services Quality Subcommittee adopted a strike-all amendment for HB 653. The strike-all amendment made the following changes to the bill:

- Removed a reference to completion of a pre-trial intervention or drug diversion program for a specified felony violation as a requirement for an exception to the exclusion provision for initial licensure, certification or registration;
- Required an applicant or candidate to successfully complete a drug court program for a specified felony and provide proof that a guilty or no contest plea was withdrawn, or charges dismissed, before becoming eligible for initial licensure, certification, or registration;
- Removed reference to offenses committed since July 1, 2009 from consideration for renewal of a license, certification, or registration;
- Removed reference to enrollment in a pre-trial intervention or drug diversion program for a specified violation as a requirement for an exception to the exclusion provision for renewal of a license, certificate, or registration; and

²¹ S. 456.004, F.S.

- Required an applicant or candidate to be enrolled in a drug court program that allows for withdrawal of a guilty or no contest plea to a specified felony upon successful completion of the program in order to be eligible for renewal of a license, certificate, or registration.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.

On February 13, 2012, the Health Care Appropriations Subcommittee adopted one amendment to CS/HB 653. The amendment is a technical amendment clarifying that the bill prohibits the department, and the boards within the department, to renew a license if the applicant or candidate falls under the same restrictions established for initial licensure, certification, or registration.

The bill was reported favorably as a committee substitute to the committee substitute. The analysis reflects the committee substitute to the committee substitute.

1 A bill to be entitled
 2 An act relating to health care fraud; amending s.
 3 456.0635, F.S.; revising the grounds under which the
 4 Department of Health or corresponding board is
 5 required to refuse to admit a candidate to an
 6 examination and refuse to issue or renew a license,
 7 certificate, or registration of a health care
 8 practitioner; providing an exception; amending s.
 9 456.036, F.S.; providing that all persons who were
 10 denied renewal of licensure, certification, or
 11 registration under s. 456.0635(3), F.S., may regain
 12 licensure, certification, or registration only by
 13 completing the application process for initial
 14 licensure; providing an exception; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 456.0635, Florida Statutes, is amended
 20 to read:

21 456.0635 Health care ~~Medicaid~~ fraud; disqualification for
 22 license, certificate, or registration.—

23 (1) Health care ~~Medicaid~~ fraud in the practice of a health
 24 care profession is prohibited.

25 (2) Each board within the jurisdiction of the department,
 26 or the department if there is no board, shall refuse to admit a
 27 candidate to any examination and refuse to issue ~~or renew~~ a
 28 license, certificate, or registration to any applicant if the

29 candidate or applicant or any principal, officer, agent,
30 managing employee, or affiliated person of the applicant, ~~has~~
31 ~~been:~~

32 (a) Has been convicted of, or entered a plea of guilty or
33 nolo contendere to, regardless of adjudication, a felony under
34 chapter 409, chapter 817, or chapter 893, or a similar felony
35 offense committed in another state or jurisdiction, unless the
36 candidate or applicant has successfully completed a drug court
37 program for that felony and provides proof that the plea has
38 been withdrawn or the charges have been dismissed. Any such
39 conviction or plea shall exclude the applicant or candidate from
40 licensure, examination, certification, or registration 21 U.S.C.
41 ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and
42 any subsequent period of probation for such conviction or plea
43 pleas ended: more than 15 years prior to the date of the
44 application;

45 1. For felonies of the first or second degree, more than
46 15 years before the date of application.

47 2. For felonies of the third degree, more than 10 years
48 before the date of application, except for felonies of the third
49 degree under s. 893.13(6) (a).

50 3. For felonies of the third degree under s. 893.13(6) (a),
51 more than 5 years before the date of application;

52 (b) Has been convicted of, or entered a plea of guilty or
53 nolo contendere to, regardless of adjudication, a felony under
54 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the
55 sentence and any subsequent period of probation for such

56 conviction or plea ended more than 15 years before the date of
 57 the application;

58 (c) ~~(b)~~ Has been terminated for cause from the Florida
 59 Medicaid program pursuant to s. 409.913, unless the candidate or
 60 applicant has been in good standing with the Florida Medicaid
 61 program for the most recent 5 years;

62 (d) ~~(e)~~ Has been terminated for cause, pursuant to the
 63 appeals procedures established by the state ~~or Federal~~
 64 ~~Government~~, from any other state Medicaid program ~~or the federal~~
 65 ~~Medicare program~~, unless the candidate or applicant has been in
 66 good standing with a state Medicaid program ~~or the federal~~
 67 ~~Medicare program~~ for the most recent 5 years and the termination
 68 occurred at least 20 years before ~~prior to~~ the date of the
 69 application; or-

70 (e) Is currently listed on the United States Department of
 71 Health and Human Services Office of Inspector General's List of
 72 Excluded Individuals and Entities.

73
 74 This subsection does not apply to candidates or applicants for
 75 initial licensure or certification who were enrolled in an
 76 educational or training program on or before July 1, 2009, which
 77 was recognized by a board or, if there is no board, recognized
 78 by the department, and who applied for licensure after July 1,
 79 2012.

80 (3) The department shall refuse to renew a license,
 81 certificate, or registration of any applicant if the applicant
 82 or any principal, officer, agent, managing employee, or
 83 affiliated person of the applicant:

84 (a) Has been convicted of, or entered a plea of guilty or
 85 nolo contendere to, regardless of adjudication, a felony under
 86 chapter 409, chapter 817, or chapter 893, or a similar felony
 87 offense committed in another state or jurisdiction, unless the
 88 applicant is currently enrolled in a drug court program that
 89 allows the withdrawal of the plea for that felony upon
 90 successful completion of that program. Any such conviction or
 91 plea excludes the applicant from licensure renewal unless the
 92 sentence and any subsequent period of probation for such
 93 conviction or plea ended:

94 1. For felonies of the first or second degree, more than
 95 15 years before the date of application.

96 2. For felonies of the third degree, more than 10 years
 97 before the date of application, except for felonies of the third
 98 degree under s. 893.13(6)(a).

99 3. For felonies of the third degree under s. 893.13(6)(a),
 100 more than 5 years before the date of application.

101 (b) Has been convicted of, or entered a plea of guilty or
 102 nolo contendere to, regardless of adjudication, a felony under
 103 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1,
 104 2009, unless the sentence and any subsequent period of probation
 105 for such conviction or plea ended more than 15 years before the
 106 date of the application.

107 (c) Has been terminated for cause from the Florida
 108 Medicaid program pursuant to s. 409.913, unless the applicant
 109 has been in good standing with the Florida Medicaid program for
 110 the most recent 5 years.

111 (d) Has been terminated for cause, pursuant to the appeals
 112 procedures established by the state, from any other state
 113 Medicaid program, unless the applicant has been in good standing
 114 with a state Medicaid program for the most recent 5 years and
 115 the termination occurred at least 20 years before the date of
 116 the application.

117 (e) Is currently listed on the United States Department of
 118 Health and Human Services Office of Inspector General's List of
 119 Excluded Individuals and Entities.

120 (4)(3) Licensed health care practitioners shall report
 121 allegations of health care Medicaid fraud to the department,
 122 regardless of the practice setting in which the alleged health
 123 care Medicaid fraud occurred.

124 (5)(4) The acceptance by a licensing authority of a
 125 licensee's candidate's relinquishment of a license which is
 126 offered in response to or anticipation of the filing of
 127 administrative charges alleging health care Medicaid fraud or
 128 similar charges constitutes the permanent revocation of the
 129 license.

130 Section 2. Present subsections (14) and (15) of section
 131 456.036, Florida Statutes, are renumbered as subsections (15)
 132 and (16), respectively, and a new subsection (14) is added to
 133 that section, to read:

134 456.036 Licenses; active and inactive status;
 135 delinquency.—

136 (14) A person who has been denied renewal of licensure,
 137 certification, or registration under s. 456.0635(3) may regain
 138 licensure, certification, or registration only by meeting the

CS/CS/HB 653

2012

139 qualifications and completing the application process for
 140 initial licensure as defined by the board, or the department if
 141 there is no board. However, a person who was denied renewal of
 142 licensure, certification, or registration under s. 24 of chapter
 143 2009-223, Laws of Florida, between July 1, 2009, and June 30,
 144 2012, is not required to retake and pass examinations applicable
 145 for initial licensure, certification, or registration.

146 Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 813 Eligibility for Temporary Cash Assistance and Food Assistance

SPONSOR(S): Smith

TIED BILLS: IDEN./SIM. BILLS: SB 1128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	9 Y, 6 N	Batchelor	Schoolfield
2) Appropriations Committee	14 Y, 6 N	Fontaine	Leznoff
3) Health & Human Services Committee		Batchelor	Gormley

SUMMARY ANALYSIS

House Bill 813 deletes a provision in s. 414.095, F.S., which prohibits the denial of temporary cash assistance and food assistance benefits based exclusively on a felony drug conviction, unless that conviction was for drug trafficking pursuant to s. 893.135, F.S.

The bill will require the Department of Children and Families (DCF) to deny cash assistance benefits and food assistance benefits to any individual who has been convicted of an offense classified as a felony for the possession of a controlled substance on or after July 1, 2012.

The bill will also require DCF to deny cash assistance benefits and food assistance benefits to any individual who has been convicted of an offense classified as a felony for drug trafficking pursuant to s. 893.135, F.S.

The bill provides an exception from denial of cash assistance and food assistance benefits to a person that that has successfully completed a treatment program or regimen for drug addiction or drug abuse. DCF reports that they will rely on self attestations by applicants to determine whether the applicant has been convicted of a drug felony.

This bill also provides for the appointment of an alternate payee to receive benefits on behalf of the other members of the assistance group if assistance is denied based on a felony drug possession conviction.

This bill is anticipated to have an insignificant fiscal impact.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Temporary Assistance for Needy Families (TANF)

Under the welfare reform legislation of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PWRORA), Public Law 104-193, the Temporary Assistance for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children (AFDC), the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program. The law ended federal entitlement to assistance and instead created TANF as a block grant that provides States, territories and tribes federal funds each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized in February 2006 under the Deficit Reduction Act of 2005.¹ States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. DCF administers the TANF program in conjunction with the Agency for Workforce Innovation (AWI).

Temporary Cash Assistance Program (Cash Assistance)

DCF administers the cash assistance program with TANF funds to help families become self-supporting while allowing children to remain in their own homes.² Current law provides that families are eligible for temporary cash assistance for a lifetime cumulative total of 48 months (4 years).³ DCF reports that approximately 92,979 people are currently receiving temporary cash assistance.⁴ The FY 2011-2012 appropriation of TANF funds to support temporary cash assistance was \$177,522,123.

Supplemental Nutrition Assistance Program-SNAP (Food Assistance)

The Food Assistance Program is a federally funded program to help low-income people buy food they need for good health. The benefits portion of the program is 100% federally funded and administration of the program is split between the state and the federal government.⁵ The U.S. Department of Agriculture (USDA) determines the amount of food assistance benefits an individual or family receives. Food assistance benefits are a supplement to a family's food budget. Households may need to spend some of their own cash, along with their food assistance benefits, to buy enough food for a month.⁶ DCF reports that approximately 3,311,095 people are currently receiving food stamps at approximately \$450 million dollars annually.⁷

Public Law 104-193 Section 115, Denial of Assistance and Benefits for Certain Drug-Related Convictions

Public Law 104-193, section 115 states that any individual who is convicted under state or federal law of any offense which is classified as a felony for the possession, use, or distribution of a controlled substance⁸ shall not be eligible for any State program funded under part A of the Title IV of the Social

¹ US Dept. of Health and Human Services, Administration on Children and Families
<http://www.acf.hhs.gov/programs/ofa/tanf/about.html> (last visited on 12/21/11).

² DCF Food Assistance Program Fact Sheet, www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf (last visited 1/4/12).

³ Section 414.105, F.S.

⁴ DCF Standard Data Reports. <http://www.dcf.state.fl.us/programs/access/StandardDataReports.asp>. (last visited 12/22/11).

⁵ DCF ACCESS Florida Food Medical Assistance and Cash Program Policy Manual,
<http://www.dcf.state.fl.us/programs/access/esspolicymanual.shtml>. (last visited 12/27/11).

⁶ DCF Food Assistance Program Fact Sheet, www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf (last visited 12/21/11).

⁷ DCF Standard Data Reports. <http://www.dcf.state.fl.us/programs/access/StandardDataReports.asp>. (last visited 1/3/12).

⁸ As defined in 21.U.S.C.802(6).

Security Act (cash assistance) or for benefits under the supplemental nutrition assistance program (food assistance), as defined in the Food Stamp Act of 1977.⁹ The public law specifies that a state may chose to opt-out of this act or may chose to exempt any or all individuals in the state, or limit the time frame for the prohibition.¹⁰ Currently, Florida has opted-out of the act and state law provides as follows:

Section 414.095(1), F.S. "Benefits shall not be denied to an individual solely based on a felony drug conviction, unless the conviction is for trafficking pursuant to s. 893.135, F.S. To be eligible under this section an individual convicted of a drug felony must be satisfactorily meeting the requirements of the temporary cash assistance program, including all substance abuse treatment requirements. Within the limits specified in this chapter, the state opts out of the provision of Pub. L. No 104-193, s. 115, that eliminates eligibility for temporary cash assistance and food assistance for any individual convicted of a controlled substance felony."¹¹

Protective Payees

The cash assistance program¹² and the food assistance program¹³ require participants to satisfy work requirements established in federal law. In the event that a cash assistance or food assistance recipient is noncompliant with the work activity requirements, DCF has authority to terminate cash assistance to the family.¹⁴ In the event that assistance is terminated, DCF will establish a protective payee that will receive cash assistance or food assistance funds on behalf of any children in the home who are under the age of 18.¹⁵ The protective payee shall be designated by DCF and may include:¹⁶

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children.
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children.
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and utilize the assistance in the best interest of the child or children.

Effect of Proposed Changes

This bill eliminates the language in s. 414.095, F.S. which currently prohibits the denial of temporary cash assistance and food assistance benefits solely based on a felony drug conviction unless that conviction was for drug trafficking pursuant to s. 893.135, F.S.

The bill creates a new subsection to s. 414.095, F.S., titled Ineligibility Due to Felony Convictions. Specifically, the bill will require DCF to deny cash assistance and food assistance benefits to any individual who has been convicted of an offense classified as a felony for the possession of a controlled substance or drug trafficking on or after July 1, 2012. A person will be denied cash assistance or food assistance unless the person can provide verification that he or she has successfully completed a treatment program or regimen for drug addiction or abuse. The bill also states that persons convicted of the offense of drug trafficking remain ineligible for these benefits. DCF reports that they will rely on self attestations by applicants to determine whether the applicant has been convicted of a drug felony.

The bill also specifies that if an individual is deemed ineligible as a result of a felony drug conviction an alternative payee will be designated to receive the assistance on behalf of others in the assistance group (e.g. children or other family in the home).

⁹ P.L.104-193, Section 115.

¹⁰ *Id.*

¹¹ Section 414.095(1), F.S.

¹² *Id.*

¹³ P.L. 104-193. Section 815

¹⁴ Section 414.065, F.S.

¹⁵ Section 414.095(4), F.S.

¹⁶ Section 414.065(2), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 414.095, F.S., relating to eligibility for temporary cash assistance.

Section 2: Amends s. 409.2564, F.S., relating to actions for support.

Section 3: Amends s. 409.902, F.S., relating to designated single state agency; payment requirements; program title; release of medical records.

Section 4: Amends s. 414.045, F.S., relating to cash assistance program.

Section 5: Amends s. 414.0652, F.S., relating to drug screening for applicants for Temporary Cash Assistance for Needy Families.

Section 6: Amends s. 414.0655, relating to medical incapacity due to substance abuse or mental health impairment.

Section 7: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There may be a reduction of eligible cash assistance or food assistance beneficiaries. The resulting reduction in program expenditures is unknown but expected to be insignificant. Additional workload issues can be absorbed within existing department resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There may be a reduction of eligible cash assistance or food assistance beneficiaries. The resulting reduction in program expenditures is unknown but expected to be insignificant. Additional workload issues can be absorbed within existing department resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 54 states that an individual may be eligible for cash assistance or food assistance if he or she has successfully completed a drug addiction or drug abuse program or regimen, however the bill does not define what "successfully completing a program" means. The bill also does not define the term "treatment program" and does not specify that the drug abuse program or regimen is required to be licensed by the state.

The relevant federal law, P.L. 104-193, Section 115, provides that states can prohibit any or all individuals from cash assistance or food assistance if the individual has been convicted of any offense classified as a felony in the law of the jurisdiction involved and which has an element, the possession, use or distribution of a controlled substance. The bill only specifies the word "possession", and does not include use or distribution of a controlled substance as in the federal law.

Although line 48 of the bill references the date of July 1, 2012, as written it is unclear whether only individuals who are convicted of a drug offense on or after July 1, 2012 will be ineligible for cash or food assistance or whether this would also apply to individuals who were convicted of such an offense prior to that date.

Lines 49-55 of the bill state that a person with a felony conviction for drug trafficking pursuant to s.893.135 is ineligible for benefits unless they complete the treatment program or regimen for addiction or abuse. This implies that persons convicted of trafficking can become eligible for benefits. However, lines 55-57 state that persons convicted for drug trafficking are ineligible for benefits. These two provisions seem to be in conflict.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
An act relating to eligibility for temporary cash assistance and food assistance; amending s. 414.095, F.S.; prohibiting an individual convicted of a felony offense from receiving temporary cash assistance or food assistance under certain conditions; providing conditions under which a person with a felony conviction may resume receiving such assistance; providing for designation of an alternative payee under certain circumstances; amending ss. 409.2564, 409.902, 414.045, 414.0652, and 414.0655, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (2) through (18) of section 414.095, Florida Statutes, are renumbered as subsections (3) through (19), respectively, subsection (1), paragraph (a) of present subsection (2), paragraphs (c) and (e) of present subsection (14), and present subsection (17) are amended, and a new subsection (2) is added to that section, to read:

414.095 Determining eligibility for temporary cash and food assistance.—

(1) ELIGIBILITY FOR TEMPORARY CASH ASSISTANCE.—An applicant must meet eligibility requirements of this section before receiving services or temporary cash assistance under this chapter, except that an applicant shall be required to

29 register for work and engage in work activities in accordance
 30 with s. 445.024, as designated by the regional workforce board,
 31 and may receive support services or child care assistance in
 32 conjunction with such requirement. The department shall make a
 33 determination of eligibility based on the criteria listed in
 34 this chapter. The department shall monitor continued eligibility
 35 for temporary cash assistance through periodic reviews
 36 consistent with the food assistance eligibility process.

37 ~~Benefits shall not be denied to an individual solely based on a~~
 38 ~~felony drug conviction, unless the conviction is for trafficking~~
 39 ~~pursuant to s. 893.135. To be eligible under this section, an~~
 40 ~~individual convicted of a drug felony must be satisfactorily~~
 41 ~~meeting the requirements of the temporary cash assistance~~
 42 ~~program, including all substance abuse treatment requirements.~~
 43 ~~Within the limits specified in this chapter, the state opts out~~
 44 ~~of the provision of Pub. L. No. 104-193, s. 115, that eliminates~~
 45 ~~eligibility for temporary cash assistance and food assistance~~
 46 ~~for any individual convicted of a controlled substance felony.~~

47 (2) INELIGIBILITY DUE TO FELONY CONVICTION.—Pursuant to
 48 Pub. L. No. 104-193, s. 115, on or after July 1, 2012, an
 49 individual convicted of an offense classified as a felony for
 50 possession of a controlled substance, as defined in the
 51 Controlled Substances Act, 21 U.S.C., s. 802(6), or pursuant to
 52 s. 893.135, is not eligible for temporary cash assistance or
 53 food assistance unless the department receives verification that
 54 the individual has satisfactorily completed a treatment program
 55 or regimen for drug addiction or drug abuse. An individual who
 56 has a felony conviction for drug trafficking is not eligible for

57 temporary cash assistance or food assistance. If the individual
 58 is deemed ineligible for temporary cash assistance or food
 59 assistance as a result of a felony drug conviction, an
 60 appropriate alternate payee shall be designated to receive the
 61 assistance on behalf of the other members of the assistance
 62 group.

63 (3)~~(2)~~ ADDITIONAL ELIGIBILITY REQUIREMENTS.-

64 (a) To be eligible for services or temporary cash
 65 assistance and Medicaid:

66 1. An applicant must be a United States citizen, or a
 67 qualified noncitizen, as defined in this section.

68 2. An applicant must be a legal resident of the state.

69 3. Each member of a family must provide to the department
 70 the member's social security number or shall provide proof of
 71 application for a social security number. An individual who
 72 fails to provide a social security number, or proof of
 73 application for a social security number, is not eligible to
 74 participate in the program.

75 4. A minor child must reside with a parent or parents,
 76 with a relative caretaker who is within the specified degree of
 77 blood relationship as defined by 45 C.F.R. part 233, or, if the
 78 minor is a teen parent with a child, in a setting approved by
 79 the department as provided in subsection (15) ~~(14)~~.

80 5. Each family must have a minor child and meet the income
 81 and resource requirements of the program. All minor children who
 82 live in the family, as well as the parents of the minor
 83 children, shall be included in the eligibility determination
 84 unless specifically excluded.

HB 813

2012

85 (15)~~(14)~~ PROHIBITIONS AND RESTRICTIONS.-

86 (c) The teen parent is not required to live with a parent,
87 legal guardian, or other adult caretaker relative if the
88 department determines that:

89 1. The teen parent has suffered or might suffer harm in
90 the home of the parent, legal guardian, or adult caretaker
91 relative.

92 2. The requirement is not in the best interest of the teen
93 parent or the child. If the department determines that it is not
94 in the best interest of the teen parent or child to reside with
95 a parent, legal guardian, or other adult caretaker relative, the
96 department shall provide or assist the teen parent in finding a
97 suitable home, a second-chance home, a maternity home, or other
98 appropriate adult-supervised supportive living arrangement. Such
99 living arrangement may include a shelter obligation in
100 accordance with subsection (11) ~~(10)~~.

101
102 The department may not delay providing temporary cash assistance
103 to the teen parent through the alternative payee designated by
104 the department pending a determination as to where the teen
105 parent should live and sufficient time for the move itself. A
106 teen parent determined to need placement that is unavailable
107 shall continue to be eligible for temporary cash assistance so
108 long as the teen parent cooperates with the department and the
109 Department of Health. The teen parent shall be provided with
110 counseling to make the transition from independence to
111 supervised living and with a choice of living arrangements.

112 (e) If a parent or caretaker relative does not assign any

HB 813

2012

113 rights a family member may have to support from any other person
 114 as required by subsection (8) ~~(7)~~, temporary cash assistance to
 115 the entire family shall be denied until the parent or caretaker
 116 relative assigns the rights to the department.

117 (17) ~~(16)~~ PROPORTIONAL REDUCTION.—If the Social Services
 118 Estimating Conference forecasts an increase in the temporary
 119 cash assistance caseload and there is insufficient funding, a
 120 proportional reduction as determined by the department shall be
 121 applied to the levels of temporary cash assistance in subsection
 122 (11) ~~(10)~~.

123 Section 2. Paragraph (a) of subsection (11) of section
 124 409.2564, Florida Statutes, is amended to read:

125 409.2564 Actions for support.—

126 (11) (a) The Department of Revenue shall review child
 127 support orders in IV-D cases at least once every 3 years when
 128 requested by either party, or when support rights are assigned
 129 to the state under s. 414.095(8) ~~414.095(7)~~, and may seek
 130 modification of the order if appropriate under the child support
 131 guidelines in s. 61.30. Not less than once every 3 years the
 132 department shall provide notice to the parties subject to the
 133 order informing them of their right to request a review and, if
 134 appropriate, a modification of the child support order. The
 135 notice requirement may be met by including appropriate language
 136 in the initial support order or any subsequent orders.

137 Section 3. Subsection (2) of section 409.902, Florida
 138 Statutes, is amended to read:

139 409.902 Designated single state agency; payment
 140 requirements; program title; release of medical records.—

141 (2) Eligibility is restricted to United States citizens
 142 and to lawfully admitted noncitizens who meet the criteria
 143 provided in s. 414.095(4) ~~414.095(3)~~.

144 (a) Citizenship or immigration status must be verified.
 145 For noncitizens, this includes verification of the validity of
 146 documents with the United States Citizenship and Immigration
 147 Services using the federal SAVE verification process.

148 (b) State funds may not be used to provide medical
 149 services to individuals who do not meet the requirements of this
 150 subsection unless the services are necessary to treat an
 151 emergency medical condition or are for pregnant women. Such
 152 services are authorized only to the extent provided under
 153 federal law and in accordance with federal regulations as
 154 provided in 42 C.F.R. s. 440.255.

155 Section 4. Paragraph (b) of subsection (1) of section
 156 414.045, Florida Statutes, is amended to read:

157 414.045 Cash assistance program.—Cash assistance families
 158 include any families receiving cash assistance payments from the
 159 state program for temporary assistance for needy families as
 160 defined in federal law, whether such funds are from federal
 161 funds, state funds, or commingled federal and state funds. Cash
 162 assistance families may also include families receiving cash
 163 assistance through a program defined as a separate state
 164 program.

165 (1) For reporting purposes, families receiving cash
 166 assistance shall be grouped into the following categories. The
 167 department may develop additional groupings in order to comply
 168 with federal reporting requirements, to comply with the data-

169 reporting needs of the board of directors of Workforce Florida,
 170 Inc., or to better inform the public of program progress.

171 (b) Child-only cases.—Child-only cases include cases that
 172 do not have an adult or teen head of household as defined in
 173 federal law. Such cases include:

174 1. Children in the care of caretaker relatives where the
 175 caretaker relatives choose to have their needs excluded in the
 176 calculation of the amount of cash assistance.

177 2. Families in the Relative Caregiver Program as provided
 178 in s. 39.5085.

179 3. Families in which the only parent in a single-parent
 180 family or both parents in a two-parent family receive
 181 supplemental security income (SSI) benefits under Title XVI of
 182 the Social Security Act, as amended. To the extent permitted by
 183 federal law, individuals receiving SSI shall be excluded as
 184 household members in determining the amount of cash assistance,
 185 and such cases shall not be considered families containing an
 186 adult. Parents or caretaker relatives who are excluded from the
 187 cash assistance group due to receipt of SSI may choose to
 188 participate in work activities. An individual who volunteers to
 189 participate in work activity but whose ability to participate in
 190 work activities is limited shall be assigned to work activities
 191 consistent with such limitations. An individual who volunteers
 192 to participate in a work activity may receive child care or
 193 support services consistent with such participation.

194 4. Families where the only parent in a single-parent
 195 family or both parents in a two-parent family are not eligible
 196 for cash assistance due to immigration status or other

HB 813

2012

197 | limitation of federal law. To the extent required by federal
 198 | law, such cases shall not be considered families containing an
 199 | adult.

200 | 5. To the extent permitted by federal law and subject to
 201 | appropriations, special needs children who have been adopted
 202 | pursuant to s. 409.166 and whose adopting family qualifies as a
 203 | needy family under the state program for temporary assistance
 204 | for needy families. Notwithstanding any provision to the
 205 | contrary in s. 414.075, s. 414.085, or s. 414.095, a family
 206 | shall be considered a needy family if:

207 | a. The family is determined by the department to have an
 208 | income below 200 percent of the federal poverty level;

209 | b. The family meets the requirements of s. 414.095(3) and
 210 | (4) ~~414.095(2) and (3)~~ related to residence, citizenship, or
 211 | eligible noncitizen status; and

212 | c. The family provides any information that may be
 213 | necessary to meet federal reporting requirements specified under
 214 | Part A of Title IV of the Social Security Act.

215 |

216 | Families described in subparagraph 1., subparagraph 2., or
 217 | subparagraph 3. may receive child care assistance or other
 218 | supports or services so that the children may continue to be
 219 | cared for in their own homes or the homes of relatives. Such
 220 | assistance or services may be funded from the temporary
 221 | assistance for needy families block grant to the extent
 222 | permitted under federal law and to the extent funds have been
 223 | provided in the General Appropriations Act.

224 | Section 5. Paragraph (c) of subsection (2) of section

HB 813

2012

225 414.0652, Florida Statutes, is amended to read:

226 414.0652 Drug screening for applicants for Temporary
 227 Assistance for Needy Families.—

228 (2) The department shall:

229 (c) Require that any teen parent who is not required to
 230 live with a parent, legal guardian, or other adult caretaker
 231 relative in accordance with s. 414.095(15)(c) ~~414.095(14)(e)~~
 232 must comply with the drug-testing requirement.

233 Section 6. Subsection (2) of section 414.0655, Florida
 234 Statutes, is amended to read:

235 414.0655 Medical incapacity due to substance abuse or
 236 mental health impairment.—

237 (2) Notwithstanding any provision of s. 414.095(3)(a)4. or
 238 5. ~~414.095(2)(a)4. or 5.~~ to the contrary, a participant who is
 239 absent from the home due to out-of-home residential treatment
 240 for not more than 150 days shall continue to be a member of the
 241 assistance group whether or not the child or children for whom
 242 the participant is the parent or caretaker relative are living
 243 in the residential treatment center.

244 Section 7. This act shall take effect July 1, 2012.

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Smith offered the following:

4
5 **Amendment**

6 Remove lines 47-62 and insert:

7 (2) INELIGIBILITY DUE TO FELONY CONVICTION - Pursuant to
8 Pub.L.No. 104-193, s. 115, an individual convicted, on or after
9 July 1, 2012, of an offense classified as a felony for
10 possession of a controlled substance, as defined in the
11 Controlled Substances Act, 21 U.S.C., s. 802(6), is not eligible
12 for temporary cash assistance or food assistance unless the
13 department receives verification that the individual has
14 satisfactorily completed a drug treatment program offered by a
15 provider that meets the requirements of s. 397.401 and is
16 licensed by the department. The department shall specify through
17 rule, the criteria to determine satisfactory completion of a
18 drug treatment program. An individual who has a felony

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 813 (2012)



Amendment No.1

19 conviction for drug trafficking, pursuant to s.893.135, is not
20 eligible for temporary cash assistance or food assistance.

21 (a) If an individual is deemed ineligible for temporary
22 cash assistance or food assistance as a result of a felony drug
23 conviction, a protective payee shall be designated to receive
24 the assistance on behalf of the other members of the assistance
25 group.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1045 Mental Health
SPONSOR(S): Criminal Justice Subcommittee; Schwartz
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	13 Y, 0 N	Mathieson	Schoolfield
2) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Krol	Cunningham
3) Health & Human Services Committee		Mathieson 	Gormley 

SUMMARY ANALYSIS

The bill makes changes to ch. 916, F.S., Mentally Deficient and Mentally Ill Defendants, and Section 985.19, F.S., Incompetency in Juvenile Delinquency Cases as follows:

- An admitting physician for a state forensic or civil facility may continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client. This authority is limited to the time period required to obtain a court order for the medication.
- Court appointed mental health experts who conduct competency evaluations in both adult and juvenile settings, must complete training once every five years in order to conduct evaluations for the court and remain on the forensic evaluator registry.
- The bill establishes a 30 day time frame for a competency hearing after the court receives notification that the defendant no longer meets criteria for continued commitment.
- The timeframe for dismissal of charges for people determined to be non-restorable is reduced from five to two years, except for capital felonies.
- The bill establishes standards for the evaluation of competency and the mental condition of juveniles, under s. 985.19, F.S.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Department of Children and Families (DCF) serves individuals who have been committed to DCF, pursuant to ch. 916, F.S. because they have been adjudicated incompetent to proceed at trial due to mental illness or because they have been found not guilty by reason of insanity. DCF currently provides competency restoration training and mental health services in four state forensic facilities, with a total of 1,098 beds.¹ In FY 2010-11, DCF reported serving 2,581 adults as a result of a chapter 916, F.S., commitment.²

Chapter 985, F.S., relating to juvenile justice, provides DCF, the Agency for Persons with Disabilities (APD), and the Department of Juvenile Justice (DJJ) with delegated authority and legislative guidance as to delinquency and competency issues for juveniles. If the court has reason to believe that a child named in a petition may be incompetent to proceed with the hearing, the court on its own motion may, or on the motion of the child's attorney or state attorney must, stay all proceedings and order an evaluation of the child's mental condition.³ The evaluation of the juvenile's mental health must specifically state the basis for determinations of juvenile incompetency.⁴ DCF is directed by statute to provide competency training for juveniles who have been found incompetent to proceed to trial as a result of mental illness, mental retardation or autism.⁵ In FY 2010-11, DCF reported that it served 412 children who were adjudicated incompetent to proceed.⁶

Competency Evaluation

Currently, courts are required to appoint to more than three experts to provide adult competency evaluations.⁷ Each expert must be a psychiatrist, licensed psychologist, or physician and must, to the extent possible, have completed DCF-approved forensic evaluator training.⁸ DCF is required to maintain and annually provide the courts with a list of available mental health professionals who have completed the approved training as experts.⁹ However, current law does not *require* attendance at a DCF approved training or training renewal in order for a person to be appointed as an expert.¹⁰ In the juvenile system, the court appoints 2-3 mental health experts to conduct competency evaluations.¹¹ For incompetency evaluations related to mental illness, DCF must provide the court a list of experts who have completed DCF-approved training.¹²

Competency Hearing

Currently, the Florida Rules of Criminal Procedure require the court to hold a hearing within 30 days of receiving a report from a facility administrator that indicates that a person adjudicated incompetent to proceed or not guilty by reason of insanity no longer meets the criteria for commitment.¹³

Dismissal of Charges following Competency Training

Currently, charges against an adult who has been adjudicated incompetent to proceed due to mental illness may be dismissed after five years of incompetency.¹⁴ This occurs unless the court makes

¹ DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

² *Id.*

³ S. 985.19(1), F.S.

⁴ S. 985.19(1)(b), F.S.

⁵ S. 985.19(4), F.S.

⁶ DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

⁷ S. 916.115(1), F.S.

⁸ S. 916.115(1)(a), F.S.

⁹ S. 916.115, (1)(b), F.S.

¹⁰ S. 916.115, (1)(a), F.S.

¹¹ S. 985.19(1)(b), F.S.

¹² S. 985.19(1)(d), F.S.

¹³ Rules 33.212(c)(6) and 3.218(b) Florida Rules of Criminal Procedure.

¹⁴ S. 916.145, F.S.

findings that the person will become competent in the future.¹⁵ Charges are dismissed without prejudice, which allows the state to re-file charges if the person become competent in the future.¹⁶

Psychotherapeutic Medication Treatment

Current law requires that forensic clients must give express and informed consent to treatment. If they refuse and the situation is deemed an emergency that puts the client's safety at risk, then treatment may be given for 48 hours. If the person still refuses to give consent, then a court order must be sought for continuation of the treatment. In non-emergency situations, the treatment may not be given (without consent) and a court order must be sought for continued treatment.¹⁷ DCF reports that in the non-emergency situations, the abrupt halt of medications to the individual can place them at risk for significant harm to their health and safety.¹⁸

Effect of Proposed changes

Continuation of Psychotherapeutic Medication

The bill requires jail physicians to provide a current psychotherapeutic medication order at the time of an inmate's transfer to a forensic or civil facility. The bill authorizes an admitting physician at a state forensic or civil facility to continue the administration of psychotherapeutic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and the cessation of medication could risk the health and safety of the client during the time a court order to medicate is pursued. This authority is for non-emergency situations¹⁹ and is limited to the time period required to obtain a court order for the medication. This provision would apply to all forensic clients since it appears in the general provisions of ch. 916, F.S. Therefore, forensic clients who are either mentally ill, or have autism or mental retardation as a diagnosis would be subject to this provision when admitted to facilities operated by DCF or the APD.

The bill does not specify a timeframe for the pursuit of a court order or place any limits on the continuation of the medication while awaiting the order. Court ordered medication of an individual has been the subject of judicial review.²⁰

Competency Hearings

The bill amends ss. 916.13 and 916.15, F.S., to require a competency hearing to be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. This requirement is consistent with Rule 3.212(c)(6), Florida Rules of Criminal Procedure and should help ensure timely processing by the courts for persons who have completed competency training regimens in state facilities.

Forensic Evaluator Training

The bill amends s. 916.111, F.S., to require mental health experts to complete a DCF-approved forensic evaluator training course that will be provided at least annually. The bill renames the DCF list of mental health experts as a forensic evaluator registry, and specifies that only those who have completed the DCF-approved training can be placed on the registry and conduct evaluations for the court. Beginning July 1, 2013, the training must be completed and retaken every five years, and failure

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ S. 916.107(3), F.S.

¹⁸ DCF Analysis of HB 1045 dated January 5, 2012. On file with Health and Human Services Access Subcommittee staff.

¹⁹ Emergency treatment is already addressed in s. 916.107(3)(a)1., F.S.

²⁰ *See Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006) (Noting that statutory provisions governing authorization of nonconsensual treatment with psychotropic medications violated the patient's state constitutional guarantees of liberty and privacy and in the absence of emergency, could not authorize the state to administer such medication, unless this was in the best interests of the patient and that no less intrusive treatment was available.) Currently, Florida law provides that a forensic client may, in the existence of an immediate danger to the safety of themselves or others, be given medication for no more than 48 hours. S. 916.107(3)(a)1., F.S. The nonconsensual administration of medication by judicial order was challenged in Florida, in *Moreland v. State*, 706 So.2d 71, (Fla. 1st DCA), where the court struck down a judicial order for failure to comply with the statutory requirement of a multidisciplinary treatment team.

to do so will result in removal from the list. The court can only appoint forensic evaluators from the registry. The bill creates the same process for evaluators in the juvenile system.

Dismissal of Charges

The bill reduces the timeframe in which a person adjudicated as incompetent to proceed due to mental illness may have their charges dismissed from five to two years. The bill provides an exception for capital felonies, which will remain at five years.²¹ DCF reports that data from the past 12 years shows that 98.7 percent of individuals were restored to competency in two years or less.²²

Determinations of Incompetency for Juvenile Delinquency Cases

The bill establishes criteria that a forensic evaluator must use when reporting to the court as to whether a child is competent to proceed. The bill provides that a child is competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings.

If the child is determined to be incompetent, the bill requires the evaluator to provide a mental disorder that forms the basis of the incompetency. The bill requires that the basis for the determination of a child's mental condition be specifically stated in the expert's competency evaluation report and must include written findings that:

- Identify the specific matters referred for evaluation;
- Identify the sources of information used by the expert;
- Describe the procedures, techniques, and diagnostic tests used in the examination to determine the basis of the child's mental condition;
- Present the factual basis for the expert's clinical findings and opinions of the child's mental condition; and
- Address the child's capacity to:
 - Appreciate the charges or allegations against the child.
 - Appreciate the range and nature of possible penalties that may be imposed in the proceedings against the child, if applicable.
 - Understand the adversarial nature of the legal process.
 - Disclose to counsel facts pertinent to the proceedings at issue.
 - Display appropriate courtroom behavior.
 - Testify relevantly.

The bill also requires the evaluator to include in his or her competency evaluation report a summary of findings" section that includes:

- The date and length of time of the face to face diagnostic clinical interview;
- A statement that identifies the mental health disorder;
- A statement of how the child would benefit from competency restoration in the community or in a residential setting;
- An assessment of treatment length, and whether the juvenile will attain competence in the future; and
- A description of appropriate mental health treatment and education.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 916.107, F.S., relating to rights of forensic clients.
- Section 2:** Amends s. 916.111, F.S., relating to training of mental health experts.
- Section 3:** Amends s. 916.115, F.S., relating to appointment of experts.
- Section 4:** Amends s. 916.13, F.S., relating to involuntary commitment of defendant adjudicated incompetent.
- Section 5:** Amends s. 916.145, F.S., relating to dismissal of charges.

²¹ A capital felony must be designated as such by statute. S. 775.081, F.S.

²² DCF data shows that from FY 1998-99 to FY 2009-10, of a total of 12,016 individuals adjudicated not competent to proceed, 98.7% of them were restored in less than two years. DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

- Section 6:** Amends s. 916.15, F.S., relating to involuntary commitment of defendant adjudicated not guilty by reason of insanity.
- Section 7:** Amends s. 985.19, F.S., relating to incompetency in juvenile cases.
- Section 8:** Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Mental health experts who wish to participate in forensic evaluations will be required to pay for the department authorized training every 5 years to be on the registry. The cost for this training is currently \$445, or \$395 for state or non-profit employees.²³

D. FISCAL COMMENTS:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

²³ DCF Analysis on file with Health and Human Services Access Subcommittee staff, January 12, 2012.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 71 could be clarified by providing a timeframe for pursuing court orders for continued medication and limits on the amount of time a medication may be continued while awaiting the order. Similar constraints are provided for in emergency situation under s. 916.107(3)(a)1., F.S.

The bill amends s. 916.111, F.S., to require mental health experts to complete a DCF-approved forensic evaluator training course and specifies that only those who have completed the DCF-approved training can be placed on the registry and conduct evaluations for the court. Section 916.115(1)(a), F.S., may also need to be amended to remove the language specifying that each expert must, *to the extent possible*, have completed DCF-approved forensic evaluator training.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Criminal Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarify the requirements for the forensic evaluator training course by specifying that the course must be retaken every 5 years in order for an expert to remain on the Department of Children and Families' forensic evaluator registry.
- Clarify that the most recent version of the Diagnostic and Statistical Manual of Mental Health Disorders must be used to support an expert's competency evaluation report.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
2 An act relating to mental health; amending s. 916.107,
3 F.S.; authorizing, in certain circumstances,
4 continuation of psychotherapeutic medication for
5 individuals receiving such medication in a jail before
6 admission to a psychiatric or forensic facility;
7 amending s. 916.111, F.S.; requiring forensic
8 evaluator training for mental health experts appointed
9 to evaluate defendants for competency to proceed or
10 for sanity at the time of the commission of the
11 offense; amending s. 916.115, F.S.; requiring the
12 Department of Children and Family Services to maintain
13 and annually provide the courts with a forensic
14 evaluator registry; amending s. 916.13, F.S.;
15 providing timeframes for competency hearings to be
16 held; amending s. 916.145, F.S.; reducing the time for
17 dismissal of charges for defendants found
18 nonrestorable from 5 years to 2 years, except in the
19 case of capital offenses which shall remain at 5
20 years; amending s. 916.15, F.S.; providing timeframes
21 for commitment hearings to be held; amending s.
22 985.19, F.S.; standardizing the protocols, procedures,
23 and criteria used in reporting expert findings in
24 determining competency in juvenile cases; revising
25 requirements related to the forensic evaluator
26 training program that appointed experts must complete;
27 requiring experts after a specified date to have
28 completed such training; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(3) RIGHT TO EXPRESS AND INFORMED CONSENT.—

(a) A forensic client shall be asked to give express and informed written consent for treatment. If a client refuses such treatment as is deemed necessary and essential by the client's multidisciplinary treatment team for the appropriate care of the client, such treatment may be provided under the following circumstances:

1. In an emergency situation in which there is immediate danger to the safety of the client or others, such treatment may be provided upon the written order of a physician for a period not to exceed 48 hours, excluding weekends and legal holidays. If, after the 48-hour period, the client has not given express and informed consent to the treatment initially refused, the administrator or designee of the civil or forensic facility shall, within 48 hours, excluding weekends and legal holidays, petition the committing court or the circuit court serving the county in which the facility is located, at the option of the facility administrator or designee, for an order authorizing the continued treatment of the client. In the interim, the need for treatment shall be reviewed every 48 hours and may be continued without the consent of the client upon the continued written order of a physician who has determined that the emergency

57 | situation continues to present a danger to the safety of the
 58 | client or others.

59 | 2. In a situation other than an emergency situation, the
 60 | administrator or designee of the facility shall petition the
 61 | court for an order authorizing necessary and essential treatment
 62 | for the client.

63 | a. If the client has been receiving psychotherapeutic
 64 | medication at the jail at the time of transfer to the forensic
 65 | or civil facility and lacks the capacity to make an informed
 66 | decision regarding mental health treatment at the time of
 67 | admission, the admitting physician may order continued
 68 | administration of the psychotherapeutic medication if, in the
 69 | clinical judgment of the physician, abrupt cessation of the
 70 | psychotherapeutic medication could cause a risk to the health
 71 | and safety of the client during the time a court order to
 72 | medicate is pursued. The jail physician shall provide a current
 73 | psychotherapeutic medication order at the time of transfer to
 74 | the forensic or civil facility.

75 | b. The court order shall allow such treatment for up to a
 76 | period not to exceed 90 days after following the date of the
 77 | entry of the order. Unless the court is notified in writing that
 78 | the client has provided express and informed consent in writing
 79 | or that the client has been discharged by the committing court,
 80 | the administrator or designee shall, before ~~prior to~~ the
 81 | expiration of the initial 90-day order, petition the court for
 82 | an order authorizing the continuation of treatment for another
 83 | 90 days ~~90-day period~~. This procedure shall be repeated until
 84 | the client provides consent or is discharged by the committing

85 court.

86 3. At the hearing on the issue of whether the court should
 87 enter an order authorizing treatment for which a client was
 88 unable to or refused to give express and informed consent, the
 89 court shall determine by clear and convincing evidence that the
 90 client has mental illness, retardation, or autism, that the
 91 treatment not consented to is essential to the care of the
 92 client, and that the treatment not consented to is not
 93 experimental and does not present an unreasonable risk of
 94 serious, hazardous, or irreversible side effects. In arriving at
 95 the substitute judgment decision, the court must consider at
 96 least the following factors:

- 97 a. The client's expressed preference regarding treatment;
- 98 b. The probability of adverse side effects;
- 99 c. The prognosis without treatment; and
- 100 d. The prognosis with treatment.

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102 The hearing shall be as convenient to the client as may be
 103 consistent with orderly procedure and shall be conducted in
 104 physical settings not likely to be injurious to the client's
 105 condition. The court may appoint a general or special magistrate
 106 to preside at the hearing. The client or the client's guardian,
 107 and the representative, shall be provided with a copy of the
 108 petition and the date, time, and location of the hearing. The
 109 client has the right to have an attorney represent him or her at
 110 the hearing, and, if the client is indigent, the court shall
 111 appoint the office of the public defender to represent the
 112 client at the hearing. The client may testify or not, as he or

113 she chooses, and has the right to cross-examine witnesses and
 114 may present his or her own witnesses.

115 Section 2. Section 916.111, Florida Statutes, is amended
 116 to read:

117 916.111 Training of mental health experts.-

118 (1) The evaluation of defendants for competency to proceed
 119 or for sanity at the time of the commission of the offense shall
 120 be conducted in such a way as to ensure uniform application of
 121 the criteria enumerated in Rules 3.210 and 3.216, Florida Rules
 122 of Criminal Procedure.

123 (2) Appointed experts shall have completed forensic
 124 evaluator training as specified in this section.

125 (3) A forensic evaluator training course approved by the
 126 department must be provided at least annually to ensure that
 127 mental health professionals have the opportunity to be placed on
 128 the department's forensic evaluator registry.

129 (a) Beginning July 1, 2013, if an expert chooses to remain
 130 on the registry, he or she must have completed or retaken the
 131 required training course within the previous 5 years. Once
 132 trained, experts must retake the required training course every
 133 5 years in order to remain on the registry. Those who have not
 134 completed the training course or have not retaken the training
 135 course within 5 years must be removed from the registry and may
 136 not conduct competency evaluations for the courts.

137 (b) A mental health professional who has completed the
 138 training course within the previous 5 years must maintain
 139 documentation of completion of the required training course and
 140 provide current contact information to the department.

141 (4) The department shall develop, and may contract with
 142 accredited institutions:

143 (a)~~(1)~~ To provide:

144 1.~~(a)~~ A plan for training mental health professionals to
 145 perform forensic evaluations and to standardize the criteria and
 146 procedures to be used in these evaluations;

147 2.~~(b)~~ Clinical protocols and procedures based upon the
 148 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
 149 Procedure; and

150 3.~~(e)~~ Training for mental health professionals in the
 151 application of these protocols and procedures in performing
 152 forensic evaluations and providing reports to the courts; and

153 (b)~~(2)~~ To compile and maintain the necessary information
 154 for evaluating the success of this program, including the number
 155 of persons trained, the cost of operating the program, and the
 156 effect on the quality of forensic evaluations as measured by
 157 appropriateness of admissions to state forensic facilities and
 158 to community-based care programs.

159 Section 3. Paragraph (b) of subsection (1) of section
 160 916.115, Florida Statutes, is amended to read:

161 916.115 Appointment of experts.—

162 (1) The court shall appoint no more than three experts to
 163 determine the mental condition of a defendant in a criminal
 164 case, including competency to proceed, insanity, involuntary
 165 placement, and treatment. The experts may evaluate the defendant
 166 in jail or in another appropriate local facility or in a
 167 facility of the Department of Corrections.

168 (b) The department shall maintain and annually provide the

CS/HB 1045

2012

169 courts with a forensic evaluator registry ~~list~~ of available
 170 mental health professionals who have completed the approved
 171 training as experts.

172 Section 4. Subsection (2) of section 916.13, Florida
 173 Statutes, is amended to read:

174 916.13 Involuntary commitment of defendant adjudicated
 175 incompetent.—

176 (2) A defendant who has been charged with a felony and who
 177 has been adjudicated incompetent to proceed due to mental
 178 illness, and who meets the criteria for involuntary commitment
 179 ~~to the department under the provisions of this chapter,~~ may be
 180 committed to the department, and the department shall retain and
 181 treat the defendant.

182 (a) Within ~~No later than~~ 6 months after the date of
 183 admission and at the end of any period of extended commitment,
 184 or at any time the administrator or designee has ~~shall have~~
 185 determined that the defendant has regained competency to proceed
 186 or no longer meets the criteria for continued commitment, the
 187 administrator or designee shall file a report with the court
 188 pursuant to the applicable Florida Rules of Criminal Procedure.

189 (b) A competency hearing must be held within 30 days after
 190 a court receives notification that the defendant is competent to
 191 proceed or no longer meets the criteria for continued
 192 commitment.

193 Section 5. Section 916.145, Florida Statutes, is amended
 194 to read:

195 916.145 Dismissal of charges.—The charges against any
 196 defendant adjudicated incompetent to proceed due to the

197 defendant's mental illness shall be dismissed without prejudice
 198 to the state if the defendant remains incompetent to proceed 2 5
 199 years after such determination or 5 years after such
 200 determination if the charge is a capital offense, unless the
 201 court in its order specifies its reasons for believing that the
 202 defendant will become competent to proceed within the
 203 foreseeable future and specifies the time within which the
 204 defendant is expected to become competent to proceed. The
 205 charges against the defendant shall be ~~are~~ dismissed without
 206 prejudice to the state to refile the charges if ~~should~~ the
 207 defendant is ~~be~~ declared competent to proceed in the future.

208 Section 6. Subsection (5) is added to section 916.15,
 209 Florida Statutes, to read:

210 916.15 Involuntary commitment of defendant adjudicated not
 211 guilty by reason of insanity.—

212 (5) The commitment hearing must be held within 30 days
 213 after the court receives notification that the defendant no
 214 longer meets the criteria for continued commitment.

215 Section 7. Subsection (1) of section 985.19, Florida
 216 Statutes, is amended, subsection (7) is renumbered as subsection
 217 (8), and a new subsection (7) is added to that section, to read:

218 985.19 Incompetency in juvenile delinquency cases.—

219 (1) If, at any time prior to or during a delinquency case,
 220 the court has reason to believe that the child named in the
 221 petition may be incompetent to proceed with the hearing, the
 222 court on its own motion may, or on the motion of the child's
 223 attorney or state attorney must, stay all proceedings and order
 224 an evaluation of the child's mental condition.

225 (a) Any motion questioning the child's competency to
 226 proceed must be served upon the child's attorney, the state
 227 attorney, the attorneys representing the Department of Juvenile
 228 Justice, and the attorneys representing the Department of
 229 Children and Family Services. Thereafter, any motion, notice of
 230 hearing, order, or other legal pleading relating to the child's
 231 competency to proceed with the hearing must be served upon the
 232 child's attorney, the state attorney, the attorneys representing
 233 the Department of Juvenile Justice, and the attorneys
 234 representing the Department of Children and Family Services.

235 (b) All determinations of competency must ~~shall~~ be made at
 236 a hearing, with findings of fact based on an evaluation of the
 237 child's mental condition made by at least ~~not less than~~ two but
 238 not ~~nor~~ more than three experts appointed by the court. ~~The~~
 239 ~~basis for the determination of incompetency must be specifically~~
 240 ~~stated in the evaluation. In addition, a recommendation as to~~
 241 ~~whether residential or nonresidential treatment or training is~~
 242 ~~required must be included in the evaluation.~~ Experts appointed
 243 by the court to determine the mental condition of a child shall
 244 be allowed reasonable fees for services rendered. State
 245 employees may be paid expenses pursuant to s. 112.061. The fees
 246 shall be taxed as costs in the case.

247 (c) A child is competent to proceed if the child has
 248 sufficient present ability to consult with counsel with a
 249 reasonable degree of rational understanding and the child has a
 250 rational and factual understanding of the present proceedings.

251 (d) The basis for the determination of a child's mental
 252 condition must be specifically stated in the expert's competency

253 evaluation report and must include written findings that:
 254 1. Identify the specific matters referred for evaluation.
 255 2. Identify the sources of information used by the expert.
 256 3. Describe the procedures, techniques, and diagnostic
 257 tests used in the examination to determine the basis of the
 258 child's mental condition.
 259 4. Address the child's capacity to:
 260 a. Appreciate the charges or allegations against the
 261 child.
 262 b. Appreciate the range and nature of possible penalties
 263 that may be imposed in the proceedings against the child, if
 264 applicable.
 265 c. Understand the adversarial nature of the legal process.
 266 d. Disclose to counsel facts pertinent to the proceedings
 267 at issue.
 268 e. Display appropriate courtroom behavior.
 269 f. Testify relevantly.
 270 5. Present the factual basis for the expert's clinical
 271 findings and opinions of the child's mental condition.
 272 (e) If the evaluator determines the child to be
 273 incompetent to proceed to trial, the evaluator must report on
 274 the mental disorder that forms the basis of the incompetency.
 275 (f) The expert's factual basis of his or her clinical
 276 findings and opinions must be supported by the diagnostic
 277 criteria found in the most recent edition of the Diagnostic and
 278 Statistical Manual of Mental Disorders of the American
 279 Psychiatric Association and must be presented in a section of
 280 his or her competency evaluation report that shall be identified

281 as a summary of findings. This section must include:

282 1. The day, month, year, and length of time of the face-
 283 to-face diagnostic clinical interview to determine the child's
 284 mental condition.

285 2. A statement that identifies the mental disorder causing
 286 the child's incompetence. In reporting on the mental disorder,
 287 the evaluator shall use the clinical name and associated
 288 diagnostic code found in the most recent edition of the
 289 Diagnostic and Statistical Manual of Mental Disorders of the
 290 American Psychiatric Association.

291 3. A statement of how the child would benefit from
 292 competency restoration services in the community or in a secure
 293 residential treatment facility.

294 4. An assessment of the probable duration of the treatment
 295 to restore competence, and the probability that the child will
 296 attain competence to proceed in the foreseeable future.

297 5. A description of recommended treatment or education
 298 appropriate for the mental disorder.

299 (g)-(e) All court orders determining incompetency must
 300 include specific written findings by the court as to the nature
 301 of the incompetency and whether the child requires a secure or
 302 nonsecure treatment or training environment environments.

303 (h)-(d) For competency incompetency evaluations related to
 304 mental illness, the Department of Children and Family Services
 305 shall maintain and annually provide the courts with a forensic
 306 evaluator registry list of available mental health professionals
 307 who have completed the approved a training as experts pursuant
 308 to this section program approved by the Department of Children

309 | ~~and Family Services to perform the evaluations.~~

310 | (i)~~(e)~~ For competency ~~incompetency~~ evaluations related to
 311 | mental retardation or autism, the court shall order the Agency
 312 | for Persons with Disabilities to examine the child to determine
 313 | if the child meets the definition of "retardation" or "autism"
 314 | in s. 393.063 and provide a clinical opinion as to, ~~if so,~~
 315 | whether the child is competent to proceed with delinquency
 316 | proceedings.

317 | ~~(f) A child is competent to proceed if the child has~~
 318 | ~~sufficient present ability to consult with counsel with a~~
 319 | ~~reasonable degree of rational understanding and the child has a~~
 320 | ~~rational and factual understanding of the present proceedings.~~
 321 | ~~The report must address the child's capacity to:~~

- 322 | 1. ~~Appreciate the charges or allegations against the~~
- 323 | ~~child.~~
- 324 | 2. ~~Appreciate the range and nature of possible penalties~~
- 325 | ~~that may be imposed in the proceedings against the child, if~~
- 326 | ~~applicable.~~
- 327 | 3. ~~Understand the adversarial nature of the legal process.~~
- 328 | 4. ~~Disclose to counsel facts pertinent to the proceedings~~
- 329 | ~~at issue.~~
- 330 | 5. ~~Display appropriate courtroom behavior.~~
- 331 | 6. ~~Testify relevantly.~~

332 | (j)~~(g)~~ Immediately upon the filing of the court order
 333 | finding a child incompetent to proceed, the clerk of the court
 334 | shall notify the Department of Children and Family Services and
 335 | the Agency for Persons with Disabilities and fax or hand deliver
 336 | to the department and to the agency a referral packet that

337 includes, at a minimum, the court order, the charging documents,
 338 the petition, and the court-appointed evaluator's reports.

339 (k) ~~(h)~~ After placement of the child in the appropriate
 340 setting, the Department of Children and Family Services in
 341 consultation with the Agency for Persons with Disabilities, as
 342 appropriate, must, within 30 days after placement of the child,
 343 prepare and submit to the court a treatment or training plan for
 344 the child's restoration of competency. A copy of the plan must
 345 be served upon the child's attorney, the state attorney, and the
 346 attorneys representing the Department of Juvenile Justice.

347 (7) Effective July 1, 2013, court-appointed experts must
 348 have completed forensic evaluator training approved by the
 349 Department of Children and Family Services and comply with these
 350 additional requirements:

351 (a) If an expert chooses to remain on the registry, the
 352 expert must have completed or retaken the required training
 353 course within the previous 5 years. Once trained, an expert must
 354 retake the required training course every 5 years in order to
 355 remain on the registry. An expert who has not completed the
 356 required training course or has not retaken the training course
 357 within 5 years must be removed from the registry and may not
 358 conduct competency evaluations for the courts.

359 (b) A mental health professional who has completed the
 360 training course within the previous 5 years must maintain
 361 documentation of having completed the required training and
 362 provide current contact information to the Department of
 363 Children and Family Services.

364 Section 8. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1045 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Schwartz offered the following:

4
5 **Amendment**

6 Remove lines 125-126 and insert:

7 (3) A forensic evaluator training course must be approved
8 by the department, or given by a state wide professional
9 association of physicians in Florida accredited to provide
10 educational activities designated for American Medical
11 Association Physician's Recognition Award Category I credit,
12 American Osteopathic Association Category 1-A credit, or
13 American Psychological Association continuing education credit,
14 using department approved curriculum. The course must be
15 provided at least annually to ensure that

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1045 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee
3 Representative Schwartz offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 198-200
7
8
9

10 -----
11 **T I T L E A M E N D M E N T**

12 Remove lines 16-20 and insert:
13 held; amending s. 916.15, F.S.; providing timeframes
14

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1045 (2012)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Schwartz offered the following:

4
5 **Amendment**

6 Remove line 349 and insert:

7 Department of Children and Family Services, or given by a state
8 wide professional association of physicians in Florida
9 accredited to provide educational activities designated for
10 American Medical Association Physician's Recognition Award
11 Category I credit, American Osteopathic Association Category 1-A
12 credit, or American Psychological Association continuing
13 education credit, using department approved curriculum. Court
14 appointed experts must also comply with these

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1081 Controlled Substances

SPONSOR(S): Health & Human Services Quality Subcommittee; McBurney

TIED BILLS: None IDEN./SIM. BILLS: SB 1364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 1 N, As CS	Mathieson	Calamas
2) Judiciary Committee	15 Y, 0 N	Thomas	Havlicak
3) Health & Human Services Committee		Mathieson	Gormley

The bill provides that knowingly using a Schedule II controlled substance that is intended to be taken orally by a prescriber, in any other manner, is a misdemeanor of the first degree.

The bill has no fiscal impact on the state.

The bill provides for an effective date of October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Controlled Substances

Controlled substances are drugs with the potential for abuse. Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act, and classifies controlled substances into five categories, known as schedules. The distinguishing factor between the schedules is the potential for abuse¹ of the substance and whether there is a currently accepted medical use. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances.²

- A **Schedule I** substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples: heroin and methaqualone.
- A **Schedule II** substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples: cocaine and morphine.
- A **Schedule III** substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples: lysergic acid; ketamine; and some anabolic steroids.
- A **Schedule IV** substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples: alprazolam; diazepam; and phenobarbital.
- A **Schedule V** substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples: low dosage levels of codeine; certain stimulants; and certain narcotic compounds.

Many people who take prescription medications do so responsibly. However, the nonmedical use or abuse of prescription drugs remains a significant public health concern in the United States. Certain prescription drugs – opioid substances, central nervous system depressants and stimulants – when abused can lead to psychological and physiological dependence. According to research by the National Institute on Drug Abuse,³ the three most abused classes of prescription drugs are:

- Opioids, used to treat pain. Examples include codeine (Schedules II, III, V), oxycodone (OxyContin, Percocet – Schedule II), and morphine (Kadian, Avinza -Schedule II);
- Central nervous system depressants, used to treat anxiety and sleep disorders. Examples include barbiturates (Mebaral, Nembutal) and benzodiazepines (Valium, Xanax) (all in Schedule IV); and
- Stimulants, used to treat ADHD, narcolepsy, and obesity. Examples include dextroamphetamine (Dexedrine, Adderall) and methylphenidate (Ritalin, Concerta) (all in Schedule II).

In the 2011 Legislative Session, HB 7095 was enacted, which sought to deal with the prescription drug abuse issue in the state. The misuse of prescription drugs in the state is a serious public health emergency, and HB 7095 enacted a variety of measures to combat the problem, including for example, prohibiting practitioners dispensing controlled substances.

¹ Section 893.02(20), F.S.

² See, s. 893.03, F.S.

³ See <http://www.drugabuse.gov/drugs-abuse/prescription-medications> (last visited January 25, 2012).

Effect of Proposed Changes

The bill amends s. 893.13(7), F.S., to provide that a person who knowingly uses a Schedule II controlled substance, which was intended by their prescriber to be administered orally, in another manner, commits a misdemeanor of the first degree.⁴

The bill provides conforming changes to s. 893.055, F.S., s. 893.0551, F.S., and s. 921.0022, F.S.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 893.13, F.S., related to prohibited acts; penalties.
- Section 2:** Amends s. 893.055, F.S., related to prescription drug monitoring program.
- Section 3:** Amends s. 893.0551, F.S., related to public records exemption for the prescription drug monitoring program.
- Section 4:** Amends s. 921.0022, F.S., related to the criminal punishment code; offence severity ranking chart.
- Section 5:** Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill creates a first degree misdemeanor offense, which may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

⁴ A first degree misdemeanor is punishable by a fine not exceeding \$1,000 or imprisonment not exceeding one year. Sections. 775.082, 775.083, F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Health & Human Services Quality Subcommittee adopted two amendments to HB 1081. The amendments:

- Provided that knowingly using a Schedule II controlled substance that is intended to be taken orally by a prescriber, in any other manner, is a misdemeanor of the first degree.
- Deleted lines 243-296, removing the provisions of the bill relating to Schedule II opioid drugs that incorporate tamper-resistant technologies.

This bill was reported favorably as a committee substitute. This analysis reflects the committee substitute.

1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 893.13, F.S.; prohibiting the knowing use in another
 4 manner of a Schedule II controlled substance intended
 5 to be administered orally; providing criminal
 6 penalties; amending ss. 893.055, 893.0551, and
 7 921.0022, F.S.; conforming cross-references; providing
 8 an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (7) of section 893.13, Florida
 13 Statutes, is amended to read:

14 893.13 Prohibited acts; penalties.—

15 (7)(a) A person may not:

- 16 1. Distribute or dispense a controlled substance in
 17 violation of this chapter.
- 18 2. Refuse or fail to make, keep, or furnish any record,
 19 notification, order form, statement, invoice, or information
 20 required under this chapter.
- 21 3. Refuse entry into any premises for any inspection or
 22 refuse to allow any inspection authorized by this chapter.
- 23 4. Distribute a controlled substance named or described in
 24 s. 893.03(1) or (2) except pursuant to an order form as required
 25 by s. 893.06.
- 26 5. Keep or maintain any store, shop, warehouse, dwelling,
 27 building, vehicle, boat, aircraft, or other structure or place
 28 which is resorted to by persons using controlled substances in

29 violation of this chapter for the purpose of using these
 30 substances, or which is used for keeping or selling them in
 31 violation of this chapter.

32 6. Use to his or her own personal advantage, or reveal,
 33 any information obtained in enforcement of this chapter except
 34 in a prosecution or administrative hearing for a violation of
 35 this chapter.

36 7. Possess a prescription form which has not been
 37 completed and signed by the practitioner whose name appears
 38 printed thereon, unless the person is that practitioner, is an
 39 agent or employee of that practitioner, is a pharmacist, or is a
 40 supplier of prescription forms who is authorized by that
 41 practitioner to possess those forms.

42 8. Knowingly use in another manner a Schedule II
 43 controlled substance intended by the prescriber to be
 44 administered orally.

45 ~~9.9.~~ Withhold information from a practitioner from whom
 46 the person seeks to obtain a controlled substance or a
 47 prescription for a controlled substance that the person making
 48 the request has received a controlled substance or a
 49 prescription for a controlled substance of like therapeutic use
 50 from another practitioner within the previous 30 days.

51 ~~10.9.~~ Acquire or obtain, or attempt to acquire or obtain,
 52 possession of a controlled substance by misrepresentation,
 53 fraud, forgery, deception, or subterfuge.

54 ~~11.10.~~ Affix any false or forged label to a package or
 55 receptacle containing a controlled substance.

56 ~~12.11.~~ Furnish false or fraudulent material information

57 in, or omit any material information from, any report or other
 58 document required to be kept or filed under this chapter or any
 59 record required to be kept by this chapter.

60 ~~13.12.~~ Store anhydrous ammonia in a container that is not
 61 approved by the United States Department of Transportation to
 62 hold anhydrous ammonia or is not constructed in accordance with
 63 sound engineering, agricultural, or commercial practices.

64 ~~14.13.~~ With the intent to obtain a controlled substance or
 65 combination of controlled substances that are not medically
 66 necessary for the person or an amount of a controlled substance
 67 or substances that is not medically necessary for the person,
 68 obtain or attempt to obtain from a practitioner a controlled
 69 substance or a prescription for a controlled substance by
 70 misrepresentation, fraud, forgery, deception, subterfuge, or
 71 concealment of a material fact. For purposes of this
 72 subparagraph, a material fact includes whether the person has an
 73 existing prescription for a controlled substance issued for the
 74 same period of time by another practitioner or as described in
 75 subparagraph 9. ~~8.~~

76 (b) A health care practitioner, with the intent to provide
 77 a controlled substance or combination of controlled substances
 78 that are not medically necessary to his or her patient or an
 79 amount of controlled substances that is not medically necessary
 80 for his or her patient, may not provide a controlled substance
 81 or a prescription for a controlled substance by
 82 misrepresentation, fraud, forgery, deception, subterfuge, or
 83 concealment of a material fact. For purposes of this paragraph,
 84 a material fact includes whether the patient has an existing

85 | prescription for a controlled substance issued for the same
 86 | period of time by another practitioner or as described in
 87 | subparagraph (a)9. ~~(a)8.~~

88 | (c) Any person who violates ~~the provisions of~~
 89 | subparagraphs (a)1.-8. ~~(a)1.-7.~~ commits a misdemeanor of the
 90 | first degree, punishable as provided in s. 775.082 or s.
 91 | 775.083; except that, upon a second or subsequent violation, the
 92 | person commits a felony of the third degree, punishable as
 93 | provided in s. 775.082, s. 775.083, or s. 775.084.

94 | (d) Any person who violates ~~the provisions of~~
 95 | subparagraphs (a)9.-13. ~~(a)8.-12.~~ commits a felony of the third
 96 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 97 | 775.084.

98 | (e) A person or health care practitioner who violates ~~the~~
 99 | ~~provisions of~~ subparagraph (a)14. ~~(a)13.~~ or paragraph (b)
 100 | commits a felony of the third degree, punishable as provided in
 101 | s. 775.082, s. 775.083, or s. 775.084, if any controlled
 102 | substance that is the subject of the offense is listed in
 103 | Schedule II, Schedule III, or Schedule IV.

104 | Section 2. Paragraph (a) of subsection (1), paragraph (b)
 105 | of subsection (2), and paragraph (f) of subsection (7) of
 106 | section 893.055, Florida Statutes, are amended to read:

107 | 893.055 Prescription drug monitoring program.—

108 | (1) As used in this section, the term:

109 | (a) "Patient advisory report" or "advisory report" means
 110 | information provided by the department in writing, or as
 111 | determined by the department, to a prescriber, dispenser,
 112 | pharmacy, or patient concerning the dispensing of controlled

113 substances. All advisory reports are for informational purposes
 114 only and impose no obligations of any nature or any legal duty
 115 on a prescriber, dispenser, pharmacy, or patient. The patient
 116 advisory report shall be provided in accordance with s.
 117 893.13(7)(a)9. ~~893.13(7)(a)8.~~ The advisory reports issued by the
 118 department are not subject to discovery or introduction into
 119 evidence in any civil or administrative action against a
 120 prescriber, dispenser, pharmacy, or patient arising out of
 121 matters that are the subject of the report; and a person who
 122 participates in preparing, reviewing, issuing, or any other
 123 activity related to an advisory report may not be permitted or
 124 required to testify in any such civil action as to any findings,
 125 recommendations, evaluations, opinions, or other actions taken
 126 in connection with preparing, reviewing, or issuing such a
 127 report.

128 (2)

129 (b) The department, when the direct support organization
 130 receives at least \$20,000 in nonstate moneys or the state
 131 receives at least \$20,000 in federal grants for the prescription
 132 drug monitoring program, shall adopt rules as necessary
 133 concerning the reporting, accessing the database, evaluation,
 134 management, development, implementation, operation, security,
 135 and storage of information within the system, including rules
 136 for when patient advisory reports are provided to pharmacies and
 137 prescribers. The patient advisory report shall be provided in
 138 accordance with s. 893.13(7)(a)9. ~~893.13(7)(a)8.~~ The department
 139 shall work with the professional health care licensure boards,
 140 such as the Board of Medicine, the Board of Osteopathic

141 Medicine, and the Board of Pharmacy; other appropriate
 142 organizations, such as the Florida Pharmacy Association, the
 143 Florida Medical Association, the Florida Retail Federation, and
 144 the Florida Osteopathic Medical Association, including those
 145 relating to pain management; and the Attorney General, the
 146 Department of Law Enforcement, and the Agency for Health Care
 147 Administration to develop rules appropriate for the prescription
 148 drug monitoring program.

149 (7)

150 (f) The program manager, upon determining a pattern
 151 consistent with the rules established under paragraph (2) (d) and
 152 having cause to believe a violation of s. 893.13(7)(a)9.

153 ~~893.13(7)(a)8.~~, (8) (a), or (8) (b) has occurred, may provide
 154 relevant information to the applicable law enforcement agency.

155 Section 3. Subsection (4) of section 893.0551, Florida
 156 Statutes, is amended to read:

157 893.0551 Public records exemption for the prescription
 158 drug monitoring program.—

159 (4) The department shall disclose such confidential and
 160 exempt information to the applicable law enforcement agency in
 161 accordance with s. 893.055(7) (f). The law enforcement agency may
 162 disclose the confidential and exempt information received from
 163 the department to a criminal justice agency as defined in s.
 164 119.011 as part of an active investigation that is specific to a
 165 violation of s. 893.13(7)(a)9. ~~893.13(7)(a)8.~~, s. 893.13(8) (a),
 166 or s. 893.13(8) (b).

167 Section 4. Paragraph (c) of subsection (3) of section
 168 921.0022, Florida Statutes, is amended to read:

CS/HB 1081

2012

169 921.0022 Criminal Punishment Code; offense severity
 170 ranking chart.—

171 (3) OFFENSE SEVERITY RANKING CHART

172 (c) LEVEL 3

173

Florida Statute	Felony Degree	Description
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174

119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
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175

316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
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176

316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
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177

316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
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178

319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
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179

319.33(1)(a)	3rd	Alter or forge any certificate
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CS/HB 1081

2012

			of title to a motor vehicle or mobile home.
180	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
181	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
182	327.35(2)(b)	3rd	Felony BUI.
183	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
184	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
185	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
186	379.2431	3rd	Taking, disturbing, mutilating,

CS/HB 1081

2012

	(1) (e) 5.		destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
187	379.2431 (1) (e) 6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
188	400.9935 (4)	3rd	Operating a clinic without a license or filing false license application or other required information.
189	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
190	501.001 (2) (b)	2nd	Tamper with a consumer product or the container using materially false/misleading

CS/HB 1081

2012

			information.
191	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
192	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
193	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
194	697.08	3rd	Equity skimming.
195	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
196	796.05(1)	3rd	Live on earnings of a prostitute.
197	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
198	806.10(2)	3rd	Interferes with or assaults

CS/HB 1081

2012

			firefighter in performance of duty.
199	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
200	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
201	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
202	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
203	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
204	817.233	3rd	Burning to defraud insurer.
205	817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor

CS/HB 1081

2012

			vehicle accidents.
206	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
207	817.236	3rd	Filing a false motor vehicle insurance application.
208	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
209	817.413(2)	3rd	Sale of used goods as new.
210	817.505(4)	3rd	Patient brokering.
211	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
212	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
213			

CS/HB 1081

2012

214	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
215	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
216	843.19	3rd	Injure, disable, or kill police dog or horse.
217	860.15(3)	3rd	Overcharging for repairs and parts.
218	870.01(2)	3rd	Riot; inciting or encouraging.
219	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8.,

CS/HB 1081

2012

			(2)(c)9., (3), or (4) drugs within 1,000 feet of university.
220	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
221	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
222	<u>893.13(7)(a)9.</u> 893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
223	<u>893.13(7)(a)10.</u> 893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
224	<u>893.13(7)(a)11.</u>	3rd	Affix false or forged label to

CS/HB 1081

2012

225	893.13(7)(a)10.		package of controlled substance.
226	<u>893.13(7)(a)12.</u> 893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
227	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
228	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
229	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.

CS/HB 1081

2012

230	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
231	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
232	944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
233	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
234	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
235	Section 5. This act shall take effect October 1, 2012.		

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Health & Human Services
Committee

Representative McBurney offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (a), (c) and (d) of subsection (1),
paragraph (a) of subsection (2), and paragraph (e) of subsection
(3) of section 456.44, Florida Statutes, are amended to read:

456.44 Controlled substance prescribing.—

(1) DEFINITIONS.—

(a) "Addiction medicine specialist" means a board-
certified psychiatrist ~~psychiatrist~~ with a subspecialty
certification in addiction medicine or who is eligible for such
subspecialty certification in addiction medicine, an addiction
medicine physician certified or eligible for certification by
the American Society of Addiction Medicine, or an osteopathic
physician who holds a certificate of added qualification in
Addiction Medicine through the American Osteopathic Association.

Amendment No. 1

20 (c) "Board-certified pain management physician" means a
21 physician who possesses board certification in pain medicine by
22 the American Board of Pain Medicine, board certification by the
23 American Board of Interventional Pain Physicians, or board
24 certification or subcertification in pain management by a
25 specialty board recognized by the American Association of
26 Physician Specialists or the American Board of Medical
27 Specialties or an osteopathic physician who holds a certificate
28 in Pain Management by the American Osteopathic Association.

29 (d) "Chronic nonmalignant pain" means pain unrelated to
30 cancer ~~or rheumatoid arthritis~~ which persists beyond the usual
31 course of disease or the injury that is the cause of the pain or
32 more than 90 days after surgery.

33 (2) REGISTRATION.—Effective January 1, 2012, a physician
34 licensed under chapter 458, chapter 459, chapter 461, or chapter
35 466 who prescribes any controlled substance, listed in Schedule
36 II, Schedule III, or Schedule IV as defined in s. 893.03, for
37 the treatment of chronic nonmalignant pain, must:

38 (a) Designate himself or herself as a controlled substance
39 prescribing practitioner on the physician's practitioner
40 profile.

41 (3) STANDARDS OF PRACTICE.—The standards of practice in
42 this section do not supersede the level of care, skill, and
43 treatment recognized in general law related to health care
44 licensure.

45 (e) The physician shall refer the patient as necessary for
46 additional evaluation and treatment in order to achieve
47 treatment objectives. Special attention shall be given to those

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Amendment No. 1

48 patients who are at risk for misusing their medications and
49 those whose living arrangements pose a risk for medication
50 misuse or diversion. The management of pain in patients with a
51 history of substance abuse or with a comorbid psychiatric
52 disorder requires extra care, monitoring, and documentation and
53 requires consultation with or referral to an addictionologist or
54 psychiatrist ~~physiatrist~~.

55
56 This subsection does not apply to a board-certified
57 anesthesiologist, physiatrist, rheumatologist, or neurologist,
58 or to a board-certified physician who has surgical privileges at
59 a hospital or ambulatory surgery center and primarily provides
60 surgical services. This subsection does not apply to a board-
61 certified medical specialist who has also completed a fellowship
62 in pain medicine approved by the Accreditation Council for
63 Graduate Medical Education or the American Osteopathic
64 Association, or who is board certified in pain medicine by a
65 board approved by the American Board of Medical Specialties or
66 the American Osteopathic Association and performs interventional
67 pain procedures of the type routinely billed using surgical
68 codes.

69 Section 2. Paragraph (a) of subsection (1) of section
70 458.3265, Florida Statutes, is amended to read:

71 458.3265 Pain-management clinics.—

72 (1) REGISTRATION.—

73 (a)1. As used in this section, the term:

74 a. "Chronic nonmalignant pain" means pain unrelated to
75 cancer ~~or rheumatoid arthritis~~ which persists beyond the usual

256375 - h1081-strike.docx

Published On: 2/20/2012 6:03:23 PM

Amendment No. 1

76 course of disease or the injury that is the cause of the pain or
77 more than 90 days after surgery.

78 b. "Pain-management clinic" or "clinic" means any publicly
79 or privately owned facility:

80 (I) That advertises in any medium for any type of pain-
81 management services; or

82 (II) Where in any month a majority of patients are
83 prescribed opioids, benzodiazepines, barbiturates, or
84 carisoprodol for the treatment of chronic nonmalignant pain.

85 2. Each pain-management clinic must register with the
86 department unless:

87 a. That clinic is licensed as a facility pursuant to
88 chapter 395;

89 b. The majority of the physicians who provide services in
90 the clinic primarily provide surgical services;

91 c. The clinic is owned by a publicly held corporation
92 whose shares are traded on a national exchange or on the over-
93 the-counter market and whose total assets at the end of the
94 corporation's most recent fiscal quarter exceeded \$50 million;

95 d. The clinic is affiliated with an accredited medical
96 school at which training is provided for medical students,
97 residents, or fellows;

98 e. The clinic does not prescribe controlled substances for
99 the treatment of pain;

100 f. The clinic is owned by a corporate entity exempt from
101 federal taxation under 26 U.S.C. s. 501(c)(3);

Amendment No. 1

102 g. The clinic is wholly owned and operated by one or more
103 board-certified anesthesiologists, physiatrists,
104 rheumatologists, or neurologists; or

105 h. The clinic is wholly owned and operated by a physician
106 multi-specialty practice where one or more board-certified
107 medical specialists who have also completed fellowships in pain
108 medicine approved by the Accreditation Council for Graduate
109 Medical Education, or who are also board-certified in pain
110 medicine by a board approved by the American Board of Medical
111 Specialties and perform interventional pain procedures of the
112 type routinely billed using surgical codes.

113 Section 3. Paragraph (a) of subsection (1) of section
114 459.0137, Florida Statutes, is amended to read:

115 459.0137 Pain-management clinics.—

116 (1) REGISTRATION.—

117 (a)1. As used in this section, the term:

118 a. "Chronic nonmalignant pain" means pain unrelated to
119 cancer ~~or rheumatoid arthritis~~ which persists beyond the usual
120 course of disease or the injury that is the cause of the pain or
121 more than 90 days after surgery.

122 b. "Pain-management clinic" or "clinic" means any publicly
123 or privately owned facility:

124 (I) That advertises in any medium for any type of pain-
125 management services; or

126 (II) Where in any month a majority of patients are
127 prescribed opioids, benzodiazepines, barbiturates, or
128 carisoprodol for the treatment of chronic nonmalignant pain.

Amendment No. 1

129 2. Each pain-management clinic must register with the
130 department unless:

131 a. That clinic is licensed as a facility pursuant to
132 chapter 395;

133 b. The majority of the physicians who provide services in
134 the clinic primarily provide surgical services;

135 c. The clinic is owned by a publicly held corporation
136 whose shares are traded on a national exchange or on the over-
137 the-counter market and whose total assets at the end of the
138 corporation's most recent fiscal quarter exceeded \$50 million;

139 d. The clinic is affiliated with an accredited medical
140 school at which training is provided for medical students,
141 residents, or fellows;

142 e. The clinic does not prescribe controlled substances for
143 the treatment of pain;

144 f. The clinic is owned by a corporate entity exempt from
145 federal taxation under 26 U.S.C. s. 501(c)(3);

146 g. The clinic is wholly owned and operated by one or more
147 board-certified anesthesiologists, physiatrists,
148 rheumatologists, or neurologists; or

149 h. The clinic is wholly owned and operated by a physician
150 multi-specialty practice where one or more board-certified
151 medical specialists who have also completed fellowships in pain
152 medicine approved by the Accreditation Council for Graduate
153 Medical Education or the American Osteopathic Association, or
154 who are also board-certified in pain medicine by a board
155 approved by the American Board of Medical Specialties or the

Amendment No. 1

156 American Osteopathic Association and perform interventional pain
157 procedures of the type routinely billed using surgical codes.

158 Section 4. Subsection (7) of section 893.13, Florida
159 Statutes, is amended to read:

160 893.13 Prohibited acts; penalties.—

161 (7)(a) A person may not:

162 1. Distribute or dispense a controlled substance in
163 violation of this chapter.

164 2. Refuse or fail to make, keep, or furnish any record,
165 notification, order form, statement, invoice, or information
166 required under this chapter.

167 3. Refuse entry into any premises for any inspection or
168 refuse to allow any inspection authorized by this chapter.

169 4. Distribute a controlled substance named or described in
170 s. 893.03(1) or (2) except pursuant to an order form as required
171 by s. 893.06.

172 5. Keep or maintain any store, shop, warehouse, dwelling,
173 building, vehicle, boat, aircraft, or other structure or place
174 which is resorted to by persons using controlled substances in
175 violation of this chapter for the purpose of using these
176 substances, or which is used for keeping or selling them in
177 violation of this chapter.

178 6. Use to his or her own personal advantage, or reveal,
179 any information obtained in enforcement of this chapter except
180 in a prosecution or administrative hearing for a violation of
181 this chapter.

182 7. Possess a prescription form which has not been
183 completed and signed by the practitioner whose name appears

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Amendment No. 1

184 printed thereon, unless the person is that practitioner, is an
185 agent or employee of that practitioner, is a pharmacist, or is a
186 supplier of prescription forms who is authorized by that
187 practitioner to possess those forms.

188 8. Knowingly use in another manner a Schedule II
189 controlled substance intended by the prescriber to be
190 administered orally.

191 9.8- Withhold information from a practitioner from whom
192 the person seeks to obtain a controlled substance or a
193 prescription for a controlled substance that the person making
194 the request has received a controlled substance or a
195 prescription for a controlled substance of like therapeutic use
196 from another practitioner within the previous 30 days.

197 10.9- Acquire or obtain, or attempt to acquire or obtain,
198 possession of a controlled substance by misrepresentation,
199 fraud, forgery, deception, or subterfuge.

200 11.10- Affix any false or forged label to a package or
201 receptacle containing a controlled substance.

202 12.11- Furnish false or fraudulent material information
203 in, or omit any material information from, any report or other
204 document required to be kept or filed under this chapter or any
205 record required to be kept by this chapter.

206 13.12- Store anhydrous ammonia in a container that is not
207 approved by the United States Department of Transportation to
208 hold anhydrous ammonia or is not constructed in accordance with
209 sound engineering, agricultural, or commercial practices.

210 14.13- With the intent to obtain a controlled substance or
211 combination of controlled substances that are not medically

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Published On: 2/20/2012 6:03:23 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1

212 necessary for the person or an amount of a controlled substance
213 or substances that is not medically necessary for the person,
214 obtain or attempt to obtain from a practitioner a controlled
215 substance or a prescription for a controlled substance by
216 misrepresentation, fraud, forgery, deception, subterfuge, or
217 concealment of a material fact. For purposes of this
218 subparagraph, a material fact includes whether the person has an
219 existing prescription for a controlled substance issued for the
220 same period of time by another practitioner or as described in
221 subparagraph 9. ~~8.~~

222 (b) A health care practitioner, with the intent to provide
223 a controlled substance or combination of controlled substances
224 that are not medically necessary to his or her patient or an
225 amount of controlled substances that is not medically necessary
226 for his or her patient, may not provide a controlled substance
227 or a prescription for a controlled substance by
228 misrepresentation, fraud, forgery, deception, subterfuge, or
229 concealment of a material fact. For purposes of this paragraph,
230 a material fact includes whether the patient has an existing
231 prescription for a controlled substance issued for the same
232 period of time by another practitioner or as described in
233 subparagraph (a)9. ~~(a)8.~~

234 (c) Any person who violates ~~the provisions of~~
235 subparagraphs (a)1.-8. ~~(a)1.-7.~~ commits a misdemeanor of the
236 first degree, punishable as provided in s. 775.082 or s.
237 775.083; except that, upon a second or subsequent violation, the
238 person commits a felony of the third degree, punishable as
239 provided in s. 775.082, s. 775.083, or s. 775.084.

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Amendment No. 1

240 (d) Any person who violates ~~the provisions of~~
241 subparagraphs (a)9.-13. ~~(a)8.-12.~~ commits a felony of the third
242 degree, punishable as provided in s. 775.082, s. 775.083, or s.
243 775.084.

244 (e) A person or health care practitioner who violates ~~the~~
245 ~~provisions of~~ subparagraph (a)14. ~~(a)13.~~ or paragraph (b)
246 commits a felony of the third degree, punishable as provided in
247 s. 775.082, s. 775.083, or s. 775.084, if any controlled
248 substance that is the subject of the offense is listed in
249 Schedule II, Schedule III, or Schedule IV.

250 Section 5. Paragraph (a) of subsection (1), paragraph (b)
251 of subsection (2), and paragraph (f) of subsection (7) of
252 section 893.055, Florida Statutes, are amended to read:

253 893.055 Prescription drug monitoring program.-

254 (1) As used in this section, the term:

255 (a) "Patient advisory report" or "advisory report" means
256 information provided by the department in writing, or as
257 determined by the department, to a prescriber, dispenser,
258 pharmacy, or patient concerning the dispensing of controlled
259 substances. All advisory reports are for informational purposes
260 only and impose no obligations of any nature or any legal duty
261 on a prescriber, dispenser, pharmacy, or patient. The patient
262 advisory report shall be provided in accordance with s.
263 893.13(7)(a)9. ~~893.13(7)(a)8.~~ The advisory reports issued by the
264 department are not subject to discovery or introduction into
265 evidence in any civil or administrative action against a
266 prescriber, dispenser, pharmacy, or patient arising out of
267 matters that are the subject of the report; and a person who

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Amendment No. 1

268 participates in preparing, reviewing, issuing, or any other
269 activity related to an advisory report may not be permitted or
270 required to testify in any such civil action as to any findings,
271 recommendations, evaluations, opinions, or other actions taken
272 in connection with preparing, reviewing, or issuing such a
273 report.

274 (2)

275 (b) The department, when the direct support organization
276 receives at least \$20,000 in nonstate moneys or the state
277 receives at least \$20,000 in federal grants for the prescription
278 drug monitoring program, shall adopt rules as necessary
279 concerning the reporting, accessing the database, evaluation,
280 management, development, implementation, operation, security,
281 and storage of information within the system, including rules
282 for when patient advisory reports are provided to pharmacies and
283 prescribers. The patient advisory report shall be provided in
284 accordance with s. 893.13(7)(a)9. ~~893.13(7)(a)8.~~ The department
285 shall work with the professional health care licensure boards,
286 such as the Board of Medicine, the Board of Osteopathic
287 Medicine, and the Board of Pharmacy; other appropriate
288 organizations, such as the Florida Pharmacy Association, the
289 Florida Medical Association, the Florida Retail Federation, and
290 the Florida Osteopathic Medical Association, including those
291 relating to pain management; and the Attorney General, the
292 Department of Law Enforcement, and the Agency for Health Care
293 Administration to develop rules appropriate for the prescription
294 drug monitoring program.

295 (7)

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Amendment No. 1

296 (f) The program manager, upon determining a pattern
 297 consistent with the rules established under paragraph (2)(d) and
 298 having cause to believe a violation of s. 893.13(7)(a)9.
 299 ~~893.13(7)(a)8.~~, (8)(a), or (8)(b) has occurred, may provide
 300 relevant information to the applicable law enforcement agency.

301 Section 6. Subsection (4) of section 893.0551, Florida
 302 Statutes, is amended to read:

303 893.0551 Public records exemption for the prescription
 304 drug monitoring program.—

305 (4) The department shall disclose such confidential and
 306 exempt information to the applicable law enforcement agency in
 307 accordance with s. 893.055(7)(f). The law enforcement agency may
 308 disclose the confidential and exempt information received from
 309 the department to a criminal justice agency as defined in s.
 310 119.011 as part of an active investigation that is specific to a
 311 violation of s. 893.13(7)(a)9. ~~893.13(7)(a)8.~~, s. 893.13(8)(a),
 312 or s. 893.13(8)(b).

313 Section 5. Paragraph (c) of subsection (3) of section
 314 921.0022, Florida Statutes, is amended to read:

315 921.0022 Criminal Punishment Code; offense severity
 316 ranking chart.—

317 (3) OFFENSE SEVERITY RANKING CHART

318 (c) LEVEL 3

319

Florida	Felony	
Statute	Degree	Description

320

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1

321	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
322	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
323	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
324	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
325	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
326	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
327	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1

forged, or unlawfully obtained
title or registration.

328

327.35(2)(b) 3rd Felony BUI.

329

328.05(2) 3rd Possess, sell, or counterfeit
fictitious, stolen, or
fraudulent titles or bills of
sale of vessels.

330

328.07(4) 3rd Manufacture, exchange, or
possess vessel with counterfeit
or wrong ID number.

331

376.302(5) 3rd Fraud related to reimbursement
for cleanup expenses under the
Inland Protection Trust Fund.

332

379.2431 3rd Taking, disturbing, mutilating,
(1)(e)5. destroying, causing to be
destroyed, transferring,
selling, offering to sell,
molesting, or harassing marine
turtles, marine turtle eggs, or
marine turtle nests in
violation of the Marine Turtle
Protection Act.

333

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1

334
335
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- 379.2431 3rd Soliciting to commit or
(1) (e) 6. conspiring to commit a
violation of the Marine Turtle
Protection Act.

- 400.9935(4) 3rd Operating a clinic without a
license or filing false license
application or other required
information.

- 440.1051(3) 3rd False report of workers'
compensation fraud or
retaliation for making such a
report.

- 501.001(2)(b) 2nd Tamper with a consumer product
or the container using
materially false/misleading
information.

- 624.401(4)(a) 3rd Transacting insurance without a
certificate of authority.

- 624.401(4)(b)1. 3rd Transacting insurance without a
certificate of authority;
premium collected less than
\$20,000.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1		
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
340		
697.08	3rd	Equity skimming.
341		
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
342		
796.05(1)	3rd	Live on earnings of a prostitute.
343		
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
344		
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
345		
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
346		
812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
347		

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1

348	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
349	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
350	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
351	817.233	3rd	Burning to defraud insurer.
352	817.234 (8)(b)-(c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
353	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
354	817.236	3rd	Filing a false motor vehicle insurance application.
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1

insurance card.

355

817.413(2) 3rd Sale of used goods as new.

356

817.505(4) 3rd Patient brokering.

357

828.12(2) 3rd Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

358

831.28(2)(a) 3rd Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.

359

831.29 2nd Possession of instruments for counterfeiting drivers' licenses or identification cards.

360

838.021(3)(b) 3rd Threatens unlawful harm to public servant.

361

843.19 3rd Injure, disable, or kill police dog or horse.

362

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1

363	860.15(3)	3rd	Overcharging for repairs and parts.
364	870.01(2)	3rd	Riot; inciting or encouraging.
365	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
366	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
367	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1

893.13(6)(a)

3rd

Possession of any controlled substance other than felony possession of cannabis.

368

893.13(7)(a)9.

3rd

Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

~~893.13(7)(a)8.~~

369

893.13(7)(a)10.

3rd

Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

~~893.13(7)(a)9.~~

370

893.13(7)(a)11.

3rd

Affix false or forged label to package of controlled substance.

~~893.13(7)(a)10.~~

371

893.13(7)(a)12.

3rd

Furnish false or fraudulent material information on any document or record required by chapter 893.

~~893.13(7)(a)11.~~

372

893.13(8)(a)1.

3rd

Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1

deceptive, untrue, or
fraudulent representations in
or related to the
practitioner's practice.

373

893.13(8)(a)2. 3rd Employ a trick or scheme in the
practitioner's practice to
assist a patient, other person,
or owner of an animal in
obtaining a controlled
substance.

374

893.13(8)(a)3. 3rd Knowingly write a prescription
for a controlled substance for
a fictitious person.

375

893.13(8)(a)4. 3rd Write a prescription for a
controlled substance for a
patient, other person, or an
animal if the sole purpose of
writing the prescription is a
monetary benefit for the
practitioner.

376

918.13(1)(a) 3rd Alter, destroy, or conceal
investigation evidence.

377

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1

944.47 3rd Introduce contraband to
(1)(a)1.-2. correctional facility.

378

944.47(1)(c) 2nd Possess contraband while upon
the grounds of a correctional
institution.

379

985.721 3rd Escapes from a juvenile
facility (secure detention or
residential commitment
facility).

380

Section 6. This act shall take effect October 1, 2012.

381

382

383

384

385

386

T I T L E A M E N D M E N T

387

Remove the entire title and insert:

388

A bill to be entitled

389

An act relating to controlled substances; amending s. 456.44,

390

F.S.; removing physiatrist; adding psychiatrist and

391

rheumatologist; amending definition of chronic non-malignant

392

pain; adding the American Board of Medical Specialties to

393

recognized certification entities; amending definition of

394

controlled substances; amending s. 458.3265, F.S.; amending

395

definition of chronic non-malignant pain; permitting a

396

rheumatologist to own pain clinics; adding multi-specialty

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1081 (2012)

Amendment No. 1



397 practice to permitted ownership forms of pain clinics; amending
398 s. 459.0137, F.S.; amending definition of chronic non-malignant
399 pain; permitting a rheumatologist to own pain clinics; adding
400 multi-specialty practice to permitted ownership forms of pain
401 clinics amending s. 893.13, F.S.; prohibiting the knowing use in
402 another manner of a Schedule II controlled substance intended to
403 be administered orally; providing criminal penalties; amending
404 ss. 893.055, 893.0551, and 921.0022, F.S.; conforming cross-
405 references; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1163 Adoption

SPONSOR(S): Appropriations Committee, Health & Human Services Access Subcommittee; Adkins and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1874

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	14 Y, 1 N, As CS	Poche	Schoolfield
2) Civil Justice Subcommittee	15 Y, 0 N	Caridad	Bond
3) Appropriations Committee	21 Y, 0 N, As CS	Fontaine	Leznoff
4) Health & Human Services Committee		Poche 	Gormley 

SUMMARY ANALYSIS

HB 1163 significantly revises current law relating to adoption. The bill:

- Clarifies the duties and obligations of adoption entities prior to and after taking custody of a surrendered newborn;
- Requires a newborn who tests positive for illicit or prescription drugs or alcohol to be placed with an adoption entity for the purposes of Florida’s “Safe Haven” law for surrendered newborns;
- Prohibits the Department of Children and Families from taking custody of a surrendered newborn who tests positive for drugs or alcohol and has no other signs of abuse, except when reasonable efforts to contact an adoption entity to take custody of the child fail;
- Allows for judicial enforcement of a contact agreement between the adoptive parent and the adoptive child’s birth parent, siblings or other relatives in certain circumstances;
- Revises the obligations and responsibilities of an unmarried biological father seeking to assert his parental rights with regard to his child;
- Amends the process for terminating parental rights;
- Outlines the duties of the court when considering a petition for termination of parental rights and, when the petition has been denied, providing for placement of the child;
- Adds guidelines to be considered by the court when approving a legal or other fee associated with an adoption in excess of \$5,000;
- Places restrictions on advertisements offering a minor for adoption or seeking a minor for adoption and establishes criminal penalties for violations of advertising restrictions;
- Provides that a person who knowingly publishes or assists in the publishing of an advertisement in violation of the bill's provisions commits a second degree misdemeanor and is subject to a fine of up to \$150 per day for each day the violation continues;
- Establishes elements of adoption deception by a birth mother, or woman holding herself out to be a birth mother, and strengthens criminal penalties for committing adoption deception;
- Provides that a person who commits adoption deception commits a second degree misdemeanor if the amount of money received was \$300 or less and a person who commits adoption deception with receipt of money totaling more than \$300 commits a third degree felony; and,
- Clarifies the rights and obligations of a volunteer mother involved in a preplanned adoption agreement.

The fiscal impact of this bill connected to third degree felonies for committing adoption deception is anticipated to be insignificant. Otherwise, there is no state fiscal impact expected.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Adoption in Florida

Chapter 39, F.S., establishes legislative intent to provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to recognize that most families desire to be competent caregivers and providers for their children; to ensure permanency for children within one year, and to ensure that the health and safety of children served shall be of paramount concern.¹ Chapter 39, F.S., provides the process and procedures for the following:

- Reporting child abuse and neglect;
- Protective investigations;
- Taking children into custody and shelter hearings;
- Petition, arraignment, adjudication, and disposition;
- Disposition;
- Post disposition change of custody;
- Case plans;
- Permanency;
- Judicial reviews; and,
- Termination of parental rights.

Many of the provisions and time-frames in chapter 39, F.S., are required by federal law in order to be eligible for federal funding.²

Ch. 63, F.S., known as the Florida Adoption Act, applies to all adoptions, both public and private, involving the following entities:

- Department of Children and Families (DCF);
- Child-placing agencies licensed by DCF under s. 63.202;
- Child-caring agencies registered under s. 409.176;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

The Legislature's intent is to provide stable and permanent homes for adoptive children in a prompt manner, to prevent the disruption of adoptive placement, and to hold parents accountable for meeting the needs of children.³ It is also the intent of the Legislature that in every adoption, the child's best interest should govern the court's determination in placement, with the court making specific findings as to those best interests.⁴ The Legislature also intends to protect and promote the well-being of the persons being adopted.⁵ Safeguards are established to ensure that that the minor is legally free for

¹ Section 39.001, F.S.

² Including, but not limited to, the Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351); the Keeping Children and Families Safe Act (P.L. 108-36); the Adoption and Safe Families Act (P.L. 105-89); the Child Abuse Prevention and Treatment Act (P.L. 93-247); and the Adoption Assistance and Child Welfare Act (P.L. 96-242).

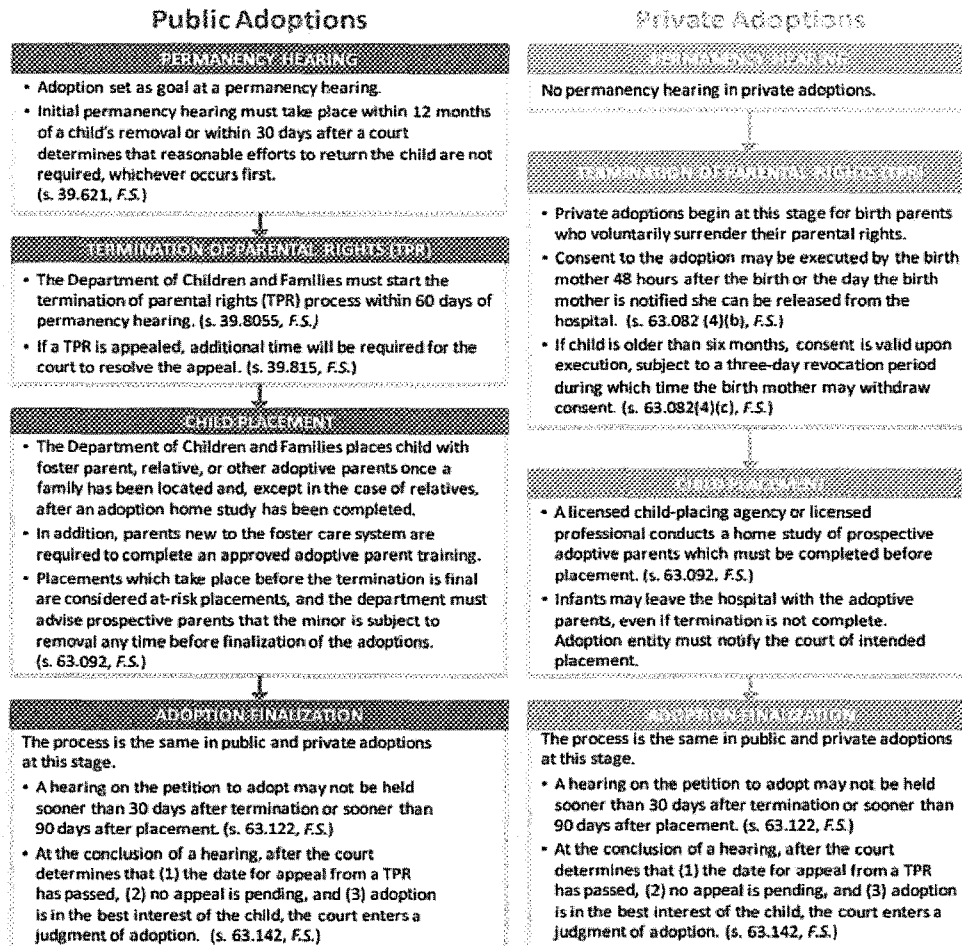
³ Section 63.022(1)(a), F.S.

⁴ Section 63.022(2), F.S.

⁵ Section 63.022(3), F.S.

adoption, that the required persons consent to the adoption, or that the parent-child relationship is terminated by judgment of the court.⁶

The process for public adoptions and private adoptions in Florida is summarized in the chart below⁷:



Source: The *Florida Statutes* and *Florida Administrative Code*.

Florida Adoption Statistics

For state fiscal year 2010-2011, 3,009 children were adopted in Florida.⁸ Over the last five years, nearly 17,000 children have been adopted out of Florida's child welfare system, while setting a record for the number of children adopted in two of the last five years.⁹ As a result of the improvement of adoption performance in the state, Florida has collected more than \$18 million in federal adoption incentive awards since 2009.¹⁰ Only Texas and Arizona have received more in adoption incentive awards during the same time period.¹¹

⁶ Section 63.022(4), F.S.

⁷ Office of Program Policy Analysis and Government Accountability, *Research Memorandum-Adoption Processes in Florida*, Dec. 8, 2011, page 3 (on file with the Health and Human Service Access Subcommittee).

⁸ Executive Office of the Governor, Office of Adoption and Child Protection, *Annual Report 2011*, December 30, 2011, page 59, available at www.flgov.com/wp-content/uploads/childadvocacy/oacp2011_annual_report.pdf (last accessed Jan. 28, 2012) (also on file with Health and Human Services Access Subcommittee).

⁹ *Id.* at page 6.

¹⁰ *Id.*

¹¹ *Id.* at page 57.

During the period of July 2010 through June 2011, of the children discharged from foster care to a finalized adoption, over 51 percent were discharged in less than 24 months from the date of the child's latest removal from home.¹² Of those children, the median length of stay in foster care was 20 months from the date of the latest removal from home to the date of discharge to adoption.¹³

Permanency

Chapter 39, F.S., provides that time is of the essence for permanency of children in the dependency system.¹⁴ A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first.¹⁵ The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child.¹⁶ A permanency hearing must be held at least every 12 months for any child who continues to receive supervision from the department or awaits adoption.¹⁷ Available permanency goals for children, listed in order of preference, are:

- Reunification;
- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship of a dependent child under s. 39.6221, F.S.;
- Permanent placement with a fit and willing relative under s. 39.6231, F.S.; or
- Placement in another planned permanent living arrangement under s. 39.6241, F.S.¹⁸

Adoption via Dependency — Pre-Termination of Parental Rights

A birth parent may decide, as the dependency process unfolds but prior to the termination of their parental rights, to work with a private adoption entity¹⁹ to find a permanent home for their child. The Legislature supports cooperation between private adoption entities and DCF to find permanent placement options for children in the care of DCF when the birth parents wish to participate in a private adoption plan with a qualified family.²⁰ A private adoption entity may intervene in dependency proceedings when it obtains consents to adopt from the parents of a minor child in the custody of the department, prior to the termination of their parental rights.²¹ The adoption entity must provide the court with a preliminary home study of the prospective adoptive parents with whom the child will be placed.²² The court must then determine whether the prospective adoptive parents are properly qualified to adopt the child, and whether the adoption is in the child's best interest.²³ The law requires that the dependency court, in determining the best interest of the child prior to termination of parental rights, consider the birth parents' rights to determine an appropriate placement for their child, the permanency offered, the child's bonding with any potential adoptive home in which the child has been residing, and the importance of maintaining sibling relationships.²⁴

If the court decides that it is in the child's best interest, the dependency court will order the transfer of custody of the minor child to the prospective adoptive parent under the supervision of the adoption entity, who shall provide monthly reports to the department until the adoption is finalized.²⁵

¹² *Id.* at page 55.

¹³ *Id.* at page 56.

¹⁴ Section 39.621(1), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 39.621(2), F.S.

¹⁹ Section 63.032(3), (6), (9), and (11), F.S.; "adoption entity" is defined as DCF, a licensed child-placing (adoption) agency, a registered or approved child-caring agency, or an attorney licensed in Florida who intends to place a child for adoption.

²⁰ Section 63.022(5), F.S.

²¹ Section 63.082(6)(b), F.S.

²² *Id.*

²³ Section 63.082(6)(c), F.S.

²⁴ Section 63.082(6)(d), F.S.

²⁵ Section 63.082(6)(c), F.S.

Adoption via Dependency — Post-Termination of Parental Rights

The laws relating to protection of children who are abused, abandoned, or neglected are found primarily in Chapter 39, F.S. When a child is adjudicated dependent, DCF must ensure that the child has a plan which will lead to a permanent living arrangement.²⁶ If a child in foster care will not be reunited with a parent, the department will initiate a proceeding to terminate parental rights (TPR). Section 39.810, F.S., requires that the court must consider the “manifest best interests of the child” when determining whether to terminate a parent’s right to their child, which includes an evaluation, among other factors, of:

- Suitable permanent relative custody arrangements;
- The ability of the birth parent(s) to provide for the material needs of the child;
- The ability of the birth parent(s) to care for the child’s health, safety, and well-being upon the child’s return home;
- The present and future needs of the child; and
- The love, affection and emotional ties between the child and his or her parent(s), siblings, or other relatives.

In making this determination, the statute prohibits the court from comparing the attributes of the parent(s) and anyone providing a present or potential placement for the child. If the court determines that it is in the manifest best interests of the child for his or her parent’s rights to be terminated, then the TPR order is entered and the child is placed in the custody of DCF for permanent placement. The Legislature has determined that adoption is the primary permanency option.²⁷

Data for state fiscal year 2010-2011 show that more children who are becoming newly available for adoption are being found permanent adoptive homes within 12 months.²⁸ In fact, the majority of children adopted during the previous state fiscal year waited 12 months or less.²⁹

A parent has the right to appeal a judicial order terminating his or her parental rights. The chart below describes the stages involved in the process of appeal of termination of parental rights.³⁰ Each stage includes a timeline goal for completion of each stage in the process as established by the Florida Supreme Court. The median length of time for the process of appealing a termination of parental rights in Florida is 151 days.³¹

²⁶ See Part IX, Chapter 39, F.S.

²⁷ Section 39.621(6), F.S.

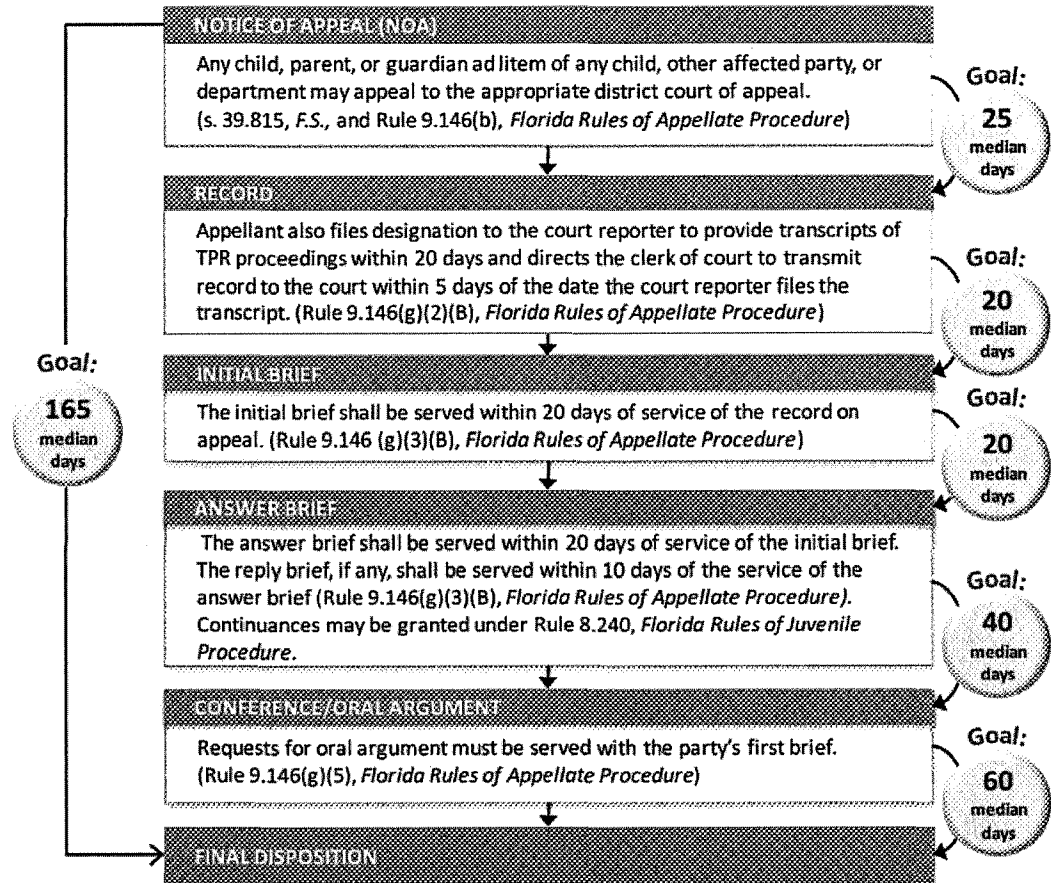
²⁸ See *supra* at FN 8, page 63.

²⁹ *Id.*; 66.63% of children adopted during this time period were waiting 12 months or less for finalization of adoption

³⁰ See *supra* at FN 8, page 5.

³¹ See *supra* at FN 8, page 1.

Stages in Appeals from Termination of Parental Rights (TPR)



Source: Florida Rules of Appellate Procedure and Florida State Court Commission on District Court of Appeal Performance and Accountability: *Report of the District Court of Appeal Performance and Accountability Commission on Delay in Child Dependency/Termination of Parental Rights Appeals*, June 2006.

Diligent Search

When a child is removed from the physical custody of his or her parent or guardian, a diligent search must be initiated to identify and locate any absent parent.³² The diligent search must include, at a minimum:

- Inquiries of all relatives of the parent or prospective parent made known to DCF;
- Inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent;
- Inquiries of other state and federal agencies likely to have information about the parent or prospective parent;
- Inquiries of appropriate utility and postal providers;
- A thorough search of at least one electronic database specifically designed for locating persons; and
- Inquiries of appropriate law enforcement agencies.³³

An affidavit of diligent search shall be included in the predisposition report.³⁴ Diligent search efforts shall continue until the department is released from any further search by the court.³⁵

³² Section 39.503(5), F.S.

³³ Section 39.503(6), F.S.

³⁴ Section 39.502(8), F.S.

³⁵ Section 39.502(9), F.S.

Prospective Adoptive Parents

DCF promulgated several administrative rules related to the recruitment, screening, application, and evaluation process of adoptive parents.³⁶ The rules outline a detailed evaluation of applicants, including a family preparation and study process.³⁷ Prospective adoptive parents are required to execute an adoption application – either DCF form CF-FSP 5071, which is incorporated by reference in DCF rules, or an adoption application in a format created by a community based care provider that contains “all of the elements of CF-FSP 5071.”³⁸ Form CF-FSP 5071 requests necessary identifying information from prospective adoptive parents, such as current and past residences, date of marriage, names and ages of other children in the home, religious affiliation, interests, employment, financial status, life history (including medical history), and references. A check of the Florida Abuse Hotline Information System must be conducted on all adoptive applicants.³⁹ Lastly, criminal background checks through local, state, and federal law enforcement agencies will be conducted on all individuals 12 years old and older who reside in the prospective adoptive home.⁴⁰

Preliminary Home Study and Final Home Investigation

A preliminary home study to determine the suitability of the intended adoptive parents is required prior to placing the minor into an intended home, and may be completed prior to identifying a prospective adoptive minor.⁴¹ The preliminary home study must be performed by a licensed child-placing agency, a registered child-caring agency, a licensed professional, or an agency described in s.61.20(2), F.S.⁴² The preliminary home study must include, at a minimum, the following:

- Interview with the intended adoptive parents;
- Records checks of DCF’s central abuse hotline;
- Criminal history check through FDLE and FBI;
- Assessment of the physical environment of the home;
- Determination of the financial security of the intended adoptive parents;
- Proof of adoptive parent counseling and education;
- Proof that information on adoption and the adoption process has been provided;
- Proof that information on support services available has been provided; and
- Copy of each signed acknowledgement of receipt of adoption entity disclosure forms.⁴³

A favorable home study is valid for one year after the date of its completion.⁴⁴ Following a favorable preliminary home study, a minor may be placed in the home pending entry of the judgment of adoption by the court. If the home study is unfavorable, placement shall not occur and the adoption entity, within 20 days of receiving the written recommendation, may petition the court to determine the suitability of adoption.⁴⁵

In order to ascertain whether the adoptive home is a suitable home for the minor and is in the best interest of the child, a final home investigation must be conducted before the adoption is concluded.

³⁶ Rules 65C-16.001 through 65C-16.007, F.A.C.

³⁷ Rule 65C-16.005(4), F.A.C.

³⁸ Rule 65C-16.004(5), F.A.C.; the DCF adoption form is CF-FSP 5071 and can be found on the department’s website at <http://www.dcf.state.fl.us/DCFForms/Search/DCFFormSearch.aspx> (type in “CF-FSP 5071” in the Form Number field) (last visited on Jan. 19, 2012).

³⁹ Rule 65C-16.007(1), F.A.C.

⁴⁰ Rule 65C-16.007(2), F.S.

⁴¹ Section 63.092(3), F.S.; unless good cause is shown, a home study is not required for adult adoptions of when the petitioner for adoption is a stepparent or a relative.

⁴² *Id.*; DCF performs the preliminary home study if there are no such entities in the county where the prospective adoptive parents reside.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

The investigation is conducted in the same manner as the preliminary home study.⁴⁶ Within 90 days after placement of the child, a written report of the final home investigation must be filed with the court and provided to the petitioner.⁴⁷ The report must contain an evaluation of the placement with a recommendation on the granting of the petition for adoption.⁴⁸ The final home investigation must include:

- Information from preliminary home study;
- Following the minor's placement, two scheduled visits with the minor and the minor's adoptive parent or parents. One visit must be in the home to determine suitability of the placement;
- Family social and medical history; and
- Other information relevant to suitability of placement Information required by rules promulgated by DCF.⁴⁹

"Safe Haven" Law- Abandonment of Newborns

Florida passed legislation providing for the safe abandonment of a newborn, in 2000.⁵⁰ The law provides that a parent may safely abandon an infant at a fire station, EMS station, or hospital emergency room within 3 days of birth.⁵¹ The receiving entity must provide any necessary emergency care, and then transfer the infant to a hospital for any further treatment.⁵² Infants admitted to a hospital under the safe abandonment law are presumed eligible for Medicaid coverage.⁵³ The hospital then transfers the child to a licensed child-placing agency.⁵⁴

The child-placing agency is required to request assistance from law enforcement within 24 hours of receiving the infant, to determine whether the child is a missing child.⁵⁵ The licensed child-placing agency seeks emergency custody via court order, and may place the child with court-approved prospective adoptive parents who become the infant's guardians pending termination of parental rights and final adoption.⁵⁶ The infant's parent may make a claim of parental rights to the court or to the entity having custody of the child at any time before the termination of parental rights.⁵⁷ Parenthood may be determined by scientific testing, if ordered by the court.⁵⁸

Safe haven abandonment pursuant to s. 383.50, F.S., does not constitute abuse or neglect, and a child safely abandoned under this statute is not deemed abandoned for purposes of reporting and investigation requirements of chapter 39 governing abuse, neglect and abandonment. Similarly, criminal investigation of a safe abandonment under this statute is prohibited, unless there is actual or suspected child abuse or neglect. A parent who abandons a child has the "absolute right to remain anonymous", and the statute prohibits pursuit of the parent.⁵⁹ In addition, the statute establishes a presumption that the abandoning parent consented to termination of parental rights.⁶⁰ A parent may rebut that presumption by making a claim for parental rights prior to termination.

⁴⁶ Section 63.125(1), F.S.

⁴⁷ Section 63.125(2), F.S.

⁴⁸ Section 63.125(3), F.S.

⁴⁹ Section 63.125(5), F.S.

⁵⁰ Ch. 2000-188, L.O.F.

⁵¹ Section 383.50(1), F.S.

⁵² Section 383.50(3), F.S.

⁵³ Section 383.50(8), F.S.

⁵⁴ Section 383.50(7), F.S.

⁵⁵ Section 63.0423(3), F.S.

⁵⁶ Section 63.0423(2), F.S.

⁵⁷ Section 63.0423(6) and (7), F.S.

⁵⁸ Section 63.0423(7), F.S.

⁵⁹ Section 383.50(5), F.S.

⁶⁰ Section 383.50(2), F.S.

Effect of Proposed Changes

The bill amends many provisions of chapter 63, F.S., relating to adoption.

The bill amends the definition of “abandoned”, found in s. 63.032(1), F.S. Currently, a child is considered abandoned if the parent or person having legal custody makes no provision for support of the child and makes little or no effort to communicate with the child. The bill changes the definition to consider a child abandoned if a parent or person having legal custody makes little or no provision for support of the child or makes little or no effort to communicate with the child. The bill eases the criteria for considering a child to be abandoned and trigger the permanent placement process.

The bill exempts from the definition of “parent”, found in s. 63.032(12), F.S., a gestational surrogate as defined in s. 742.13, F.S.⁶¹

The bill clarifies the definition of “unmarried biological father”, found in s. 63.032(19), F.S., to mean, in part, the child’s biological father who is not married to the child’s mother at the time of conception or on the date of the birth of the child. Current law is vague regarding the definition of an unmarried biological father as related to the timing of the birth of the child.

Section 1

The bill updates Legislative intent to reflect contents of the bill.

Section 2

The bill clarifies or expands certain definitions.

Section 3

The bill exempts adoption proceedings initiated under chapter 39, F.S., from the requirement that a search of the Florida Putative Father Registry be conducted, as provided in s. 63.054(7), F.S., if a search of the Registry was previously completed and documentation of the search is contained in the proceeding case file. The exemption may create inconsistency in the application of the statute. It may also provide for a legal challenge to an order terminating parental rights by a father in the case where a father has registered but was not provided notice of the hearing on termination of parental rights because a search of the registry was not completed.

Section 4

The bill requires all adoptions of minor children to use an adoption entity⁶² which will assume the responsibilities provided in s. 63.039, F.S., which outlines the duties owed to prospective adoptive parents and provides for sanctions. Adoption by a relative or stepparent does not require the use of an adoption entity under this provision.

Section 5

The bill provides that, upon entry of a final judgment terminating parental rights, an adoption entity that takes physical custody of an infant assumes responsibility for medical and other costs associated with emergency care and treatment of the infant from the time the entity takes custody of the infant. The bill specifies that the adoption entity does not inherit financial responsibility for care and treatment that was provided to the infant prior to the entity taking physical custody of the infant.

⁶¹ Section 742.13(5), F.S., defines “gestational surrogate” as a woman who contracts to become pregnant by means of assisted reproductive technology without the use of an egg from her body.

⁶² Section 63.032(3), F.S., defines “adoption entity” as DCF; a child-caring agency licensed under s. 409.176; an intermediary, such as a Florida licensed attorney; or an out-of-state child-placing agency licensed by DCF to place children within the state.

The bill proposes that an infant who tests positive for illegal or narcotic prescription drugs or alcohol, but shows no other signs of abuse or neglect, shall be placed with an adoption entity pursuant to s. 383.50, F.S.,⁶³ and s. 63.0423, F.S., which outlines procedures for handling surrendered newborns. The bill further provides that if DCF is contacted regarding a surrendered newborn under this section of law, the department may only provide instruction on contacting an adoption entity to take custody of the child. DCF may not take custody of the surrendered newborn unless reasonable efforts to contact an adoption entity to take custody of the child fail. This provision of the bill attempts to place a specific category of newborns, those testing positive for drugs or alcohol, in the private adoption process to allow for speedier placement in a qualified, permanent arrangement. The change would require persons receiving surrendered infants to make a determination that there are no signs of child abuse and neglect without a referral to the abuse hotline or DCF investigation. This provision of the bill does not prevent DCF from conducting its investigatory duties. The bill also states that the provisions of s. 383.50(7), F.S., which require a hospital to contact a licensed child-placing agency or statewide central abuse hotline when it receives a newborn surrendered under the "Safe Haven Act", are not eliminated by this provision.

The bill prohibits the court from ordering scientific testing to determine paternity or maternity of a minor child until the court determines that a prior order terminating parental rights is voidable pursuant to s. 63.0423(9)(a), F.S. All parties can agree that such testing to determine paternity or maternity is in the best interests of the child, at which point the court may order such testing.

Section 6

Current law entitles a grandparent to receive notice from an adoption entity of a hearing on a petition for termination of parental rights pending adoption if a child has lived with the grandparent for at least six months within the 24 months immediately preceding the date of filing the petition.

The bill requires the period of residence with the grandparent to be continuous in nature. This may create an issue of interpretation for the court regarding the meaning of continuity and whether de minimus absences from the home by the child or grandparent break the continuous requirement. If so, extremely short, temporary absences of one night or weekend may operate to waive the right of a grandparent to receive notice of hearing on a petition for termination of parental rights.

Section 7

The bill changes the title of s. 63.0427, F.S., from "Adopted minor's right to continued communication or contact with siblings and other relatives" to "Agreements for continued communication or contact between adopted child and siblings, parents, and other relatives". The bill prohibits the court from increasing contact between an adopted child and siblings, birth parents, or other relatives without the consent of the adoptive parent or parents. The court may reduce such contact between the parties without the consent of the adoptive parent or parents.

The bill permits prospective adoptive parents to enter into an agreement allowing contact between the child to be adopted and the birth parent, other relative, or previous foster parent. Contact may take the form of visits, telephone calls, written correspondence, exchange of photographs, and other similar kinds of contact. An agreement establishing contact is enforceable by a court only if:

- The agreement is in writing and was submitted to the court;
- The adoptive parents have agreed to the terms of the contact agreement;
- The court determines that contact is in the best interests of the child; and
- The child, if 12 years of age or older, has agreed to the contact agreement

Any dispute regarding the contact agreement or any breach of the agreement does not affect the validity or finality of the adoption. The adoptive parent can terminate the contact agreement if he or she

⁶³ Section 383.50, F.S., is Florida's "safe haven" law for newborns.

reasonable believes further contact to be detrimental to the best interests of the child. To terminate a contact agreement, an adoptive parent must file a notice of intent to terminate the agreement, which includes the reasons for termination, with the court that approved the agreement and with any party to the agreement. If appropriate, the bill allows the court to order the parties to mediation to resolve the issues associated with the contact agreement. The bill requires the mediation to be conducted pursuant to the provisions of s. 61.183, F.S., which, in part, requires the mediation to be conducted by a mediator certified by the Florida Supreme Court. The bill also requires the petitioner for dissolution of the contact agreement to pay for the mediation. Lastly, the bill provides for an enforceable contact agreement even if the agreement does not disclose the identity of the parties or if identifying information is redacted from the agreement.

Section 8

In circumstances where an intermediary (attorney) has taken custody of a minor who has been voluntarily surrendered through execution of a consent to adoption, the intermediary is responsible for the minor until the court orders preliminary approval of placement in a prospective adoptive home. The intermediary retains the right to remove the minor from the prospective adoptive home if the intermediary deems removal to be in the best interests of the child. The bill prohibits the intermediary from removing a child without a court order unless the child is in danger of imminent harm. The bill also clarifies that the intermediary does become responsible for payment of the minor's medical bills that were incurred prior to taking physical custody after the execution of adoption consents.

The bill requires that prospective adoptive parents receive a completed and approved favorable preliminary home study within one year before placement of a minor child in the prospective. Current law does not specify that the favorable preliminary home study be completed and approved with the applicable time period. The bill requires that, in the case where a suitable prospective adoptive home is not available, the minor must be placed in a licensed foster care home, with a home-study approved person or family, or with a relative until a suitable prospective adoptive home becomes available. Current law does not specify that the foster home be licensed and does not provide the option for placement with a person or family that has been home-study-approved.

Sections 9 and 10

The bill requires strict compliance with the provisions of chapter 63, F.S., by an unmarried biological father in order to retain the rights afforded to him under applicable law. The bill provides that a registrant who files a claim of paternity form with the Office of Vital Statistics expressly consents to submit to and pay for DNA testing upon the request of any party. Current law does not require the registrant to pay for DNA testing.

Section 11

Current law requires notice of proceedings to terminate parental rights to be served on the father of the minor if one of several elements is met.

The bill adds, as an element to require notice to be served, the fact that the father is listed on the child's birth certificate before the date a petition for termination of parental rights is filed. The bill requires the status of the father to be determined at the time the petition for termination of parental rights is filed. This status may not be modified with regard to the father's rights or obligations by any acts that occur after the petition has been filed. Case law allows the father's status, and thereby his rights and responsibilities, to be reassessed following marriage to the birth mother subsequent to the entry of judgment of termination of parental rights.⁶⁴ The bill allows for the father's rights and obligations to be modified or altered if the judgment terminating parental rights is voided due to the fact that, at the time the petition was filed, the father relied on false information provided a person in such a manner that, if he was provided with truthful information, his actions would have resulted in a different determination of status.

⁶⁴ See *D. and L.P. v. C.L.G. and A.R.L.*, 37 So.3d 897 (Fla. 1st DCA 2010).

The bill provides that, in order to demonstrate a full commitment to the responsibilities of parenthood, an unmarried biological father must provide reasonable and regular financial support. The bill does not define "reasonable and regular". The bill states that an unmarried biological father retains the responsibility to provide financial assistance to the birth mother during pregnancy and to the child following birth regardless of whether the birth mother and child are receiving financial support from an adoption entity, prospective adoptive parent, or third party. In addition, the fact that the birth mother and child are receiving support from other sources does not excuse the father's duty to provide support. Merely expressing a desire to fulfill responsibilities towards his child does not satisfy the obligations of the father outlined in s. 63.062, F.S.

The bill requires an adoption entity to serve notice of an intended adoption plan on any known and locatable unmarried biological father who is identified to the entity by the birth mother at the time she signs her consent to adoption only if the child is 6 months old or less at the time the consent is executed. Current law does not specify an age limitation for the child in relation to service of notice of intended adoption plan. Service of notice is not required if, among other circumstances, the child is more than 6 months old at the time the birth mother executes the consent to adoption. It is unclear why 6 months was determined to be the age that triggered the notice requirement for intended adoption plans.

The bill specifies that an affidavit of nonpaternity is sufficient to waive notice of all court proceedings after execution if it contains a denial of parental obligations. It is not necessary that the affidavit include a denial of biological relationship to the child. The affidavit has the effect of indicating that, while the affiant may be the biological father of the child, the affiant has no intention of participating in the parenting of the child and is willfully surrendering his parental rights related to the child.

Section 12

The bill makes a grammatical change in term from "interest" to "interests".

Section 13

Current law states that the notice and consent provisions of ch. 63, F.S., as they relate to the father of a child, do not apply in cases where the child is conceived as a result of a violation of a criminal law of Florida, another state or another country. The bill adds that a criminal conviction is not necessary for a court to find that a child was conceived as a result of a violation of a criminal law of Florida, another state or another country.

Following execution of a consent to adoption by a parent or parents, as required by law, the bill directs the court to permit an adoption entity to intervene in a dependency hearing held pursuant to chapter 39, F.S. Current law provides the court discretion ("may") on allowing an adoption entity to intervene. Upon intervention, the bill directs the court to immediately hold a hearing to determine if the adoption entity submitted the proper documents to be allowed to intervene and, if so, if a change of placement of the child is appropriate. Among the documents to be submitted is a preliminary home study. The bill provides that, unless the court is concerned about the completeness of the home study submitted by the adoption entity or is concerned about the qualifications of the individual who conducted the home study, another study to be completed by DCF is not necessary.

The bill does not allow a parent whose consent to adoption has been revoked or set aside to use any other consents executed by the other parent or an applicable third party to affect the rights and obligations of the other parent or applicable third party.

Section 14

The bill provides that a consent to adoption of a child 6 months of age or older may be revoked up to three business days after it was signed. Current law provides merely a three day revocation period.

Section 15

Under s. 63.087(6), F.S., an answer or pleading in response to a petition to terminate parental rights pending adoption must be filed. Current law provides that failure to appear at the hearing on the petition is grounds upon which the court may terminate parental rights. The bill specifies that failure to “personally” appear at the hearing constitutes grounds for terminating parental rights.

Section 16

The bill provides a cross-reference to a newly created paragraph.

Section 17

If the court does not find clear and convincing evidence sufficient to enter a judgment terminating parental rights, the court must dismiss the petition and the parent or parents whose rights were sought to be terminated retain all rights in full force and effect. The court is required to enter an order based on written findings providing for the placement of the minor when the petition is dismissed. The bill prohibits the court from making permanent custody decisions between competing parties at the time the petition for termination of parental rights is dismissed. Instead, the court shall return the child to the parent or guardian who had physical custody of the child at the time of placement for adoption unless the court determines it is not in the best interests of the child or it is not an available option. The bill prevents the court from changing the placement of a child who has established a bonded relationship with the caregiver without a reasonable transition plan. The court may order the parties to work with a qualified professional in a reunification or unification plan to assist the child in this transition.

Current law permits the court to order scientific testing to determine the paternity of a minor at any time when the court has jurisdiction over the minor.

The bill permits the court to order scientific testing to determine paternity only if the court determines that the consent of the father is necessary, unless all parties agree that knowledge of paternity of the child is in the best interest of the child. The bill also prohibits the court from ordering scientific testing of paternity of an unmarried biological father where the minor has a father whose rights have not been terminated.

A parent whose rights have been terminated may file a motion for relief from judgment terminating parental rights. Within 30 days of filing of the motion, the court must conduct a preliminary hearing to determine what contact, if any, is permitted between the child and the parent seeking relief. Contact can only be considered if it was requested by the parent who attended the preliminary hearing.

The bill provides that contact may not be awarded unless the parent had a previous bonded relationship with the child and the parent has pled a legitimate legal basis and established a prima facie case for setting aside the judgment terminating rights. The bill requires the court to determine if the pleading seeking relief asserts sufficient facts on its face as to lead the court to grant the relief requested. Again, the bill does not define or further clarify the term “bonded relationship”.

Section 18

Current law requires a copy of a completed home study be given to the intended adoptive parents who were the subject of the home study. The bill requires that the home study be signed by the person or entity that completed the home study. The bill also makes a minor change in language usage that does not have a substantive affect on the law.

Section 19

The bill amends s. 63.097, F.S., regarding fees associated with adoptions. Current law requires that the court approve all legal or other fees that exceed \$5,000 in connection with an adoption. The bill provides guidelines for judges to consider when determining the reasonableness of a fee. The

guidelines are taken from Rule 4-1.5 of the Rules Regulating Professional Conduct established by The Florida Bar, the regulating authority for attorneys in the state. The guidelines to be used are:

- The time and labor required, the novelty and difficulty of the question involved, and the skill required to perform the legal service properly;
- The likelihood, if apparent to the client, that the acceptance of the particular case will preclude the attorney from accepting other employment;
- The fee customarily charged in the community for similar legal services;
- The amount involved in the case, the responsibility involved in the representation of the claimant, and the result obtained;
- The time limitations imposed by the case or the client and any additional or special time demands made of the attorney by the client;
- The expertise, reputation, diligence, and ability of the attorney performing the service and the skill, expertise, and efficiency of effort in the actual provision of the legal service; and
- Whether the fee is fixed or contingent on the recovery or outcome of the case.

Section 20

Current law allows only the clerk of court to transmit to the state registrar of vital statistics a certificate containing information necessary for issuance of new birth record within 30 days of entry of judgment of adoption. The bill allows the adoption entity involved in the adoption to also transmit the certificate to the state registrar.

Section 21

Current law allows an adult adoptee to petition the court to appoint an intermediary or licensed child-placing agency to contact a birth parent who has not registered with the adoption registry pursuant to s. 63.165, F.S., and advise them of the availability of same. The bill allows a birth parent to go through the same process to contact an adult adoptee and advise both the adult adoptee and the birth parent that the one or both parties is seeking to contact the other and of the availability of an intermediary or agency to facilitate contact.

Section 22

The bill requires the state adoption information center, established under s. 63.167, F.S., to provide contact information for all adoption entities in a caller's county or, if there are no adoption entities in the caller's area, the contact information for the nearest adoption entity to the caller, when asked for a referral to make an adoption plan. The bill also requires the information center to rotate the order in which names of adoption entities are provided to callers.

Section 23

The bill makes it unlawful for a person to assist an unlicensed person or entity in publishing or broadcasting an advertisement making a minor available for adoption or seeking a minor for adoption without including a Florida license number of the agency or attorney placing the advertisement. The bill allows only a Florida licensed attorney or a Florida licensed adoption entity to place a paid advertisement in a telephone book, including the attorney or entity phone number, that a child is available for adoption or a child is sought for adoption. This provision will prevent an attorney or adoption entity licensed in another state or country from advertising or broadcasting an offer of a child for adoption or soliciting a child from within the state for adoption.

The bill requires a person who publishes a telephone directory for distribution in Florida to include, in all adoption advertisements, a statement that only licensed Florida attorneys or adoption entities may place advertisements offering or seeking minors for adoption. The bill requires the telephone directory publisher to include the appropriate Florida Bar number or Florida license number of the attorney or entity placing the advertisement in the advertisement itself. A person who knowingly publishes or assists in the publishing of an advertisement in violation of these provisions commits a second degree

misdemeanor⁶⁵ and is subject to a fine of up to \$150 per day for each day the violation continues. This provision requires the telephone directory publisher to ensure that only a Florida licensed attorney or adoption entity places an advertisement relating to adoption and to exclude all other attorneys or entities from advertising in the directory.

A birth mother, or a woman holding herself out to be a birth mother, who solicits and receives payment of adoption-related expenses in connection with an adoption plan commits adoption deception if:

- The birth mother, or woman holding herself out to be a birth mother, knew or should have known she was not pregnant at the time she sought or accepted funds for adoption-related expenses;
- The birth mother, or woman holding herself out to be a birth mother, accepts living expenses from a prospective adoptive parent or adoption entity without disclosing that she is receiving living expenses from another prospective adoptive parent or adoption entity at the same time in an effort to secure the child for adoption; or
- The birth mother, or woman holding herself out to be a birth mother, makes false representations to induce payment of living expenses and does not intend to offer the child for the adoption.

It is not clear how the intent of the birth mother in this situation would be determined. The intent element of the crime of adoption deception established by the bill may present a difficult proof problem for prosecutors.

A person who commits adoption deception commits a second degree misdemeanor if the amount of money received was \$300 or less.⁶⁶ The bill makes adoption deception with receipt of money totaling more than \$300 a third degree felony.⁶⁷ A person who commits adoption deception is also liable for damages as a result of acts or omissions, including reasonable attorney fees and costs incurred by the adoption entity or the prospective adoptive parent.

Section 24

Under s. 63.213, F.S., relating to preplanned adoption agreements, the bill clarifies that the agreement in no way constitutes consent of the mother to place her biological child for adoption until 48 hours after the birth of the child. The bill states that the right to rescind consent within this time period only applies when the child is genetically related to the mother. The bill further specifies that certain provisions of the section apply only if the child is genetically related to the mother. Lastly, for purposes of this section, the definition of "child" is revised to mean a child or children conceived through a fertility technique. Current law refers only to a child or children conceived through an insemination, which does not account for improvements in medical technology that may allow for conception of a child in a manner other than insemination.

Section 25

The bill confirms that any adoption made before July 1, 2012, the effective date of the bill, are valid. Any proceedings that are pending as of that date, or any amendments to proceedings pending on that date that are subsequently entered, are not affected by the change in law, unless the amendment is designated a remedial provision.

⁶⁵ The maximum penalty for a second degree misdemeanor is a fine not exceeding \$500 and a term of imprisonment not exceeding 60 days.

⁶⁶ The thresholds for differing degrees of theft can be found in s. 812.014, F.S.

⁶⁷ A third degree felony is punishable by a fine not exceeding \$5,000 or a term of imprisonment not exceeding 5 years. If the offender is determined by the court to be a habitual offender, the term of imprisonment shall not exceed 10 years. Sections 775.082, 775.083, 775.084, F.S.

Section 26

The bill amends s. 63.2325, F.S., to make technical changes, replacing the term “revocation” with “invalidation” and replacing the term “withdrawal of” with “revocation”. The changes are made to make the statute internally consistent.

Section 27

The bill provides an effective date of July 1, 2012.

General

The bill deletes several references to a “licensed child-placing agency” throughout ch. 63, F.S., and replaces it with “adoption entity”. The bill adds the term “licensed child-placing agency” to the definition of “adoption entity” for purposes of chapter 63, F.S., and deletes the duplicative term “an agency”. The definition of “adoption entity” is consistent across chapter 39, F.S., and chapter 63, F.S., by adding “licensed child-placing agency” to the definition. The bill also changes many references to the child’s best “interest” throughout chapter 63, F.S., to the child’s best “interests” to reflect consistency in statute with applicable case law.

B. SECTION DIRECTORY:

Section 1: Amends s. 63.022, F.S., relating to legislative intent.

Section 2: Amends s. 63.032, F.S., relating to definitions.

Section 3: Amends s. 63.037, F.S., relating to proceedings applicable to cases resulting from a termination of parental rights under chapter 39.

Section 4: Amends s. 63.039, F.S., relating to duty of adoption entity to prospective adoptive parents; sanctions.

Section 5: Amends s. 63.0423, F.S., relating to procedures with respect to surrendered infants.

Section 6: Amends s. 63.0425, F.S., relating to grandparent’s right to notice.

Section 7: Amends s. 63.0427, F.S., relating to adopted minor’s right to continued communication or contact with siblings and other relatives.

Section 8: Amends s. 63.052, F.S., relating to guardians designated; proof of commitment.

Section 9: Amends s. 63.053, F.S., relating to rights and responsibilities of an unmarried biological father; legislative findings.

Section 10: Amends s. 63.054, F.S., relating to actions required by an unmarried biological father to establish parental rights; Florida Putative Father Registry.

Section 11: Amends s. 63.062, F.S., relating to persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.

Section 12: Amends s. 63.063, F.S., relating to responsibility of parents for actions; fraud or misrepresentation; contesting termination of parental rights and adoption.

Section 13: Amends s. 63.082, F.S., relating to execution of consent to adoption or affidavit of nonpaternity; family social and medical history; withdrawal of consent.

Section 14: Amends s. 63.085, F.S., relating to disclosure by adoption entity.

Section 15: Amends s. 63.087, F.S., relating to proceeding to terminate parental rights pending adoption; general provisions.

Section 16: Amends s. 63.088, F.S., relating to proceeding to terminate parental rights pending adoption; notice and service; diligent search.

Section 17: Amends s. 63.089, F.S., relating to proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.

Section 18: Amends s. 63.092, F.S., relating to report to the court of intended placement by an adoption entity; at-risk placement; preliminary study.

Section 19: Amends s. 63.097, F.S., relating to fees.

Section 20: Amends s. 63.152, F.S., relating to application for new birth record.

Section 21: Amends s. 63.162, F.S., relating to hearings and records in adoption proceedings.

Section 22: Amends s. 63.167, F.S., relating to state adoption information center.

- Section 23:** Amends s. 63.212, F.S., relating to prohibited acts; penalties for violation.
Section 24: Amends s. 63.213, F.S., relating to preplanned adoption agreement.
Section 25: Amends s. 63.222, F.S., relating to effect on prior adoption proceedings.
Section 26: Amends s. 63.2325, F.S., relating to conditions for revocation of a consent to adoption or affidavit of nonpaternity.
Section 27: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The provisions of the bill are designed to steer more surrendered newborns to the private adoption process and avoid the dependency process outlined in ch. 39, F.S. To the extent that the provisions accomplish that goal, the resources maintained by DCF for the purpose of the dependency process will be retained by the department. The provisions of the bill could positively impact the number of hours worked by DCF staff and investigators in opening and investigating cases. Also, the foster care system will have fewer children to care for, lessening the amount of money used to care for minors in the system.

The court system may see an increase in the number of petitions for termination of parental rights and the number of cases presented for finalization of adoption as more children are placed within the private adoption process.

Section 24 of this bill creates a third degree felony for persons committing adoption deception that results in the offender receiving criminal compensation of more than \$300. This provision of the bill has not yet been reviewed by the Criminal Justice Estimating Conference; however, unofficial staff review indicates the expected impact to be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private adoption entities will realize an increase in the number of children placed in the private adoption process.

D. FISCAL COMMENTS:

None.

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:

The bill prohibits adoption entities located outside Florida from advertising or offering a minor for adoption or seeking a minor for adoption and establishes criminal penalties for violations of advertising restrictions.

The United States Supreme Court describes the Commerce Clause as follows:

The Commerce Clause and its nexus requirement are informed not so much by concerns about fairness for the individual defendant as by structural concerns about the effects of state regulation on the national economy. Under the Articles of Confederation, state taxes and duties hindered and suppressed interstate commerce; the Framers intended the Commerce Clause as a cure for these structural ills. It is in this light that we have interpreted the negative implication of the Commerce Clause.

Quill Corp. v. North Dakota, 504 U.S. 298, 312 (1992) (internal citations omitted).

Dormant commerce clause analysis is a part of Commerce Clause analysis. The dormant commerce clause is the theory that, where Congress has not acted to regulate or deregulate a specific form of commerce between the states, it is presumed that Congress would prohibit unreasonable restrictions upon that form of interstate commerce.⁶⁸

Dormant Commerce Clause doctrine distinguishes between state regulations that "affirmatively discriminate" against interstate commerce and evenhanded regulations that "burden interstate transactions only incidentally." *Maine v. Taylor*, 477 U.S. 131, 138 (1986). Regulations that "clearly discriminate against interstate commerce [are] virtually invalid per se," *National Electric Manufacturers Association v. Sorrell*, 272 F.3d 104, 108 (2d Cir.2001), while those that incidentally burden interstate commerce will be struck down only if "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits," *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

State regulations may burden interstate commerce "when a statute (i) shifts the costs of regulation onto other states, permitting in-state lawmakers to avoid the costs of their political decisions, (ii) has the practical effect of requiring out-of-state commerce to be conducted at the regulating state's direction, or (iii) alters the interstate flow of the goods in question, as distinct from the impact on companies trading in those goods." *Brown & Williamson Tobacco Corp. v. Pataki*, 320 F.3d 200, 208-09 (2d Cir.2003) (citations omitted).

"A state law that has the 'practical effect' of regulating commerce occurring wholly outside that State's borders is invalid under the Commerce Clause." *Healy v. The Beer Institute*, 491 U.S. 324, 332 (1989).

⁶⁸ The Commerce Clause also allows Congress to specifically leave regulation of an area to the states, even if the effect of leaving such regulation to the states leads to burdensome and conflicting regulation. The most notable example of this is regulation of the insurance industry.

B. RULE-MAKING AUTHORITY:

The Department of Children and Family Services has appropriate rulemaking authority sufficient to implement the provisions of the bill, as necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 321-330 of the bill make an exception for newborn infants who test positive for illegal drugs, alcohol or other substance abuse. However, this exception is not made in s. 383.50, F.S, related to surrendered newborn infants, which is referenced in this section of the bill. This could be clarified by deleting the reference to s. 383.50, F.S., or by amending s. 383.50, F.S., to agree with changes to the bill. In addition, the exception for newborns who test positive for drugs, alcohol, or other substances in lines 321-330 seems to conflict with the definition of "harm" to a child's health found in s. 39.01(32)(g), F.S.

Lines 397-402 of the bill require the requisite period of residence of a child with a grandparent to be 6 continuous months of the 24 months immediately preceding the filing of a petition for termination of parental rights in order for the grandparent to be entitled to notice of the hearing on the petition. The bill does not define the term "continuous". This could create an issue for interpretation by the courts, on a case-by-case basis, as to what constitutes "continuous" residence. The courts will be required to determine if "de minimus" absences from the home by the child or the grandparent violate the continuous requirement.

Lines 1612-1614 of the bill include the intent of the birth mother not to offer up a child for adoption as a proof of an element of the crime of adoption deception outlined in s. 63.212(2), F.S. The provision may present an unintended consequence of criminalizing a "change of heart" of the birth mother, who decides not to give the child up for adoption.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2012, the Health and Human Services Access Subcommittee adopted a strike-all amendment and an amendment to the strike-all amendment for House Bill 1163. The amendment to the strike-all amendment added guidelines to s. 63.097, F.S., to aid judges in determining a reasonable fee in an adoption case where the amount of the fee exceeds \$5,000. The guidelines mirror the guidelines found in Rule 4-1.5 of the Rules of Professional Conduct established by The Florida Bar. The strike-all amendment made the following changes to the bill:

- Clarified that a search of the Florida Putative Father Registry is not required in dependency proceedings under chapter 39, F.S., if a search was previously completed and documentation of the search is contained in the proceeding case file;
- Added "Florida licensed child-placing agency" to the definition of "adoption entity" in s. 63.032(3), F.S.;
- Clarified that DCF may not take custody of a newborn infant who tests positive for illicit or narcotic prescription drugs or alcohol, absent any other signs of abuse or neglect, unless efforts fail to locate an adoption entity to take custody of the infant;
- Changed the term "adoption entity" back to "person" regarding the category of individuals or entities that the court may consider for providing false information to a birth parent, in conjunction with a petition for termination for parental rights, which prevented the birth parent from making known his or her desire to assume parental responsibility for the child or from exercising his or her parental rights;
- Required a mediation, ordered by the court to resolve any disputes associated with a contact agreement, to be conducted pursuant to the provisions of s. 61.183, F.S., including that the mediation be conducted by a mediator certified by the Florida Supreme Court and requiring the petitioner seeking to dissolve the contact agreement to pay for the mediation;

- Added guidelines to s. 63.097, F.S., to assist the court in determining reasonable legal and other fees, in connection with an adoption, which exceed \$5,000;
- Confirmed that a father's rights, which are determined at the time the petition for termination for parental rights is filed and cannot be modified or altered by subsequent acts, are restored if a judgment terminating parental rights is voided based on a finding that false information was given to the father which prevented him from making known his desire to assume parental responsibility for the child or from exercising his parental rights; and
- Made other technical changes, including a renumbering of subsections.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute as passed in the Health and Human Services Access Subcommittee.

On February 15, 2012, the Appropriations Committee adopted three amendments to the committee substitute for HB 1163. This analysis reflects the bill as a committee substitute for a committee substitute that was reported favorably by the Appropriations Committee. The three amendments accomplish the following:

- Conform to the Senate version by confirming the reporting requirements established in s. 383.50(7), F.S., which provides that a hospital must notify a licensed child-placing agency when admitting a surrendered newborn infant;
- Conform to the Senate version by making a technical modification to the specification of who may adopt; and,
- Make a technical modification by revising the definition of "adoption entity" to remove duplicative language.

1 A bill to be entitled
 2 An act relating to adoption; amending s. 63.022, F.S.;
 3 revising legislative intent to delete reference to
 4 reporting requirements for placements of minors and
 5 exceptions; amending s. 63.032, F.S.; revising
 6 definitions; amending s. 63.037, F.S.; exempting
 7 adoption proceedings initiated under chapter 39, F.S.,
 8 from a requirement for a search of the Florida
 9 Putative Father Registry; amending s. 63.039, F.S.;
 10 providing that all adoptions of minor children require
 11 the use of an adoption entity that will assume the
 12 responsibilities provided in specified provisions;
 13 providing an exception; amending s. 63.0423, F.S.;
 14 revising terminology relating to surrendered infants;
 15 providing that an infant who tests positive for
 16 illegal drugs, narcotic prescription drugs, alcohol,
 17 or other substances, but shows no other signs of child
 18 abuse or neglect, shall be placed in the custody of an
 19 adoption entity; providing that a specified reporting
 20 requirement is not superseded; providing that when the
 21 Department of Children and Family Services is
 22 contacted regarding a surrendered infant who does not
 23 appear to have been the victim of actual or suspected
 24 child abuse or neglect, it shall provide instruction
 25 to contact an adoption entity and may not take custody
 26 of the infant; providing an exception; revising
 27 provisions relating to scientific testing to determine
 28 the paternity or maternity of a minor; amending s.

29 63.0425, F.S.; requiring that a child's residence be
 30 continuous for a specified period in order to entitle
 31 the grandparent to notice of certain proceedings;
 32 amending s. 63.0427, F.S.; prohibiting a court from
 33 increasing contact between an adopted child and
 34 siblings, birth parents, or other relatives without
 35 the consent of the adoptive parent or parents;
 36 providing for agreements for contact between a child
 37 to be adopted and the birth parent, other relative, or
 38 previous foster parent of the child; amending s.
 39 63.052, F.S.; deleting a requirement that a minor be
 40 permanently committed to an adoption entity in order
 41 for the entity to be guardian of the person of the
 42 minor; limiting the circumstances in which an
 43 intermediary may remove a child; providing that an
 44 intermediary does not become responsible for a minor
 45 child's medical bills that were incurred before taking
 46 physical custody of the child; providing additional
 47 placement options for a minor surrendered to an
 48 adoption entity for subsequent adoption when a
 49 suitable prospective adoptive home is not available;
 50 amending s. 63.053, F.S.; requiring that an unmarried
 51 biological father strictly comply with specified
 52 provisions in order to protect his interests; amending
 53 s. 63.054, F.S.; authorizing submission of an
 54 alternative document to the Office of Vital Statistics
 55 by the petitioner in each proceeding for termination
 56 of parental rights; providing that by filing a claim

57 | of paternity form the registrant expressly consents to
 58 | paying for DNA testing; requiring that an alternative
 59 | address designated by a registrant be a physical
 60 | address; providing that the filing of a claim of
 61 | paternity with the Florida Putative Father Registry
 62 | does not relieve a person from compliance with
 63 | specified requirements; amending s. 63.062, F.S.;
 64 | revising requirements for when a minor's father must
 65 | be served prior to termination of parental rights;
 66 | requiring that an unmarried biological father comply
 67 | with specified requirements in order for his consent
 68 | to be required for adoption; revising such
 69 | requirements; providing that the mere fact that a
 70 | father expresses a desire to fulfill his
 71 | responsibilities towards his child which is
 72 | unsupported by acts evidencing this intent does not
 73 | meet the requirements; providing for the sufficiency
 74 | of an affidavit of nonpaternity; providing an
 75 | exception to a condition to a petition to adopt an
 76 | adult; amending s. 63.063, F.S.; conforming
 77 | terminology; amending s. 63.082, F.S.; revising
 78 | language concerning applicability of notice and
 79 | consent provisions in cases in which the child is
 80 | conceived as a result of a violation of criminal law;
 81 | providing that a criminal conviction is not required
 82 | for the court to find that the child was conceived as
 83 | a result of a violation of criminal law; requiring an
 84 | affidavit of diligent search to be filed whenever a

85 person who is required to consent is unavailable
 86 because the person cannot be located; providing that
 87 in an adoption of a stepchild or a relative, a
 88 certified copy of the death certificate of the person
 89 whose consent is required may be attached to the
 90 petition for adoption if a separate petition for
 91 termination of parental rights is not being filed;
 92 authorizing the execution of an affidavit of
 93 nonpaternity before the birth of a minor in preplanned
 94 adoptions; revising language of a consent to adoption;
 95 providing that a home study provided by the adoption
 96 entity shall be deemed to be sufficient except in
 97 certain circumstances; providing for a hearing if an
 98 adoption entity moves to intervene in a dependency
 99 case; revising language concerning seeking to revoke
 100 consent to an adoption of a child older than 6 months
 101 of age; providing that if the consent of one parent is
 102 set aside or revoked, any other consents executed by
 103 the other parent or a third party whose consent is
 104 required for the adoption of the child may not be used
 105 by the parent who consent was revoked or set aside to
 106 terminate or diminish the rights of the other parent
 107 or third party; amending s. 63.085, F.S.; revising
 108 language of an adoption disclosure statement;
 109 requiring that a copy of a waiver by prospective
 110 adoptive parents of receipt of certain records must be
 111 filed with the court; amending s. 63.087, F.S.;

112 specifying that a failure to personally appear at a

113 proceeding to terminate parental rights constitutes
 114 grounds for termination; amending s. 63.088, F.S.;
 115 providing that in a termination of parental rights
 116 proceeding if a required inquiry that identifies a
 117 father who has been adjudicated by a court as the
 118 father of the minor child before the date a petition
 119 for termination of parental rights is filed the
 120 inquiry must terminate at that point; amending s.
 121 63.089, F.S.; specifying that it is a failure to
 122 personally appear that provides grounds for
 123 termination of parental rights in certain
 124 circumstances; revising provisions relating to
 125 dismissal of petitions to terminate parental rights;
 126 providing that contact between a parent seeking relief
 127 from a judgment terminating parental rights and a
 128 child may be awarded only in certain circumstances;
 129 providing for placement of a child in the event that a
 130 court grants relief from a judgment terminating
 131 parental rights and no new pleading is filed to
 132 terminate parental rights; amending s. 63.092, F.S.;
 133 requiring that a signed copy of the home study must be
 134 provided to the intended adoptive parents who were the
 135 subject of the study; amending s. 63.097, F.S.;
 136 providing guidelines for a court considering a
 137 reasonable attorney fee associated with adoption
 138 services; amending s. 63.152, F.S.; authorizing an
 139 adoption entity to transmit a certified statement of
 140 the entry of a judgment of adoption to the state

141 registrar of vital statistics; amending s. 63.162,
 142 F.S.; authorizing a birth parent to petition that
 143 court to appoint an intermediary or a licensed child-
 144 placing agency to contact an adult adoptee and advise
 145 both of the availability of the adoption registry and
 146 that the birth parent wishes to establish contact;
 147 amending s. 63.167, F.S.; requiring that the state
 148 adoption center provide contact information for all
 149 adoption entities in a caller's county or, if no
 150 adoption entities are located in the caller's county,
 151 the number of the nearest adoption entity when
 152 contacted for a referral to make an adoption plan;
 153 amending s. 63.212, F.S.; restricting who may place a
 154 paid advertisement or paid listing of the person's
 155 telephone number offering certain adoption services;
 156 requiring of publishers of telephone directories to
 157 include certain statements at the beginning of any
 158 classified heading for adoption and adoption services;
 159 providing requirements for such advertisements;
 160 providing criminal penalties for violations;
 161 prohibiting the offense of adoption deception by a
 162 person who is a birth mother or a woman who holds
 163 herself out to be a birth mother; providing criminal
 164 penalties; providing liability by violators for
 165 certain damages; amending s. 63.213, F.S.; providing
 166 that a preplanned adoption arrangement does not
 167 constitute consent of a mother to place her biological
 168 child for adoption until 48 hours following birth;

169 providing that a volunteer mother's right to rescind
 170 her consent in a preplanned adoption applies only when
 171 the child is genetically related to her; revising the
 172 definitions of the terms "child," "preplanned adoption
 173 arrangement," and "volunteer mother"; amending s.
 174 63.222, F.S.; providing that provisions designated as
 175 remedial may apply to any proceedings pending on the
 176 effective date of the provisions; amending s. 63.2325,
 177 F.S.; revising terminology relating to revocation of
 178 consent to adoption; providing an effective date.

179
 180 Be It Enacted by the Legislature of the State of Florida:

181
 182 Section 1. Paragraphs (e) through (m) of subsection (4) of
 183 section 63.022, Florida Statutes, are redesignated as paragraphs
 184 (d) through (l), respectively, and subsection (2) and present
 185 paragraph (d) of subsection (4) of that section are amended to
 186 read:

187 63.022 Legislative intent.—

188 (2) It is the intent of the Legislature that in every
 189 adoption, the best interest of the child should govern and be of
 190 foremost concern in the court's determination. The court shall
 191 make a specific finding as to the best interests ~~interest~~ of the
 192 child in accordance with the provisions of this chapter.

193 (4) The basic safeguards intended to be provided by this
 194 chapter are that:

195 ~~(d) All placements of minors for adoption are reported to~~
 196 ~~the Department of Children and Family Services, except relative,~~

197 ~~adult, and stepparent adoptions.~~

198 Section 2. Subsections (1), (3), (12), (17), and (19) of
 199 section 63.032, Florida Statutes, are amended to read:

200 63.032 Definitions.—As used in this chapter, the term:

201 (1) "Abandoned" means a situation in which the parent or
 202 person having legal custody of a child, while being able, makes
 203 little or no provision for the child's support ~~or and~~ makes
 204 little or no effort to communicate with the child, which
 205 situation is sufficient to evince an intent to reject parental
 206 responsibilities. If, in the opinion of the court, the efforts
 207 of such parent or person having legal custody of the child to
 208 support and communicate with the child are only marginal efforts
 209 that do not evince a settled purpose to assume all parental
 210 duties, the court may declare the child to be abandoned. In
 211 making this decision, the court may consider the conduct of a
 212 father towards the child's mother during her pregnancy.

213 (3) "Adoption entity" means the department, ~~an agency,~~ a
 214 child-caring agency registered under s. 409.176, an
 215 intermediary, a Florida-licensed child-placing agency, or a
 216 child-placing agency licensed in another state which is
 217 qualified by the department to place children in the State of
 218 Florida.

219 (12) "Parent" means a woman who gives birth to a child and
 220 who is not a gestational surrogate as defined in s. 742.13 or a
 221 man whose consent to the adoption of the child would be required
 222 under s. 63.062(1). If a child has been legally adopted, the
 223 term "parent" means the adoptive mother or father of the child.
 224 The term does not include an individual whose parental

225 relationship to the child has been legally terminated or an
 226 alleged or prospective parent.

227 (17) "Suitability of the intended placement" means the
 228 fitness of the intended placement, with primary consideration
 229 being given to the best interests ~~interest~~ of the child.

230 (19) "Unmarried biological father" means the child's
 231 biological father who is not married to the child's mother at
 232 the time of conception or on the date of the birth of the child
 233 and who, before the filing of a petition to terminate parental
 234 rights, has not been adjudicated by a court of competent
 235 jurisdiction to be the legal father of the child or has not
 236 filed ~~executed~~ an affidavit pursuant to s. 382.013(2)(c).

237 Section 3. Section 63.037, Florida Statutes, is amended to
 238 read:

239 63.037 Proceedings applicable to cases resulting from a
 240 termination of parental rights under chapter 39.—A case in which
 241 a minor becomes available for adoption after the parental rights
 242 of each parent have been terminated by a judgment entered
 243 pursuant to chapter 39 shall be governed by s. 39.812 and this
 244 chapter. Adoption proceedings initiated under chapter 39 are
 245 exempt from the following provisions of this chapter:

246 requirement for search of the Florida Putative Father Registry
 247 provided in s. 63.054(7), if a search was previously completed
 248 and documentation of the search is contained in the case file;
 249 disclosure requirements for the adoption entity provided in s.
 250 63.085(1); general provisions governing termination of parental
 251 rights pending adoption provided in s. 63.087; notice and
 252 service provisions governing termination of parental rights

253 pending adoption provided in s. 63.088; and procedures for
 254 terminating parental rights pending adoption provided in s.
 255 63.089.

256 Section 4. Subsections (2) through (4) of section 63.039,
 257 Florida Statutes, are renumbered as subsections (3) through (5),
 258 respectively, and a new subsection (2) is added to that section
 259 to read:

260 63.039 Duty of adoption entity to prospective adoptive
 261 parents; sanctions.—

262 (2) With the exception of an adoption by a relative or
 263 stepparent, all adoptions of minor children require the use of
 264 an adoption entity that will assume the responsibilities
 265 provided in this section.

266 Section 5. Subsections (1), (2), (3), (4), (7), (8), and
 267 (9) of section 63.0423, Florida Statutes, are amended to read:

268 63.0423 Procedures with respect to surrendered infants.—

269 (1) Upon entry of final judgment terminating parental
 270 rights, an adoption entity ~~A licensed child-placing agency~~ that
 271 takes physical custody of an infant surrendered at a hospital,
 272 emergency medical services station, or fire station pursuant to
 273 s. 383.50 assumes ~~shall assume~~ responsibility for the all
 274 ~~medical costs~~ and ~~all~~ other costs associated with the emergency
 275 services and care of the surrendered infant from the time the
 276 adoption entity ~~licensed child-placing agency~~ takes physical
 277 custody of the surrendered infant.

278 (2) The adoption entity ~~licensed child-placing agency~~
 279 shall immediately seek an order from the circuit court for
 280 emergency custody of the surrendered infant. The emergency

281 custody order shall remain in effect until the court orders
 282 preliminary approval of placement of the surrendered infant in
 283 the prospective home, at which time the prospective adoptive
 284 parents become guardians pending termination of parental rights
 285 and finalization of adoption or until the court orders
 286 otherwise. The guardianship of the prospective adoptive parents
 287 shall remain subject to the right of the adoption entity
 288 ~~licensed child-placing agency~~ to remove the surrendered infant
 289 from the placement during the pendency of the proceedings if
 290 such removal is deemed by the adoption entity ~~licensed child-~~
 291 ~~placing agency~~ to be in the best interests ~~interest~~ of the
 292 child. The adoption entity ~~licensed child-placing agency~~ may
 293 immediately seek to place the surrendered infant in a
 294 prospective adoptive home.

295 (3) The adoption entity ~~licensed child-placing agency~~ that
 296 takes physical custody of the surrendered infant shall, within
 297 24 hours thereafter, request assistance from law enforcement
 298 officials to investigate and determine, through the Missing
 299 Children Information Clearinghouse, the National Center for
 300 Missing and Exploited Children, and any other national and state
 301 resources, whether the surrendered infant is a missing child.

302 (4) The parent who surrenders the infant in accordance
 303 with s. 383.50 is presumed to have consented to termination of
 304 parental rights, and express consent is not required. Except
 305 when there is actual or suspected child abuse or neglect, the
 306 adoption entity ~~may licensed child-placing agency shall~~ not
 307 attempt to pursue, search for, or notify that parent as provided
 308 in s. 63.088 and chapter 49. For purposes of s. 383.50 and this

309 section, an infant who tests positive for illegal drugs,
 310 narcotic prescription drugs, alcohol, or other substances, but
 311 shows no other signs of child abuse or neglect, shall be placed
 312 in the custody of an adoption entity. This subsection does not
 313 eliminate the reporting requirement under s. 383.50(7). When the
 314 department is contacted regarding an infant properly surrendered
 315 under this section and s. 383.50, the department shall provide
 316 instruction to contact an adoption entity and may not take
 317 custody of the infant unless reasonable efforts to contact an
 318 adoption entity to accept the infant have not been successful.

319 (7) If a claim of parental rights of a surrendered infant
 320 is made before the judgment to terminate parental rights is
 321 entered, the circuit court may hold the action for termination
 322 of parental rights ~~pending subsequent adoption~~ in abeyance for a
 323 period of time not to exceed 60 days.

324 (a) The court may order scientific testing to determine
 325 maternity or paternity at the expense of the parent claiming
 326 parental rights.

327 (b) The court shall appoint a guardian ad litem for the
 328 surrendered infant and order whatever investigation, home
 329 evaluation, and psychological evaluation are necessary to
 330 determine what is in the best interests ~~interest~~ of the
 331 surrendered infant.

332 (c) The court may not terminate parental rights solely on
 333 the basis that the parent left the infant at a hospital,
 334 emergency medical services station, or fire station in
 335 accordance with s. 383.50.

336 (d) The court shall enter a judgment with written findings

337 of fact and conclusions of law.

338 (8) Within 7 business days after recording the judgment,
 339 the clerk of the court shall mail a copy of the judgment to the
 340 department, the petitioner, and any person ~~the persons~~ whose
 341 consent was ~~were~~ required, if known. The clerk shall execute a
 342 certificate of each mailing.

343 (9) (a) A judgment terminating parental rights pending
 344 adoption is voidable, and any later judgment of adoption of that
 345 minor is voidable, if, upon the motion of a ~~birth~~ parent, the
 346 court finds that a person knowingly gave false information that
 347 prevented the ~~birth~~ parent from timely making known his or her
 348 desire to assume parental responsibilities toward the minor or
 349 from exercising his or her parental rights. A motion under this
 350 subsection must be filed with the court originally entering the
 351 judgment. The motion must be filed within a reasonable time but
 352 not later than 1 year after the entry of the judgment
 353 terminating parental rights.

354 (b) No later than 30 days after the filing of a motion
 355 under this subsection, the court shall conduct a preliminary
 356 hearing to determine what contact, if any, will be permitted
 357 between a ~~birth~~ parent and the child pending resolution of the
 358 motion. Such contact may be allowed only if it is requested by a
 359 parent who has appeared at the hearing and the court determines
 360 that it is in the best interests ~~interest~~ of the child. If the
 361 court orders contact between a ~~birth~~ parent and the child, the
 362 order must be issued in writing as expeditiously as possible and
 363 must state with specificity any provisions regarding contact
 364 with persons other than those with whom the child resides.

365 (c) ~~At the preliminary hearing, The court, upon the motion~~
 366 ~~of any party or upon its own motion,~~ may not order scientific
 367 testing to determine the paternity or maternity of the minor
 368 until such time as the court determines that a previously
 369 entered judgment terminating the parental rights of that parent
 370 is voidable pursuant to paragraph (a), unless all parties agree
 371 that such testing is in the best interests of the child ~~if the~~
 372 ~~person seeking to set aside the judgment is alleging to be the~~
 373 ~~child's birth parent but has not previously been determined by~~
 374 ~~legal proceedings or scientific testing to be the birth parent.~~
 375 Upon the filing of test results establishing that person's
 376 maternity or paternity of the surrendered infant, the court may
 377 order visitation only if it appears to be as it deems
 378 appropriate and in the best interests ~~interest~~ of the child.

379 (d) Within 45 days after the preliminary hearing, the
 380 court shall conduct a final hearing on the motion to set aside
 381 the judgment and shall enter its written order as expeditiously
 382 as possible thereafter.

383 Section 6. Subsection (1) of section 63.0425, Florida
 384 Statutes, is amended to read:

385 63.0425 Grandparent's right to notice.—

386 (1) If a child has lived with a grandparent for at least 6
 387 continuous months within the 24-month period immediately
 388 preceding the filing of a petition for termination of parental
 389 rights pending adoption, the adoption entity shall provide
 390 notice to that grandparent of the hearing on the petition.

391 Section 7. Section 63.0427, Florida Statutes, is amended
 392 to read:

393 63.0427 Agreements for ~~Adopted minor's right to~~ continued
 394 communication or contact between adopted child and with
 395 siblings, parents, and other relatives.-

396 (1) A child whose parents have had their parental rights
 397 terminated and whose custody has been awarded to the department
 398 pursuant to s. 39.811, and who is the subject of a petition for
 399 adoption under this chapter, shall have the right to have the
 400 court consider the appropriateness of postadoption communication
 401 or contact, including, but not limited to, visits, written
 402 correspondence, or telephone calls, with his or her siblings or,
 403 upon agreement of the adoptive parents, with the parents who
 404 have had their parental rights terminated or other specified
 405 biological relatives. The court shall consider the following in
 406 making such determination:

- 407 (a) Any orders of the court pursuant to s. 39.811(7).
- 408 (b) Recommendations of the department, the foster parents
 409 if other than the adoptive parents, and the guardian ad litem.
- 410 (c) Statements of the prospective adoptive parents.
- 411 (d) Any other information deemed relevant and material by
 412 the court.

413
 414 If the court determines that the child's best interests will be
 415 served by postadoption communication or contact, the court shall
 416 so order, stating the nature and frequency of for ~~for~~ the
 417 communication or contact. This order shall be made a part of the
 418 final adoption order, but ~~in no event shall~~ the continuing
 419 validity of the adoption may not be contingent upon such
 420 postadoption communication or contact and, ~~nor shall~~ the ability

421 of the adoptive parents and child to change residence within or
 422 outside the State of Florida may not be impaired by such
 423 communication or contact.

424 (2) Notwithstanding ~~the provisions of~~ s. 63.162, the
 425 adoptive parent may, at any time, petition for review of a
 426 communication or contact order entered pursuant to subsection
 427 (1), if the adoptive parent believes that the best interests of
 428 the adopted child are being compromised, and the court may ~~shall~~
 429 ~~have authority to~~ order the communication or contact to be
 430 terminated or modified, as the court deems to be in the best
 431 interests of the adopted child; however, the court may not
 432 increase contact between the adopted child and siblings, birth
 433 parents, or other relatives without the consent of the adoptive
 434 parent or parents. As part of the review process, the court may
 435 order the parties to engage in mediation. The department shall
 436 not be required to be a party to such review.

437 (3) Prospective adoptive parents may enter into an
 438 agreement for contact between the child to be adopted and the
 439 birth parent, other relative, or previous foster parent of the
 440 child to be adopted. Such contact may include visits, written
 441 correspondence, telephone contact, exchange of photographs, or
 442 other similar types of contact. The agreement is enforceable by
 443 the court only if:

444 (a) The agreement was in writing and was submitted to the
 445 court.

446 (b) The adoptive parents have agreed to the terms of the
 447 contact agreement.

448 (c) The court finds the contact to be in the best

449 interests of the child.

450 (d) The child, if 12 years of age or older, has agreed to
 451 the contact outlined in the agreement.

452 (4) All parties must acknowledge that a dispute regarding
 453 the contact agreement does not affect the validity or finality
 454 of the adoption and that a breach of the agreement may not be
 455 grounds to set aside the adoption or otherwise impact the
 456 validity or finality of the adoption in any way.

457 (5) An adoptive parent may terminate the contact between
 458 the child and the birth parent, other relative, or foster parent
 459 if the adoptive parent reasonably believes that the contact is
 460 detrimental to the best interests of the child.

461 (6) In order to terminate the agreement for contact, the
 462 adoptive parent must file a notice of intent to terminate the
 463 contact agreement with the court that initially approved the
 464 contact agreement, and provide a copy of the notice to the
 465 adoption entity that placed the child, if any, and to the birth
 466 parent, other relative, or foster parent of the child who is a
 467 party to the agreement, outlining the reasons for termination of
 468 the agreement.

469 (7) If appropriate under the circumstances of the case,
 470 the court may order the parties to participate in mediation to
 471 attempt to resolve the issues with the contact agreement. The
 472 mediation shall be conducted pursuant to s. 61.183. The
 473 petitioner shall be responsible for payment for the services of
 474 the mediator.

475 (8) The court may modify the terms of the agreement in
 476 order to serve the best interests of the child, but may not

477 increase the amount or type of contact unless the adoptive
 478 parents agree to the increase in contact or change in the type
 479 of contact.

480 (9) An agreement for contact entered into under this
 481 subsection is enforceable even if it does not fully disclose the
 482 identity of the parties to the agreement or if identifying
 483 information has been redacted from the agreement.

484 Section 8. Subsections (1), (2), (3), and (6) of section
 485 63.052, Florida Statutes, are amended to read:

486 63.052 Guardians designated; proof of commitment.-

487 (1) For minors who have been placed for adoption with ~~and~~
 488 ~~permanently committed to~~ an adoption entity, other than an
 489 intermediary, such adoption entity shall be the guardian of the
 490 person of the minor and has the responsibility and authority to
 491 provide for the needs and welfare of the minor.

492 (2) For minors who have been voluntarily surrendered to an
 493 intermediary through an execution of a consent to adoption, the
 494 intermediary shall be responsible for the minor until the time a
 495 court orders preliminary approval of placement of the minor in
 496 the prospective adoptive home, after which time the prospective
 497 adoptive parents shall become guardians pending finalization of
 498 adoption, subject to the intermediary's right and responsibility
 499 to remove the child from the prospective adoptive home if the
 500 removal is deemed by the intermediary to be in the best
 501 interests ~~interest~~ of the child. The intermediary may not remove
 502 the child without a court order unless the child is in danger of
 503 imminent harm. The intermediary does not become responsible for
 504 the minor child's medical bills that were incurred before taking

505 physical custody of the child after the execution of adoption
 506 consents. Prior to the court's entry of an order granting
 507 preliminary approval of the placement, the intermediary shall
 508 have the responsibility and authority to provide for the needs
 509 and welfare of the minor. A ~~No~~ minor may not shall be placed in
 510 a prospective adoptive home until that home has received a
 511 favorable preliminary home study, as provided in s. 63.092,
 512 completed and approved within 1 year before such placement in
 513 the prospective home. The provisions of s. 627.6578 shall remain
 514 in effect notwithstanding the guardianship provisions in this
 515 section.

516 (3) If a minor is surrendered to an adoption entity for
 517 subsequent adoption and a suitable prospective adoptive home is
 518 not available pursuant to s. 63.092 at the time the minor is
 519 surrendered to the adoption entity, the minor must be placed in
 520 a licensed foster care home, or with a person or family that has
 521 received a favorable preliminary home study pursuant to
 522 subsection (2), or with a relative until such a suitable
 523 prospective adoptive home is available.

524 (6) Unless otherwise authorized by law or ordered by the
 525 court, the department is not responsible for expenses incurred
 526 by other adoption entities participating in a placement of a
 527 minor.

528 Section 9. Subsections (2) and (3) of section 63.053,
 529 Florida Statutes, are amended to read:

530 63.053 Rights and responsibilities of an unmarried
 531 biological father; legislative findings.—

532 (2) The Legislature finds that the interests of the state,

533 the mother, the child, and the adoptive parents described in
 534 this chapter outweigh the interest of an unmarried biological
 535 father who does not take action in a timely manner to establish
 536 and demonstrate a relationship with his child in accordance with
 537 the requirements of this chapter. An unmarried biological father
 538 has the primary responsibility to protect his rights and is
 539 presumed to know that his child may be adopted without his
 540 consent unless he strictly complies with ~~the provisions of~~ this
 541 chapter and demonstrates a prompt and full commitment to his
 542 parental responsibilities.

543 (3) The Legislature finds that a birth mother and a birth
 544 father have a right of ~~to~~ privacy.

545 Section 10. Subsections (1), (2), (4), and (13) of section
 546 63.054, Florida Statutes, are amended to read:

547 63.054 Actions required by an unmarried biological father
 548 to establish parental rights; Florida Putative Father Registry.-

549 (1) In order to preserve the right to notice and consent
 550 to an adoption under this chapter, an unmarried biological
 551 father must, as the "registrant," file a notarized claim of
 552 paternity form with the Florida Putative Father Registry
 553 maintained by the Office of Vital Statistics of the Department
 554 of Health which includes confirmation of his willingness and
 555 intent to support the child for whom paternity is claimed in
 556 accordance with state law. The claim of paternity may be filed
 557 at any time before the child's birth, but may not be filed after
 558 the date a petition is filed for termination of parental rights.
 559 In each proceeding for termination of parental rights, the
 560 petitioner must submit to the Office of Vital Statistics a copy

561 | of the petition for termination of parental rights or a document
 562 | executed by the clerk of the court showing the style of the
 563 | case, the names of the persons whose rights are sought to be
 564 | terminated, and the date and time of the filing of the petition.

565 | The Office of Vital Statistics may not record a claim of
 566 | paternity after the date a petition for termination of parental
 567 | rights is filed. The failure of an unmarried biological father
 568 | to file a claim of paternity with the registry before the date a
 569 | petition for termination of parental rights is filed also bars
 570 | him from filing a paternity claim under chapter 742.

571 | (a) An unmarried biological father is excepted from the
 572 | time limitations for filing a claim of paternity with the
 573 | registry or for filing a paternity claim under chapter 742, if:

574 | 1. The mother identifies him to the adoption entity as a
 575 | potential biological father by the date she executes a consent
 576 | for adoption; and

577 | 2. He is served with a notice of intended adoption plan
 578 | pursuant to s. 63.062(3) and the 30-day mandatory response date
 579 | is later than the date the petition for termination of parental
 580 | rights is filed with the court.

581 | (b) If an unmarried biological father falls within the
 582 | exception provided by paragraph (a), the petitioner shall also
 583 | submit to the Office of Vital Statistics a copy of the notice of
 584 | intended adoption plan and proof of service of the notice on the
 585 | potential biological father.

586 | (c) An unmarried biological father who falls within the
 587 | exception provided by paragraph (a) may not file a claim of
 588 | paternity with the registry or a paternity claim under chapter

589 742 after the 30-day mandatory response date to the notice of
 590 intended adoption plan has expired. The Office of Vital
 591 Statistics may not record a claim of paternity 30 days after
 592 service of the notice of intended adoption plan.

593 (2) By filing a claim of paternity form with the Office of
 594 Vital Statistics, the registrant expressly consents to submit to
 595 and pay for DNA testing upon the request of any party, the
 596 registrant, or the adoption entity with respect to the child
 597 referenced in the claim of paternity.

598 (4) Upon initial registration, or at any time thereafter,
 599 the registrant may designate a physical ~~an~~ address other than
 600 his residential address for sending any communication regarding
 601 his registration. Similarly, upon initial registration, or at
 602 any time thereafter, the registrant may designate, in writing,
 603 an agent or representative to receive any communication on his
 604 behalf and receive service of process. The agent or
 605 representative must file an acceptance of the designation, in
 606 writing, in order to receive notice or service of process. The
 607 failure of the designated representative or agent of the
 608 registrant to deliver or otherwise notify the registrant of
 609 receipt of correspondence from the Florida Putative Father
 610 Registry is at the registrant's own risk and may ~~shall~~ not serve
 611 as a valid defense based upon lack of notice.

612 (13) The filing of a claim of paternity with the Florida
 613 Putative Father Registry does not excuse or waive the obligation
 614 of a petitioner to comply with the requirements of s. 63.088(4)
 615 for conducting a diligent search and required inquiry with
 616 respect to the identity of an unmarried biological father or

617 legal father which are set forth in this chapter.

618 Section 11. Paragraph (b) of subsection (1), subsections
 619 (2), (3), and (4), and paragraph (a) of subsection (8) of
 620 section 63.062, Florida Statutes, are amended to read:

621 63.062 Persons required to consent to adoption; affidavit
 622 of nonpaternity; waiver of venue.—

623 (1) Unless supported by one or more of the grounds
 624 enumerated under s. 63.089(3), a petition to terminate parental
 625 rights pending adoption may be granted only if written consent
 626 has been executed as provided in s. 63.082 after the birth of
 627 the minor or notice has been served under s. 63.088 to:

628 (b) The father of the minor, if:

629 1. The minor was conceived or born while the father was
 630 married to the mother;

631 2. The minor is his child by adoption;

632 3. The minor has been adjudicated by the court to be his
 633 child before ~~by~~ the date a petition ~~is filed~~ for termination of
 634 parental rights is filed;

635 4. He has filed an affidavit of paternity pursuant to s.
 636 382.013(2)(c) or he is listed on the child's birth certificate
 637 before ~~by~~ the date a petition ~~is filed~~ for termination of
 638 parental rights is filed; or

639 5. In the case of an unmarried biological father, he has
 640 acknowledged in writing, signed in the presence of a competent
 641 witness, that he is the father of the minor, has filed such
 642 acknowledgment with the Office of Vital Statistics of the
 643 Department of Health within the required timeframes, and has
 644 complied with the requirements of subsection (2).

645
 646 The status of the father shall be determined at the time of the
 647 filing of the petition to terminate parental rights and may not
 648 be modified, except as otherwise provided in s. 63.0423(9)(a),
 649 for purposes of his obligations and rights under this chapter by
 650 acts occurring after the filing of the petition to terminate
 651 parental rights.

652 (2) In accordance with subsection (1), the consent of an
 653 unmarried biological father shall be necessary only if the
 654 unmarried biological father has complied with the requirements
 655 of this subsection.

656 (a)1. With regard to a child who is placed with adoptive
 657 parents more than 6 months after the child's birth, an unmarried
 658 biological father must have developed a substantial relationship
 659 with the child, taken some measure of responsibility for the
 660 child and the child's future, and demonstrated a full commitment
 661 to the responsibilities of parenthood by providing reasonable
 662 and regular financial support to the child in accordance with
 663 the unmarried biological father's ability, if not prevented from
 664 doing so by the person or authorized agency having lawful
 665 custody of the child, and either:

666 a. Regularly visited the child at least monthly, when
 667 physically and financially able to do so and when not prevented
 668 from doing so by the birth mother or the person or authorized
 669 agency having lawful custody of the child; or

670 b. Maintained regular communication with the child or with
 671 the person or agency having the care or custody of the child,
 672 when physically or financially unable to visit the child or when

673 not prevented from doing so by the birth mother or person or
 674 authorized agency having lawful custody of the child.

675 ~~2. The mere fact that an unmarried biological father~~
 676 ~~expresses a desire to fulfill his responsibilities towards his~~
 677 ~~child which is unsupported by acts evidencing this intent does~~
 678 ~~not preclude a finding by the court that the unmarried~~
 679 ~~biological father failed to comply with the requirements of this~~
 680 ~~subsection.~~

681 2.3. An unmarried biological father who openly lived with
 682 the child for at least 6 months within the 1-year period
 683 following the birth of the child and immediately preceding
 684 placement of the child with adoptive parents and who openly held
 685 himself out to be the father of the child during that period
 686 shall be deemed to have developed a substantial relationship
 687 with the child and to have otherwise met the requirements of
 688 this paragraph.

689 (b) With regard to a child who is ~~younger than~~ 6 months of
 690 age or younger at the time the child is placed with the adoptive
 691 parents, an unmarried biological father must have demonstrated a
 692 full commitment to his parental responsibility by having
 693 performed all of the following acts prior to the time the mother
 694 executes her consent for adoption:

695 1. Filed a notarized claim of paternity form with the
 696 Florida Putative Father Registry within the Office of Vital
 697 Statistics of the Department of Health, which form shall be
 698 maintained in the confidential registry established for that
 699 purpose and shall be considered filed when the notice is entered
 700 in the registry of notices from unmarried biological fathers.

701 2. Upon service of a notice of an intended adoption plan
 702 or a petition for termination of parental rights pending
 703 adoption, executed and filed an affidavit in that proceeding
 704 stating that he is personally fully able and willing to take
 705 responsibility for the child, setting forth his plans for care
 706 of the child, and agreeing to a court order of child support and
 707 a contribution to the payment of living and medical expenses
 708 incurred for the mother's pregnancy and the child's birth in
 709 accordance with his ability to pay.

710 3. If he had knowledge of the pregnancy, paid a fair and
 711 reasonable amount of the living and medical expenses incurred in
 712 connection with the mother's pregnancy and the child's birth, in
 713 accordance with his financial ability and when not prevented
 714 from doing so by the birth mother or person or authorized agency
 715 having lawful custody of the child. The responsibility of the
 716 unmarried biological father to provide financial assistance to
 717 the birth mother during her pregnancy and to the child after
 718 birth is not abated because support is being provided to the
 719 birth mother or child by the adoption entity, a prospective
 720 adoptive parent, or a third party, nor does it serve as a basis
 721 to excuse the birth father's failure to provide support.

722 (c) The mere fact that a father expresses a desire to
 723 fulfill his responsibilities towards his child which is
 724 unsupported by acts evidencing this intent does not meet the
 725 requirements of this section.

726 (d)-(e) The petitioner shall file with the court a
 727 certificate from the Office of Vital Statistics stating that a
 728 diligent search has been made of the Florida Putative Father

CS/CS/HB 1163

2012

729 Registry of notices from unmarried biological fathers described
 730 in subparagraph (b)1. and that no filing has been found
 731 pertaining to the father of the child in question or, if a
 732 filing is found, stating the name of the putative father and the
 733 time and date of filing. That certificate shall be filed with
 734 the court prior to the entry of a final judgment of termination
 735 of parental rights.

736 (e)~~(d)~~ An unmarried biological father who does not comply
 737 with each of the conditions provided in this subsection is
 738 deemed to have waived and surrendered any rights in relation to
 739 the child, including the right to notice of any judicial
 740 proceeding in connection with the adoption of the child, and his
 741 consent to the adoption of the child is not required.

742 (3) Pursuant to chapter 48, an adoption entity shall serve
 743 a notice of intended adoption plan upon any known and locatable
 744 unmarried biological father who is identified to the adoption
 745 entity by the mother by the date she signs her consent for
 746 adoption if the child is 6 months of age or less at the time the
 747 consent is executed ~~or who is identified by a diligent search of~~
 748 ~~the Florida Putative Father Registry, or upon an entity whose~~
 749 ~~consent is required.~~ Service of the notice of intended adoption
 750 plan is not required ~~mandatory~~ when the unmarried biological
 751 father signs a consent for adoption or an affidavit of
 752 nonpaternity or when the child is more than 6 months of age at
 753 the time of the execution of the consent by the mother. The
 754 notice may be served at any time before the child's birth or
 755 before placing the child in the adoptive home. The recipient of
 756 the notice may waive service of process by executing a waiver

757 and acknowledging receipt of the plan. The notice of intended
 758 adoption plan must specifically state that if the unmarried
 759 biological father desires to contest the adoption plan he must,
 760 within 30 days after service, file with the court a verified
 761 response that contains a pledge of commitment to the child in
 762 substantial compliance with subparagraph (2)(b)2. and a claim of
 763 paternity form with the Office of Vital Statistics, and must
 764 provide the adoption entity with a copy of the verified response
 765 filed with the court and the claim of paternity form filed with
 766 the Office of Vital Statistics. The notice must also include
 767 instructions for submitting a claim of paternity form to the
 768 Office of Vital Statistics and the address to which the claim
 769 must be sent. If the party served with the notice of intended
 770 adoption plan is an entity whose consent is required, the notice
 771 must specifically state that the entity must file, within 30
 772 days after service, a verified response setting forth a legal
 773 basis for contesting the intended adoption plan, specifically
 774 addressing the best interests ~~interest~~ of the child.

775 (a) If the unmarried biological father or entity whose
 776 consent is required fails to timely and properly file a verified
 777 response with the court and, in the case of an unmarried
 778 biological father, a claim of paternity form with the Office of
 779 Vital Statistics, the court shall enter a default judgment
 780 against the ~~any~~ unmarried biological father or entity and the
 781 consent of that unmarried biological father or entity shall no
 782 longer be required under this chapter and shall be deemed to
 783 have waived any claim of rights to the child. To avoid an entry
 784 of a default judgment, within 30 days after receipt of service

785 of the notice of intended adoption plan:

786 1. The unmarried biological father must:

787 a. File a claim of paternity with the Florida Putative
788 Father Registry maintained by the Office of Vital Statistics;

789 b. File a verified response with the court which contains
790 a pledge of commitment to the child in substantial compliance
791 with subparagraph (2)(b)2.; and

792 c. Provide support for the birth mother and the child.

793 2. The entity whose consent is required must file a
794 verified response setting forth a legal basis for contesting the
795 intended adoption plan, specifically addressing the best
796 interests ~~interest~~ of the child.

797 (b) If the mother identifies a potential unmarried
798 biological father within the timeframes required by the statute,
799 whose location is unknown, the adoption entity shall conduct a
800 diligent search pursuant to s. 63.088. If, upon completion of a
801 diligent search, the potential unmarried biological father's
802 location remains unknown and a search of the Florida Putative
803 Father Registry fails to reveal a match, the adoption entity
804 shall request in the petition for termination of parental rights
805 pending adoption that the court declare the diligent search to
806 be in compliance with s. 63.088, that the adoption entity has no
807 further obligation to provide notice to the potential unmarried
808 biological father, and that the potential unmarried biological
809 father's consent to the adoption is not required.

810 (4) Any person whose consent is required under paragraph
811 (1)(b), or any other man, may execute an irrevocable affidavit
812 of nonpaternity in lieu of a consent under this section and by

813 | doing so waives notice to all court proceedings after the date
 814 | of execution. An affidavit of nonpaternity must be executed as
 815 | provided in s. 63.082. The affidavit of nonpaternity may be
 816 | executed prior to the birth of the child. The person executing
 817 | the affidavit must receive disclosure under s. 63.085 prior to
 818 | signing the affidavit. For purposes of this chapter, an
 819 | affidavit of nonpaternity is sufficient if it contains a
 820 | specific denial of parental obligations and does not need to
 821 | deny the existence of a biological relationship.

822 | (8) A petition to adopt an adult may be granted if:
 823 | (a) Written consent to adoption has been executed by the
 824 | adult and the adult's spouse, if any, unless the spouse's
 825 | consent is waived by the court for good cause.

826 | Section 12. Subsection (2) of section 63.063, Florida
 827 | Statutes, is amended to read:

828 | 63.063 Responsibility of parents for actions; fraud or
 829 | misrepresentation; contesting termination of parental rights and
 830 | adoption.—

831 | (2) Any person injured by a fraudulent representation or
 832 | action in connection with an adoption may pursue civil or
 833 | criminal penalties as provided by law. A fraudulent
 834 | representation is not a defense to compliance with the
 835 | requirements of this chapter and is not a basis for dismissing a
 836 | petition for termination of parental rights or a petition for
 837 | adoption, for vacating an adoption decree, or for granting
 838 | custody to the offended party. Custody and adoption
 839 | determinations must be based on the best interests ~~interest~~ of
 840 | the child in accordance with s. 61.13.

841 Section 13. Paragraph (d) of subsection (1), paragraphs
 842 (c) and (d) of subsection (3), paragraphs (a), (d), and (e) of
 843 subsection (4), and subsections (6) and (7) of section 63.082,
 844 Florida Statutes, are amended to read:

845 63.082 Execution of consent to adoption or affidavit of
 846 nonpaternity; family social and medical history; revocation
 847 ~~withdrawal~~ of consent.-

848 (1)

849 (d) The notice and consent provisions of this chapter as
 850 they relate to the father ~~birth~~ of a child ~~or to legal fathers~~
 851 do not apply in cases in which the child is conceived as a
 852 result of a violation of the criminal laws of this or another
 853 state or country, including, but not limited to, sexual battery,
 854 unlawful sexual activity with certain minors under s. 794.05,
 855 lewd acts perpetrated upon a minor, or incest. A criminal
 856 conviction is not required for the court to find that the child
 857 was conceived as a result of a violation of the criminal laws of
 858 this state or another state or country.

859 (3)

860 (c) If any person who is required to consent is
 861 unavailable because the person cannot be located, an ~~the~~
 862 ~~petition to terminate parental rights pending adoption must be~~
 863 ~~accompanied by the~~ affidavit of diligent search required under
 864 s. 63.088 shall be filed.

865 (d) If any person who is required to consent is
 866 unavailable because the person is deceased, the petition to
 867 terminate parental rights pending adoption must be accompanied
 868 by a certified copy of the death certificate. In an adoption of

869 a stepchild or a relative, the certified copy of the death
 870 certificate of the person whose consent is required may ~~must~~ be
 871 attached to the petition for adoption if a separate petition for
 872 termination of parental rights is not being filed.

873 (4) (a) An affidavit of nonpaternity may be executed before
 874 the birth of the minor; however, the consent to an adoption may
 875 ~~shall~~ not be executed before the birth of the minor except in a
 876 preplanned adoption pursuant to s. 63.213.

877 (d) The consent to adoption or the affidavit of
 878 nonpaternity must be signed in the presence of two witnesses and
 879 be acknowledged before a notary public who is not signing as one
 880 of the witnesses. The notary public must legibly note on the
 881 consent or the affidavit the date and time of execution. The
 882 witnesses' names must be typed or printed underneath their
 883 signatures. The witnesses' home or business addresses must be
 884 included. The person who signs the consent or the affidavit has
 885 the right to have at least one of the witnesses be an individual
 886 who does not have an employment, professional, or personal
 887 relationship with the adoption entity or the prospective
 888 adoptive parents. The adoption entity must give reasonable
 889 advance notice to the person signing the consent or affidavit of
 890 the right to select a witness of his or her own choosing. The
 891 person who signs the consent or affidavit must acknowledge in
 892 writing on the consent or affidavit that such notice was given
 893 and indicate the witness, if any, who was selected by the person
 894 signing the consent or affidavit. The adoption entity must
 895 include its name, address, and telephone number on the consent
 896 to adoption or affidavit of nonpaternity.

897 (e) A consent to adoption being executed by the birth
 898 parent must be in at least 12-point boldfaced type and shall
 899 contain the following recitation of rights ~~in substantially the~~
 900 ~~following form:~~

901 CONSENT TO ADOPTION

902
 903 YOU HAVE THE RIGHT TO SELECT AT LEAST ONE PERSON WHO DOES NOT
 904 HAVE AN EMPLOYMENT, PROFESSIONAL, OR PERSONAL RELATIONSHIP WITH
 905 THE ADOPTION ENTITY OR THE PROSPECTIVE ADOPTIVE PARENTS TO BE
 906 PRESENT WHEN THIS AFFIDAVIT IS EXECUTED AND TO SIGN IT AS A
 907 WITNESS. YOU MUST ACKNOWLEDGE ON THIS FORM THAT YOU WERE
 908 NOTIFIED OF THIS RIGHT AND YOU MUST INDICATE THE WITNESS OR
 909 WITNESSES YOU SELECTED, IF ANY.

910
 911 YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU MAY DO ANY OF THE
 912 FOLLOWING INSTEAD OF SIGNING THIS CONSENT OR BEFORE SIGNING THIS
 913 CONSENT:

- 914
- 915 1. CONSULT WITH AN ATTORNEY;
 - 916 2. HOLD, CARE FOR, AND FEED THE CHILD UNLESS OTHERWISE
 917 LEGALLY PROHIBITED;
 - 918 3. PLACE THE CHILD IN FOSTER CARE OR WITH ANY FRIEND OR
 919 FAMILY MEMBER YOU CHOOSE WHO IS WILLING TO CARE FOR THE
 920 CHILD;
 - 921 4. TAKE THE CHILD HOME UNLESS OTHERWISE LEGALLY
 922 PROHIBITED; AND
 - 923 5. FIND OUT ABOUT THE COMMUNITY RESOURCES THAT ARE
 924 AVAILABLE TO YOU IF YOU DO NOT GO THROUGH WITH THE

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ADOPTION.

IF YOU DO SIGN THIS CONSENT, YOU ARE GIVING UP ALL RIGHTS TO YOUR CHILD. YOUR CONSENT IS VALID, BINDING, AND IRREVOCABLE EXCEPT UNDER SPECIFIC LEGAL CIRCUMSTANCES. IF YOU ARE GIVING UP YOUR RIGHTS TO A NEWBORN CHILD WHO IS TO BE IMMEDIATELY PLACED FOR ADOPTION UPON THE CHILD'S RELEASE FROM A LICENSED HOSPITAL OR BIRTH CENTER FOLLOWING BIRTH, A WAITING PERIOD WILL BE IMPOSED UPON THE BIRTH MOTHER BEFORE SHE MAY SIGN THE CONSENT FOR ADOPTION. A BIRTH MOTHER MUST WAIT 48 HOURS FROM THE TIME OF BIRTH, OR UNTIL THE DAY THE BIRTH MOTHER HAS BEEN NOTIFIED IN WRITING, EITHER ON HER PATIENT CHART OR IN RELEASE PAPERS, THAT SHE IS FIT TO BE RELEASED FROM A LICENSED HOSPITAL OR BIRTH CENTER, WHICHEVER IS SOONER, BEFORE THE CONSENT FOR ADOPTION MAY BE EXECUTED. ANY MAN MAY EXECUTE A CONSENT AT ANY TIME AFTER THE BIRTH OF THE CHILD. ONCE YOU HAVE SIGNED THE CONSENT, IT IS VALID, BINDING, AND IRREVOCABLE AND CANNOT BE INVALIDATED ~~WITHDRAWN~~ UNLESS A COURT FINDS THAT IT WAS OBTAINED BY FRAUD OR DURESS.

IF YOU BELIEVE THAT YOUR CONSENT WAS OBTAINED BY FRAUD OR DURESS AND YOU WISH TO INVALIDATE ~~REVOKE~~ THAT CONSENT, YOU MUST:

1. NOTIFY THE ADOPTION ENTITY, BY WRITING A LETTER, THAT YOU WISH TO WITHDRAW YOUR CONSENT; AND
2. PROVE IN COURT THAT THE CONSENT WAS OBTAINED BY FRAUD OR DURESS.

953 This statement of rights is not required for the adoption of a
 954 relative, an adult, a stepchild, or a child older than 6 months
 955 of age. A consent form for the adoption of a child older than 6
 956 months of age at the time of the execution of consent must
 957 contain a statement outlining the revocation rights provided in
 958 paragraph (c).

959 (6) (a) If a parent executes a consent for placement of a
 960 minor with an adoption entity or qualified prospective adoptive
 961 parents and the minor child is in the custody of the department,
 962 but parental rights have not yet been terminated, the adoption
 963 consent is valid, binding, and enforceable by the court.

964 (b) Upon execution of the consent of the parent, the
 965 adoption entity shall be permitted to ~~may~~ intervene in the
 966 dependency case as a party in interest and must provide the
 967 court that acquired ~~having~~ jurisdiction over the minor, pursuant
 968 to the shelter or dependency petition filed by the department, a
 969 copy of the preliminary home study of the prospective adoptive
 970 parents and any other evidence of the suitability of the
 971 placement. The preliminary home study must be maintained with
 972 strictest confidentiality within the dependency court file and
 973 the department's file. A preliminary home study must be provided
 974 to the court in all cases in which an adoption entity has
 975 intervened pursuant to this section. Unless the court has
 976 concerns regarding the qualifications of the home study
 977 provider, or concerns that the home study may not be adequate to
 978 determine the best interests of the child, the home study
 979 provided by the adoption entity shall be deemed to be sufficient
 980 and no additional home study needs to be performed by the

CS/CS/HB 1163

2012

981 department.

982 (c) If an adoption entity files a motion to intervene in
 983 the dependency case in accordance with this chapter, the
 984 dependency court shall promptly grant a hearing to determine
 985 whether the adoption entity has filed the required documents to
 986 be permitted to intervene and whether a change of placement of
 987 the child is appropriate.

988 (d)~~(e)~~ Upon a determination by the court that the
 989 prospective adoptive parents are properly qualified to adopt the
 990 minor child and that the adoption appears to be in the best
 991 interests ~~interest~~ of the minor child, the court shall
 992 immediately order the transfer of custody of the minor child to
 993 the prospective adoptive parents, under the supervision of the
 994 adoption entity. The adoption entity shall thereafter provide
 995 monthly supervision reports to the department until finalization
 996 of the adoption.

997 (e)~~(d)~~ In determining whether the best interests ~~interest~~
 998 of the child are ~~is~~ served by transferring the custody of the
 999 minor child to the prospective adoptive parent selected by the
 1000 parent, the court shall consider the rights of the parent to
 1001 determine an appropriate placement for the child, the permanency
 1002 offered, the child's bonding with any potential adoptive home
 1003 that the child has been residing in, and the importance of
 1004 maintaining sibling relationships, if possible.

1005 (7) If a person is seeking to revoke ~~withdraw~~ consent for
 1006 a child older than 6 months of age ~~who has been placed with~~
 1007 ~~prospective adoptive parents:~~

1008 (a) The person seeking to revoke ~~withdraw~~ consent must, in

1009 accordance with paragraph (4)(c), notify the adoption entity in
 1010 writing by certified mail, return receipt requested, within 3
 1011 business days after execution of the consent. As used in this
 1012 subsection, the term "business day" means any day on which the
 1013 United States Postal Service accepts certified mail for
 1014 delivery.

1015 (b) Upon receiving timely written notice from a person
 1016 whose consent to adoption is required of that person's desire to
 1017 revoke ~~withdraw~~ consent, the adoption entity must contact the
 1018 prospective adoptive parent to arrange a time certain for the
 1019 adoption entity to regain physical custody of the minor, unless,
 1020 upon a motion for emergency hearing by the adoption entity, the
 1021 court determines in written findings that placement of the minor
 1022 with the person who had legal or physical custody of the child
 1023 immediately before the child was placed for adoption may
 1024 endanger the minor or that the person who desires to revoke
 1025 ~~withdraw~~ consent is not required to consent to the adoption, has
 1026 been determined to have abandoned the child, or is otherwise
 1027 subject to a determination that the person's consent is waived
 1028 under this chapter.

1029 (c) If the court finds that the placement may endanger the
 1030 minor, the court shall enter an order continuing the placement
 1031 of the minor with the prospective adoptive parents pending
 1032 further proceedings if they desire continued placement. If the
 1033 prospective adoptive parents do not desire continued placement,
 1034 the order must include, but need not be limited to, a
 1035 determination of whether temporary placement in foster care,
 1036 with the person who had legal or physical custody of the child

1037 immediately before placing the child for adoption, or with a
 1038 relative is in the best interests ~~interest~~ of the child and
 1039 whether an investigation by the department is recommended.

1040 (d) If the person revoking ~~withdrawing~~ consent claims to
 1041 be the father of the minor but has not been established to be
 1042 the father by marriage, court order, or scientific testing, the
 1043 court may order scientific paternity testing and reserve ruling
 1044 on removal of the minor until the results of such testing have
 1045 been filed with the court.

1046 (e) The adoption entity must return the minor within 3
 1047 business days after timely and proper notification of the
 1048 revocation ~~withdrawal~~ of consent or after the court determines
 1049 that revocation ~~withdrawal~~ is timely and in accordance with the
 1050 requirements of this chapter ~~valid and binding~~ upon
 1051 consideration of an emergency motion, as filed pursuant to
 1052 paragraph (b), to the physical custody of the person revoking
 1053 ~~withdrawing~~ consent or the person directed by the court. If the
 1054 person seeking to revoke ~~withdraw~~ consent claims to be the
 1055 father of the minor but has not been established to be the
 1056 father by marriage, court order, or scientific testing, the
 1057 adoption entity may return the minor to the care and custody of
 1058 the mother, if she desires such placement and she is not
 1059 otherwise prohibited by law from having custody of the child.

1060 (f) Following the revocation period ~~for withdrawal of~~
 1061 ~~consent~~ described in paragraph (a), ~~or the placement of the~~
 1062 ~~child with the prospective adoptive parents, whichever occurs~~
 1063 ~~later,~~ consent may be set aside ~~withdrawn~~ only when the court
 1064 finds that the consent was obtained by fraud or duress.

1065 (g) An affidavit of nonpaternity may be set aside
 1066 ~~withdrawn~~ only if the court finds that the affidavit was
 1067 obtained by fraud or duress.

1068 (h) If the consent of one parent is set aside or revoked
 1069 in accordance with this chapter, any other consents executed by
 1070 the other parent or a third party whose consent is required for
 1071 the adoption of the child may not be used by the parent who
 1072 consent was revoked or set aside to terminate or diminish the
 1073 rights of the other parent or third party whose consent was
 1074 required for the adoption of the child.

1075 Section 14. Subsection (1) and paragraph (a) of subsection
 1076 (2) of section 63.085, Florida Statutes, are amended, and
 1077 paragraph (c) is added to subsection (2) of that section, to
 1078 read:

1079 63.085 Disclosure by adoption entity.—

1080 (1) DISCLOSURE REQUIRED TO PARENTS AND PROSPECTIVE
 1081 ADOPTIVE PARENTS.—Within 14 days after a person seeking to adopt
 1082 a minor or a person seeking to place a minor for adoption
 1083 contacts an adoption entity in person or provides the adoption
 1084 entity with a mailing address, the entity must provide a written
 1085 disclosure statement to that person if the entity agrees or
 1086 continues to work with the person. The adoption entity shall
 1087 also provide the written disclosure to the parent who did not
 1088 initiate contact with the adoption entity within 14 days after
 1089 that parent is identified and located. For purposes of providing
 1090 the written disclosure, a person is considered to be seeking to
 1091 place a minor for adoption if that person has sought information
 1092 or advice from the adoption entity regarding the option of

1093 adoptive placement. The written disclosure statement must be in
 1094 substantially the following form:

1095

1096

ADOPTION DISCLOSURE

1097

THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE PROVIDED TO ALL

1098

PERSONS CONSIDERING ADOPTING A MINOR OR SEEKING TO PLACE A MINOR

1099

FOR ADOPTION, TO ADVISE THEM OF THE FOLLOWING FACTS REGARDING

1100

ADOPTION UNDER FLORIDA LAW:

1101

1102

1. The name, address, and telephone number of the adoption
 1103 entity providing this disclosure is:

1104

Name:

1105

Address:

1106

Telephone Number:

1107

2. The adoption entity does not provide legal
 1108 representation or advice to parents or anyone signing a consent
 1109 for adoption or affidavit of nonpaternity, and parents have the
 1110 right to consult with an attorney of their own choosing to
 1111 advise them.

1112

3. With the exception of an adoption by a stepparent or
 1113 relative, a child cannot be placed into a prospective adoptive
 1114 home unless the prospective adoptive parents have received a
 1115 favorable preliminary home study, including criminal and child
 1116 abuse clearances.

1117

4. A valid consent for adoption may not be signed by the
 1118 birth mother until 48 hours after the birth of the child, or the
 1119 day the birth mother is notified, in writing, that she is fit
 1120 for discharge from the licensed hospital or birth center. Any

1121 man may sign a valid consent for adoption at any time after the
 1122 birth of the child.

1123 5. A consent for adoption signed before the child attains
 1124 the age of 6 months is binding and irrevocable from the moment
 1125 it is signed unless it can be proven in court that the consent
 1126 was obtained by fraud or duress. A consent for adoption signed
 1127 after the child attains the age of 6 months is valid from the
 1128 moment it is signed; however, it may be revoked up to 3 business
 1129 days after it was signed.

1130 6. A consent for adoption is not valid if the signature of
 1131 the person who signed the consent was obtained by fraud or
 1132 duress.

1133 7. An unmarried biological father must act immediately in
 1134 order to protect his parental rights. Section 63.062, Florida
 1135 Statutes, prescribes that any father seeking to establish his
 1136 right to consent to the adoption of his child must file a claim
 1137 of paternity with the Florida Putative Father Registry
 1138 maintained by the Office of Vital Statistics of the Department
 1139 of Health by the date a petition to terminate parental rights is
 1140 filed with the court, or within 30 days after receiving service
 1141 of a Notice of Intended Adoption Plan. If he receives a Notice
 1142 of Intended Adoption Plan, he must file a claim of paternity
 1143 with the Florida Putative Father Registry, file a parenting plan
 1144 with the court, and provide financial support to the mother or
 1145 child within 30 days following service. An unmarried biological
 1146 father's failure to timely respond to a Notice of Intended
 1147 Adoption Plan constitutes an irrevocable legal waiver of any and
 1148 all rights that the father may have to the child. A claim of

CS/CS/HB 1163

2012

1149 paternity registration form for the Florida Putative Father
 1150 Registry may be obtained from any local office of the Department
 1151 of Health, Office of Vital Statistics, the Department of
 1152 Children and Families, the Internet websites for these agencies,
 1153 and the offices of the clerks of the Florida circuit courts. The
 1154 claim of paternity form must be submitted to the Office of Vital
 1155 Statistics, Attention: Adoption Unit, P.O. Box 210,
 1156 Jacksonville, FL 32231.

1157 8. There are alternatives to adoption, including foster
 1158 care, relative care, and parenting the child. There may be
 1159 services and sources of financial assistance in the community
 1160 available to parents if they choose to parent the child.

1161 9. A parent has the right to have a witness of his or her
 1162 choice, who is unconnected with the adoption entity or the
 1163 adoptive parents, to be present and witness the signing of the
 1164 consent or affidavit of nonpaternity.

1165 10. A parent 14 years of age or younger must have a
 1166 parent, legal guardian, or court-appointed guardian ad litem to
 1167 assist and advise the parent as to the adoption plan and to
 1168 witness consent.

1169 11. A parent has a right to receive supportive counseling
 1170 from a counselor, social worker, physician, clergy, or attorney.

1171 12. The payment of living or medical expenses by the
 1172 prospective adoptive parents before the birth of the child does
 1173 not, in any way, obligate the parent to sign the consent for
 1174 adoption.

1175

1176 (2) DISCLOSURE TO ADOPTIVE PARENTS.—

1177 (a) At the time that an adoption entity is responsible for
 1178 selecting prospective adoptive parents for a born or unborn
 1179 child whose parents are seeking to place the child for adoption
 1180 or whose rights were terminated pursuant to chapter 39, the
 1181 adoption entity must provide the prospective adoptive parents
 1182 with information concerning the background of the child to the
 1183 extent such information is disclosed to the adoption entity by
 1184 the parents, legal custodian, or the department. This subsection
 1185 applies only if the adoption entity identifies the prospective
 1186 adoptive parents and supervises the ~~physical~~ placement of the
 1187 child in the prospective adoptive parents' home. If any
 1188 information cannot be disclosed because the records custodian
 1189 failed or refused to produce the background information, the
 1190 adoption entity has a duty to provide the information if it
 1191 becomes available. An individual or entity contacted by an
 1192 adoption entity to obtain the background information must
 1193 release the requested information to the adoption entity without
 1194 the necessity of a subpoena or a court order. In all cases, the
 1195 prospective adoptive parents must receive all available
 1196 information by the date of the final hearing on the petition for
 1197 adoption. The information to be disclosed includes:

- 1198 1. A family social and medical history form completed
 1199 pursuant to s. 63.162(6).
- 1200 2. The biological mother's medical records documenting her
 1201 prenatal care and the birth and delivery of the child.
- 1202 3. A complete set of the child's medical records
 1203 documenting all medical treatment and care since the child's
 1204 birth and before placement.

1205 4. All mental health, psychological, and psychiatric
 1206 records, reports, and evaluations concerning the child before
 1207 placement.

1208 5. The child's educational records, including all records
 1209 concerning any special education needs of the child before
 1210 placement.

1211 6. Records documenting all incidents that required the
 1212 department to provide services to the child, including all
 1213 orders of adjudication of dependency or termination of parental
 1214 rights issued pursuant to chapter 39, any case plans drafted to
 1215 address the child's needs, all protective services
 1216 investigations identifying the child as a victim, and all
 1217 guardian ad litem reports filed with the court concerning the
 1218 child.

1219 7. Written information concerning the availability of
 1220 adoption subsidies for the child, if applicable.

1221 (c) If the prospective adoptive parents waive the receipt
 1222 of any of the records described in paragraph (a), a copy of the
 1223 written notification of the waiver to the adoption entity shall
 1224 be filed with the court.

1225 Section 15. Subsection (6) of section 63.087, Florida
 1226 Statutes, is amended to read:

1227 63.087 Proceeding to terminate parental rights pending
 1228 adoption; general provisions.—

1229 (6) ANSWER AND APPEARANCE REQUIRED.—An answer to the
 1230 petition or any pleading requiring an answer must be filed in
 1231 accordance with the Florida Family Law Rules of Procedure.
 1232 Failure to file a written response to the petition constitutes

CS/CS/HB 1163

2012

1233 grounds upon which the court may terminate parental rights.
 1234 Failure to personally appear at the hearing constitutes grounds
 1235 upon which the court may terminate parental rights. Any person
 1236 present at the hearing to terminate parental rights pending
 1237 adoption whose consent to adoption is required under s. 63.062
 1238 must:

1239 (a) Be advised by the court that he or she has a right to
 1240 ask that the hearing be reset for a later date so that the
 1241 person may consult with an attorney; and

1242 (b) Be given an opportunity to admit or deny the
 1243 allegations in the petition.

1244 Section 16. Subsection (4) of section 63.088, Florida
 1245 Statutes, is amended to read:

1246 63.088 Proceeding to terminate parental rights pending
 1247 adoption; notice and service; diligent search.—

1248 (4) REQUIRED INQUIRY.—In proceedings initiated under s.
 1249 63.087, the court shall conduct an inquiry of the person who is
 1250 placing the minor for adoption and of any relative or person
 1251 having legal custody of the minor who is present at the hearing
 1252 and likely to have the following information regarding the
 1253 identity of:

1254 (a) Any man to whom the mother of the minor was married at
 1255 any time when conception of the minor may have occurred or at
 1256 the time of the birth of the minor;

1257 (b) Any man who has filed an affidavit of paternity
 1258 pursuant to s. 382.013(2)(c) before the date that a petition for
 1259 termination of parental rights is filed with the court;

1260 (c) Any man who has adopted the minor;

1261 (d) Any man who has been adjudicated by a court as the
 1262 father of the minor child before the date a petition for
 1263 termination of parental rights is filed with the court; and

1264 (e) Any man whom the mother identified to the adoption
 1265 entity as a potential biological father before the date she
 1266 signed the consent for adoption.

1267
 1268 The information sought under this subsection may be provided to
 1269 the court in the form of a sworn affidavit by a person having
 1270 personal knowledge of the facts, addressing each inquiry
 1271 enumerated in this subsection, except that, if the inquiry
 1272 identifies a father under paragraph (a), paragraph (b), ~~or~~
 1273 paragraph (c), or paragraph (d), the inquiry may not continue
 1274 further. The inquiry required under this subsection may be
 1275 conducted before the birth of the minor.

1276 Section 17. Paragraph (d) of subsection (3), paragraph (b)
 1277 of subsection (4), and subsections (5) and (7) of section
 1278 63.089, Florida Statutes, are amended to read:

1279 63.089 Proceeding to terminate parental rights pending
 1280 adoption; hearing; grounds; dismissal of petition; judgment.—

1281 (3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING
 1282 ADOPTION.—The court may enter a judgment terminating parental
 1283 rights pending adoption if the court determines by clear and
 1284 convincing evidence, supported by written findings of fact, that
 1285 each person whose consent to adoption is required under s.
 1286 63.062:

1287 (d) Has been properly served notice of the proceeding in
 1288 accordance with the requirements of this chapter and has failed

1289 to file a written answer or personally appear at the evidentiary
 1290 hearing resulting in the judgment terminating parental rights
 1291 pending adoption;

1292 (4) FINDING OF ABANDONMENT.—A finding of abandonment
 1293 resulting in a termination of parental rights must be based upon
 1294 clear and convincing evidence that a parent or person having
 1295 legal custody has abandoned the child in accordance with the
 1296 definition contained in s. 63.032. A finding of abandonment may
 1297 also be based upon emotional abuse or a refusal to provide
 1298 reasonable financial support, when able, to a birth mother
 1299 during her pregnancy.

1300 (b) The child has been abandoned when the parent of a
 1301 child is incarcerated on or after October 1, 2001, in a federal,
 1302 state, or county correctional institution and:

1303 1. The period of time for which the parent has been or is
 1304 expected to be incarcerated will constitute a significant
 1305 portion of the child's minority. In determining whether the
 1306 period of time is significant, the court shall consider the
 1307 child's age and the child's need for a permanent and stable
 1308 home. The period of time begins on the date that the parent
 1309 enters into incarceration;

1310 2. The incarcerated parent has been determined by a court
 1311 of competent jurisdiction to be a violent career criminal as
 1312 defined in s. 775.084, a habitual violent felony offender as
 1313 defined in s. 775.084, convicted of child abuse as defined in s.
 1314 827.03, or a sexual predator as defined in s. 775.21; has been
 1315 convicted of first degree or second degree murder in violation
 1316 of s. 782.04 or a sexual battery that constitutes a capital,

1317 | life, or first degree felony violation of s. 794.011; or has
 1318 | been convicted of a substantially similar offense in another
 1319 | jurisdiction. As used in this section, the term "substantially
 1320 | similar offense" means any offense that is substantially similar
 1321 | in elements and penalties to one of those listed in this
 1322 | subparagraph, and that is in violation of a law of any other
 1323 | jurisdiction, whether that of another state, the District of
 1324 | Columbia, the United States or any possession or territory
 1325 | thereof, or any foreign jurisdiction; or

1326 | 3. The court determines by clear and convincing evidence
 1327 | that continuing the parental relationship with the incarcerated
 1328 | parent would be harmful to the child and, for this reason,
 1329 | termination of the parental rights of the incarcerated parent is
 1330 | in the best interests ~~interest~~ of the child.

1331 | (5) DISMISSAL OF PETITION.—If the court does not find by
 1332 | clear and convincing evidence that parental rights of a parent
 1333 | should be terminated pending adoption, the court must dismiss
 1334 | the petition and that parent's parental rights that were the
 1335 | subject of such petition shall remain in full force under the
 1336 | law. The order must include written findings in support of the
 1337 | dismissal, including findings as to the criteria in subsection
 1338 | (4) if rejecting a claim of abandonment.

1339 | (a) Parental rights may not be terminated based upon a
 1340 | consent that the court finds has been timely revoked ~~withdrawn~~
 1341 | under s. 63.082 or a consent to adoption or affidavit of
 1342 | nonpaternity that the court finds was obtained by fraud or
 1343 | duress.

1344 | (b) The court must enter an order based upon written

1345 findings providing for the placement of the minor, but the court
 1346 may not proceed to determine custody between competing eligible
 1347 parties. The placement of the child should revert to the parent
 1348 or guardian who had physical custody of the child at the time of
 1349 the placement for adoption unless the court determines upon
 1350 clear and convincing evidence that this placement is not in the
 1351 best interests of the child or is not an available option for
 1352 the child. The court may not change the placement of a child who
 1353 has established a bonded relationship with the current caregiver
 1354 without providing for a reasonable transition plan consistent
 1355 with the best interests of the child. The court may direct the
 1356 parties to participate in a reunification or unification plan
 1357 with a qualified professional to assist the child in the
 1358 transition. The court may order scientific testing to determine
 1359 the paternity of the minor only if the court has determined that
 1360 the consent of the alleged father would be required, unless all
 1361 parties agree that such testing is in the best interests of the
 1362 child. The court may not order scientific testing to determine
 1363 paternity of an unmarried biological father if the child has a
 1364 father as described in s. 63.088(4)(a)-(d) whose rights have not
 1365 been previously terminated at any time during which the court
 1366 has jurisdiction over the minor. Further proceedings, if any,
 1367 regarding the minor must be brought in a separate custody action
 1368 under chapter 61, a dependency action under chapter 39, or a
 1369 paternity action under chapter 742.

1370 (7) RELIEF FROM JUDGMENT TERMINATING PARENTAL RIGHTS.—

1371 (a) A motion for relief from a judgment terminating
 1372 parental rights must be filed with the court originally entering

1373 the judgment. The motion must be filed within a reasonable time,
 1374 but not later than 1 year after the entry of the judgment. An
 1375 unmarried biological father does not have standing to seek
 1376 relief from a judgment terminating parental rights if the mother
 1377 did not identify him to the adoption entity before the date she
 1378 signed a consent for adoption or if he was not located because
 1379 the mother failed or refused to provide sufficient information
 1380 to locate him.

1381 (b) No later than 30 days after the filing of a motion
 1382 under this subsection, the court must conduct a preliminary
 1383 hearing to determine what contact, if any, shall be permitted
 1384 between a parent and the child pending resolution of the motion.
 1385 Such contact shall be considered only if it is requested by a
 1386 parent who has appeared at the hearing and may not be awarded
 1387 unless the parent previously established a bonded relationship
 1388 with the child and the parent has pled a legitimate legal basis
 1389 and established a prima facia case for setting aside the
 1390 judgment terminating parental rights. If the court orders
 1391 contact between a parent and child, the order must be issued in
 1392 writing as expeditiously as possible and must state with
 1393 specificity any provisions regarding contact with persons other
 1394 than those with whom the child resides.

1395 (c) At the preliminary hearing, the court, upon the motion
 1396 of any party or upon its own motion, may order scientific
 1397 testing to determine the paternity of the minor if the person
 1398 seeking to set aside the judgment is alleging to be the child's
 1399 father and that fact has not previously been determined by
 1400 legitimacy or scientific testing. The court may order visitation

1401 with a person for whom scientific testing for paternity has been
 1402 ordered and who has previously established a bonded relationship
 1403 with the child.

1404 (d) Unless otherwise agreed between the parties or for
 1405 good cause shown, the court shall conduct a final hearing on the
 1406 motion for relief from judgment within 45 days after the filing
 1407 and enter its written order as expeditiously as possible
 1408 thereafter.

1409 (e) If the court grants relief from the judgment
 1410 terminating parental rights and no new pleading is filed to
 1411 terminate parental rights, the placement of the child should
 1412 revert to the parent or guardian who had physical custody of the
 1413 child at the time of the original placement for adoption unless
 1414 the court determines upon clear and convincing evidence that
 1415 this placement is not in the best interests of the child or is
 1416 not an available option for the child. The court may not change
 1417 the placement of a child who has established a bonded
 1418 relationship with the current caregiver without providing for a
 1419 reasonable transition plan consistent with the best interests of
 1420 the child. The court may direct the parties to participate in a
 1421 reunification or unification plan with a qualified professional
 1422 to assist the child in the transition. The court may not direct
 1423 the placement of a child with a person other than the adoptive
 1424 parents without first obtaining a favorable home study of that
 1425 person and any other persons residing in the proposed home and
 1426 shall take whatever additional steps are necessary and
 1427 appropriate for the physical and emotional protection of the
 1428 child.

CS/CS/HB 1163

2012

1429 Section 18. Subsection (3) of section 63.092, Florida
 1430 Statutes, is amended to read:

1431 63.092 Report to the court of intended placement by an
 1432 adoption entity; at-risk placement; preliminary study.—

1433 (3) PRELIMINARY HOME STUDY.—Before placing the minor in
 1434 the intended adoptive home, a preliminary home study must be
 1435 performed by a licensed child-placing agency, a child-caring
 1436 agency registered under s. 409.176, a licensed professional, or
 1437 agency described in s. 61.20(2), unless the adoptee is an adult
 1438 or the petitioner is a stepparent or a relative. If the adoptee
 1439 is an adult or the petitioner is a stepparent or a relative, a
 1440 preliminary home study may be required by the court for good
 1441 cause shown. The department is required to perform the
 1442 preliminary home study only if there is no licensed child-
 1443 placing agency, child-caring agency registered under s. 409.176,
 1444 licensed professional, or agency described in s. 61.20(2), in
 1445 the county where the prospective adoptive parents reside. The
 1446 preliminary home study must be made to determine the suitability
 1447 of the intended adoptive parents and may be completed prior to
 1448 identification of a prospective adoptive minor. A favorable
 1449 preliminary home study is valid for 1 year after the date of its
 1450 completion. Upon its completion, a signed copy of the home study
 1451 must be provided to the intended adoptive parents who were the
 1452 subject of the home study. A minor may not be placed in an
 1453 intended adoptive home before a favorable preliminary home study
 1454 is completed unless the adoptive home is also a licensed foster
 1455 home under s. 409.175. The preliminary home study must include,
 1456 at a minimum:

- 1457 (a) An interview with the intended adoptive parents;
- 1458 (b) Records checks of the department's central abuse
- 1459 registry and criminal records correspondence checks under s.
- 1460 39.0138 through the Department of Law Enforcement on the
- 1461 intended adoptive parents;
- 1462 (c) An assessment of the physical environment of the home;
- 1463 (d) A determination of the financial security of the
- 1464 intended adoptive parents;
- 1465 (e) Documentation of counseling and education of the
- 1466 intended adoptive parents on adoptive parenting;
- 1467 (f) Documentation that information on adoption and the
- 1468 adoption process has been provided to the intended adoptive
- 1469 parents;
- 1470 (g) Documentation that information on support services
- 1471 available in the community has been provided to the intended
- 1472 adoptive parents; and
- 1473 (h) A copy of each signed acknowledgment of receipt of
- 1474 disclosure required by s. 63.085.
- 1475
- 1476 If the preliminary home study is favorable, a minor may be
- 1477 placed in the home pending entry of the judgment of adoption. A
- 1478 minor may not be placed in the home if the preliminary home
- 1479 study is unfavorable. If the preliminary home study is
- 1480 unfavorable, the adoption entity may, within 20 days after
- 1481 receipt of a copy of the written recommendation, petition the
- 1482 court to determine the suitability of the intended adoptive
- 1483 home. A determination as to suitability under this subsection
- 1484 does not act as a presumption of suitability at the final

1485 hearing. In determining the suitability of the intended adoptive
 1486 home, the court must consider the totality of the circumstances
 1487 in the home. A ~~No~~ minor may not be placed in a home in which
 1488 there resides any person determined by the court to be a sexual
 1489 predator as defined in s. 775.21 or to have been convicted of an
 1490 offense listed in s. 63.089(4)(b)2.

1491 Section 19. Subsection (7) is added to section 63.097,
 1492 Florida Statutes, to read:

1493 63.097 Fees.—

1494 (7) In determining reasonable attorney fees, courts shall
 1495 use the following criteria:

1496 (a) The time and labor required, the novelty and
 1497 difficulty of the question involved, and the skill requisite to
 1498 perform the legal service properly.

1499 (b) The likelihood, if apparent to the client, that the
 1500 acceptance of the particular employment will preclude other
 1501 employment by the attorney.

1502 (c) The fee customarily charged in the locality for
 1503 similar legal services.

1504 (d) The amount involved in the subject matter of the
 1505 representation, the responsibility involved in the
 1506 representation, and the results obtained.

1507 (e) The time limitations imposed by the client or by the
 1508 circumstances and, as between attorney and client, any
 1509 additional or special time demands or requests of the attorney
 1510 by the client.

1511 (f) The nature and length of the professional relationship
 1512 with the client.

1513 (g) The experience, reputation, diligence, and ability of
 1514 the attorney or attorneys performing the service and the skill,
 1515 expertise, or efficiency of effort reflected in the actual
 1516 providing of such services.

1517 (h) Whether the fee is fixed or contingent.

1518 Section 20. Section 63.152, Florida Statutes, is amended
 1519 to read:

1520 63.152 Application for new birth record.—Within 30 days
 1521 after entry of a judgment of adoption, the clerk of the court or
 1522 the adoption entity shall transmit a certified statement of the
 1523 entry to the state registrar of vital statistics on a form
 1524 provided by the registrar. A new birth record containing the
 1525 necessary information supplied by the certificate shall be
 1526 issued by the registrar on application of the adopting parents
 1527 or the adopted person.

1528 Section 21. Subsection (7) of section 63.162, Florida
 1529 Statutes, is amended to read:

1530 63.162 Hearings and records in adoption proceedings;
 1531 confidential nature.—

1532 (7) The court may, upon petition of an adult adoptee or
 1533 birth parent, for good cause shown, appoint an intermediary or a
 1534 licensed child-placing agency to contact a birth parent or adult
 1535 adoptee, as applicable, who has not registered with the adoption
 1536 registry pursuant to s. 63.165 and advise both ~~them~~ of the
 1537 availability of the intermediary or agency and that the birth
 1538 parent or adult adoptee, as applicable, wishes to establish
 1539 contact ~~same~~.

1540 Section 22. Paragraph (c) of subsection (2) of section

CS/CS/HB 1163

2012

1541 63.167, Florida Statutes, is amended to read:

1542 63.167 State adoption information center.—

1543 (2) The functions of the state adoption information center
1544 shall include:

1545 (c) Operating a toll-free telephone number to provide
1546 information and referral services. The state adoption
1547 information center shall provide contact information for all
1548 adoption entities in the caller's county or, if no adoption
1549 entities are located in the caller's county, the number of the
1550 nearest adoption entity when contacted for a referral to make an
1551 adoption plan and shall rotate the order in which the names of
1552 adoption entities are provided to callers.

1553 Section 23. Paragraph (g) of subsection (1) and
1554 subsections (2) and (8) of section 63.212, Florida Statutes, are
1555 amended to read:

1556 63.212 Prohibited acts; penalties for violation.—

1557 (1) It is unlawful for any person:

1558 (g) Except an adoption entity, to advertise or offer to
1559 the public, in any way, by any medium whatever that a minor is
1560 available for adoption or that a minor is sought for adoption;
1561 and, further, it is unlawful for any person to publish or
1562 broadcast any such advertisement or assist an unlicensed person
1563 or entity in publishing or broadcasting any such advertisement
1564 without including a Florida license number of the agency or
1565 attorney placing the advertisement.

1566 1. Only a person who is an attorney licensed to practice
1567 law in this state or an adoption entity licensed under the laws
1568 of this state may place a paid advertisement or paid listing of

1569 the person's telephone number, on the person's own behalf, in a
 1570 telephone directory that:

1571 a. A child is offered or wanted for adoption; or
 1572 b. The person is able to place, locate, or receive a child
 1573 for adoption.

1574 2. A person who publishes a telephone directory that is
 1575 distributed in this state:

1576 a. Shall include, at the beginning of any classified
 1577 heading for adoption and adoption services, a statement that
 1578 informs directory users that only attorneys licensed to practice
 1579 law in this state and licensed adoption entities may legally
 1580 provide adoption services under state law.

1581 b. May publish an advertisement described in subparagraph
 1582 1. in the telephone directory only if the advertisement contains
 1583 the following:

1584 (I) For an attorney licensed to practice law in this
 1585 state, the person's Florida Bar number.

1586 (II) For a child placing agency licensed under the laws of
 1587 this state, the number on the person's adoption entity license.

1588 (2) Any person who is a birth mother, or a woman who holds
 1589 herself out to be a birth mother, who is interested in making an
 1590 adoption plan and who knowingly or intentionally benefits from
 1591 the payment of adoption-related expenses in connection with that
 1592 adoption plan commits adoption deception if:

1593 (a) The person knows or should have known that the person
 1594 is not pregnant at the time the sums were requested or received;

1595 (b) The person accepts living expenses assistance from a
 1596 prospective adoptive parent or adoption entity without

1597 disclosing that she is receiving living expenses assistance from
 1598 another prospective adoptive parent or adoption entity at the
 1599 same time in an effort to adopt the same child; or

1600 (c) The person knowingly makes false representations to
 1601 induce the payment of living expenses and does not intend to
 1602 make an adoptive placement. It is unlawful for:

1603 ~~(a) Any person or adoption entity under this chapter to:~~

1604 ~~1. Knowingly provide false information; or~~

1605 ~~2. Knowingly withhold material information.~~

1606 ~~(b) A parent, with the intent to defraud, to accept~~
 1607 ~~benefits related to the same pregnancy from more than one~~
 1608 ~~adoption entity without disclosing that fact to each entity.~~

1609

1610 Any person who willfully commits adoption deception ~~violates any~~
 1611 ~~provision of this subsection~~ commits a misdemeanor of the second
 1612 degree, punishable as provided in s. 775.082 or s. 775.083, if
 1613 the sums received by the birth mother or woman holding herself
 1614 out to be a birth mother do not exceed \$300, and a felony of the
 1615 third degree, punishable as provided in s. 775.082, s. 775.083,
 1616 or s. 775.084, if the sums received by the birth mother or woman
 1617 holding herself out to be a birth mother exceed \$300. In
 1618 addition, the person is liable for damages caused by such acts
 1619 or omissions, including reasonable attorney ~~attorney's~~ fees and
 1620 costs incurred by the adoption entity or the prospective
 1621 adoptive parent. Damages may be awarded through restitution in
 1622 any related criminal prosecution or by filing a separate civil
 1623 action.

1624 (8) Unless otherwise indicated, a person who willfully and

CS/CS/HB 1163

2012

1625 with criminal intent violates any provision of this section,
 1626 excluding paragraph (1)(g), commits a felony of the third
 1627 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1628 775.084. A person who willfully and with criminal intent
 1629 violates paragraph (1)(g) commits a misdemeanor of the second
 1630 degree, punishable as provided in s. 775.083; and each day of
 1631 continuing violation shall be considered a separate offense. In
 1632 addition, any person who knowingly publishes or assists with the
 1633 publication of any advertisement or other publication which
 1634 violates the requirements of paragraph (1)(g) commits a
 1635 misdemeanor of the second degree, punishable as provided in s.
 1636 775.083, and may be required to pay a fine of up to \$150 per day
 1637 for each day of continuing violation.

1638 Section 24. Paragraph (b) of subsection (1), paragraphs
 1639 (a) and (e) of subsection (2), and paragraphs (b), (h), and (i)
 1640 of subsection (6) of section 63.213, Florida Statutes, are
 1641 amended to read:

1642 63.213 Preplanned adoption agreement.—

1643 (1) Individuals may enter into a preplanned adoption
 1644 arrangement as specified in this section, but such arrangement
 1645 may not in any way:

1646 (b) Constitute consent of a mother to place her biological
 1647 child for adoption until 48 hours ~~after the following~~ birth of
 1648 the child and unless the court making the custody determination
 1649 or approving the adoption determines that the mother was aware
 1650 of her right to rescind within the 48-hour period after the
 1651 following birth of the child but chose not to rescind such
 1652 consent. The volunteer mother's right to rescind her consent in

1653 a preplanned adoption applies only when the child is genetically
 1654 related to her.

1655 (2) A preplanned adoption agreement must include, but need
 1656 not be limited to, the following terms:

1657 (a) That the volunteer mother agrees to become pregnant by
 1658 the fertility technique specified in the agreement, to bear the
 1659 child, and to terminate any parental rights and responsibilities
 1660 to the child she might have through a written consent executed
 1661 at the same time as the preplanned adoption agreement, subject
 1662 to a right of rescission by the volunteer mother any time within
 1663 48 hours after the birth of the child, if the volunteer mother
 1664 is genetically related to the child.

1665 (e) That the intended father and intended mother
 1666 acknowledge that they may not receive custody or the parental
 1667 rights under the agreement if the volunteer mother terminates
 1668 the agreement or if the volunteer mother rescinds her consent to
 1669 place her child for adoption within 48 hours after the birth of
 1670 the child, if the volunteer mother is genetically related to the
 1671 child.

1672 (6) As used in this section, the term:

1673 (b) "Child" means the child or children conceived by means
 1674 of a fertility technique ~~an insemination~~ that is part of a
 1675 preplanned adoption arrangement.

1676 (h) "Preplanned adoption arrangement" means the
 1677 arrangement through which the parties enter into an agreement
 1678 for the volunteer mother to bear the child, for payment by the
 1679 intended father and intended mother of the expenses allowed by
 1680 this section, for the intended father and intended mother to

CS/CS/HB 1163

2012

1681 assert full parental rights and responsibilities to the child if
 1682 consent to adoption is not rescinded after birth by a the
 1683 volunteer mother who is genetically related to the child, and
 1684 for the volunteer mother to terminate, subject to any ~~a~~ right of
 1685 rescission, all her parental rights and responsibilities to the
 1686 child in favor of the intended father and intended mother.

1687 (i) "Volunteer mother" means a female at least 18 years of
 1688 age who voluntarily agrees, subject to a right of rescission if
 1689 it is her biological child, that if she should become pregnant
 1690 pursuant to a preplanned adoption arrangement, she will
 1691 terminate her parental rights and responsibilities to the child
 1692 in favor of the intended father and intended mother.

1693 Section 25. Section 63.222, Florida Statutes, is amended
 1694 to read:

1695 63.222 Effect on prior adoption proceedings.—Any adoption
 1696 made before July 1, 2012, ~~is the effective date of this act~~
 1697 ~~shall be~~ valid, and any proceedings pending on that the
 1698 effective date and any subsequent amendments thereto ~~of this act~~
 1699 are not affected thereby unless the amendment is designated as a
 1700 remedial provision.

1701 Section 26. Section 63.2325, Florida Statutes, is amended
 1702 to read:

1703 63.2325 Conditions for invalidation ~~revocation~~ of a
 1704 consent to adoption or affidavit of nonpaternity.—
 1705 Notwithstanding the requirements of this chapter, a failure to
 1706 meet any of those requirements does not constitute grounds for
 1707 invalidation ~~revocation~~ of a consent to adoption or revocation
 1708 ~~withdrawal~~ of an affidavit of nonpaternity unless the extent and

CS/CS/HB 1163

2012

1709 | circumstances of such a failure result in a material failure of
1710 | fundamental fairness in the administration of due process, or
1711 | the failure constitutes or contributes to fraud or duress in
1712 | obtaining a consent to adoption or affidavit of nonpaternity.

1713 | Section 27. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee

3 Representative Adkins offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (4) of section 39.802, Florida
8 Statutes, is amended to read:

9 39.802 Petition for termination of parental rights;
10 filing; elements.-

11 (4) A petition for termination of parental rights filed
12 under this chapter must contain facts supporting the following
13 allegations:

14 (a) That at least one of the grounds listed in s. 39.806
15 has been met.

16 (b) That the parents of the child were informed of their
17 right to counsel at all hearings that they attended and that a
18 dispositional order adjudicating the child dependent was entered

Amendment No.

19 in any prior dependency proceeding relied upon in offering a
20 parent a case plan as described in s. 39.806.

21 (c) That the manifest best interests of the child, in
22 accordance with s. 39.810, would be served by the granting of
23 the petition.

24 (d) That the parents of the child were informed of the
25 availability of private placement of the child with an adoption
26 entity, as defined in s. 63.032(3).

27 Section 2. Paragraphs (e) through (m) of subsection (4) of
28 section 63.022, Florida Statutes, are redesignated as paragraphs
29 (d) through (l), respectively, and subsection (2) and present
30 paragraph (d) of subsection (4) are amended to read:

31 63.022 Legislative intent.—

32 (2) It is the intent of the Legislature that in every
33 adoption, the best interest of the child should govern and be of
34 foremost concern in the court's determination. The court shall
35 make a specific finding as to the best interests ~~interest~~ of the
36 child in accordance with the provisions of this chapter.

37 (4) The basic safeguards intended to be provided by this
38 chapter are that:

39 ~~(d) All placements of minors for adoption are reported to~~
40 ~~the Department of Children and Family Services, except relative,~~
41 ~~adult, and stepparent adoptions.~~

42 Section 3. Subsections (1), (3), (12), (17), and (19) of
43 section 63.032, Florida Statutes, are amended to read:

44 63.032 Definitions.—As used in this chapter, the term:

45 (1) "Abandoned" means a situation in which the parent or
46 person having legal custody of a child, while being able, makes

Amendment No.

47 little or no provision for the child's support or ~~and~~ makes
48 little or no effort to communicate with the child, which
49 situation is sufficient to evince an intent to reject parental
50 responsibilities. If, in the opinion of the court, the efforts
51 of such parent or person having legal custody of the child to
52 support and communicate with the child are only marginal efforts
53 that do not evince a settled purpose to assume all parental
54 duties, the court may declare the child to be abandoned. In
55 making this decision, the court may consider the conduct of a
56 father towards the child's mother during her pregnancy.

57 (3) "Adoption entity" means the department, ~~an agency~~, a
58 child-caring agency registered under s. 409.176, an
59 intermediary, a Florida-licensed child-placing agency under s.
60 63.202, or a child-placing agency licensed in another state
61 which is ~~qualified~~ licensed by the department to place children
62 in the State of Florida.

63 (12) "Parent" means a woman who gives birth to a child and
64 who is not a gestational surrogate as defined in s. 742.13 or a
65 man whose consent to the adoption of the child would be required
66 under s. 63.062(1). If a child has been legally adopted, the
67 term "parent" means the adoptive mother or father of the child.
68 The term does not include an individual whose parental
69 relationship to the child has been legally terminated or an
70 alleged or prospective parent.

71 (17) "Suitability of the intended placement" means the
72 fitness of the intended placement, with primary consideration
73 being given to the best interests ~~interest~~ of the child.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

74 (19) "Unmarried biological father" means the child's
75 biological father who is not married to the child's mother at
76 the time of conception or on the date of the birth of the child
77 and who, before the filing of a petition to terminate parental
78 rights, has not been adjudicated by a court of competent
79 jurisdiction to be the legal father of the child or has not
80 filed ~~executed~~ an affidavit pursuant to s. 382.013(2)(c).

81 Section 4. Section 63.037, Florida Statutes, is amended to
82 read:

83 63.037 Proceedings applicable to cases resulting from a
84 termination of parental rights under chapter 39.—A case in which
85 a minor becomes available for adoption after the parental rights
86 of each parent have been terminated by a judgment entered
87 pursuant to chapter 39 shall be governed by s. 39.812 and this
88 chapter. Adoption proceedings initiated under chapter 39 are
89 exempt from the following provisions of this chapter:
90 requirement for search of the Florida Putative Father Registry
91 provided in s. 63.054(7), if a search was previously completed
92 and documentation of the search is contained in the case file;
93 disclosure requirements for the adoption entity provided in s.
94 63.085(1); general provisions governing termination of parental
95 rights pending adoption provided in s. 63.087; notice and
96 service provisions governing termination of parental rights
97 pending adoption provided in s. 63.088; and procedures for
98 terminating parental rights pending adoption provided in s.
99 63.089.

100 Section 5. Subsections (2) through (4) of section 63.039,
101 Florida Statutes, are renumbered as subsections (3) through (5),

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

102 respectively, and a new subsection (2) is added to that section
103 to read:

104 63.039 Duty of adoption entity to prospective adoptive
105 parents; sanctions.-

106 (2) With the exception of an adoption by a relative or
107 stepparent, all adoptions of minor children require the use of
108 an adoption entity that will assume the responsibilities
109 provided in this section.

110 Section 6. Subsections (1), (2), (3), (4), (7), (8), and
111 (9) of section 63.0423, Florida Statutes, are amended to read:

112 63.0423 Procedures with respect to surrendered infants.-

113 (1) Upon entry of final judgment terminating parental
114 rights, an adoption entity ~~A licensed child placing agency~~ that
115 takes physical custody of an infant surrendered at a hospital,
116 emergency medical services station, or fire station pursuant to
117 s. 383.50 assumes ~~shall assume~~ responsibility for the all
118 ~~medical costs~~ and ~~all~~ other costs associated with the emergency
119 services and care of the surrendered infant from the time the
120 adoption entity ~~licensed child placing agency~~ takes physical
121 custody of the surrendered infant.

122 (2) The adoption entity ~~licensed child placing agency~~
123 shall immediately seek an order from the circuit court for
124 emergency custody of the surrendered infant. The emergency
125 custody order shall remain in effect until the court orders
126 preliminary approval of placement of the surrendered infant in
127 the prospective home, at which time the prospective adoptive
128 parents become guardians pending termination of parental rights
129 and finalization of adoption or until the court orders

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Amendment No.

130 otherwise. The guardianship of the prospective adoptive parents
131 shall remain subject to the right of the adoption entity
132 ~~licensed child placing agency~~ to remove the surrendered infant
133 from the placement during the pendency of the proceedings if
134 such removal is deemed by the adoption entity ~~licensed child-~~
135 ~~placing agency~~ to be in the best interests ~~interest~~ of the
136 child. The adoption entity ~~licensed child placing agency~~ may
137 immediately seek to place the surrendered infant in a
138 prospective adoptive home.

139 (3) The adoption entity ~~licensed child placing agency~~ that
140 takes physical custody of the surrendered infant shall, within
141 24 hours thereafter, request assistance from law enforcement
142 officials to investigate and determine, through the Missing
143 Children Information Clearinghouse, the National Center for
144 Missing and Exploited Children, and any other national and state
145 resources, whether the surrendered infant is a missing child.

146 (4) The parent who surrenders the infant in accordance
147 with s. 383.50 is presumed to have consented to termination of
148 parental rights, and express consent is not required. Except
149 when there is actual or suspected child abuse or neglect, the
150 adoption entity may ~~licensed child placing agency shall~~ not
151 attempt to pursue, search for, or notify that parent as provided
152 in s. 63.088 and chapter 49. For purposes of s. 383.50 and this
153 section, an infant who tests positive for illegal drugs,
154 narcotic prescription drugs, alcohol, or other substances, but
155 shows no other signs of child abuse or neglect, shall be placed
156 in the custody of an adoption entity. This subsection does not
157 eliminate the reporting requirement under s. 383.50(7). When the

Amendment No.

158 department is contacted regarding an infant properly surrendered
159 under this section and s. 383.50, the department shall provide
160 instruction to contact an adoption entity and may not take
161 custody of the infant unless reasonable efforts to contact an
162 adoption entity to accept the infant have not been successful.

163 (7) If a claim of parental rights of a surrendered infant
164 is made before the judgment to terminate parental rights is
165 entered, the circuit court may hold the action for termination
166 of parental rights ~~pending subsequent adoption~~ in abeyance for a
167 period of time not to exceed 60 days.

168 (a) The court may order scientific testing to determine
169 maternity or paternity at the expense of the parent claiming
170 parental rights.

171 (b) The court shall appoint a guardian ad litem for the
172 surrendered infant and order whatever investigation, home
173 evaluation, and psychological evaluation are necessary to
174 determine what is in the best interests ~~interest~~ of the
175 surrendered infant.

176 (c) The court may not terminate parental rights solely on
177 the basis that the parent left the infant at a hospital,
178 emergency medical services station, or fire station in
179 accordance with s. 383.50.

180 (d) The court shall enter a judgment with written findings
181 of fact and conclusions of law.

182 (8) Within 7 business days after recording the judgment,
183 the clerk of the court shall mail a copy of the judgment to the
184 department, the petitioner, and any person ~~the persons~~ whose

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

185 consent ~~was~~ were required, if known. The clerk shall execute a
186 certificate of each mailing.

187 (9) (a) A judgment terminating parental rights pending
188 adoption is voidable, and any later judgment of adoption of that
189 minor is voidable, if, upon the motion of a ~~birth~~ parent, the
190 court finds that a person knowingly gave false information that
191 prevented the ~~birth~~ parent from timely making known his or her
192 desire to assume parental responsibilities toward the minor or
193 from exercising his or her parental rights. A motion under this
194 subsection must be filed with the court originally entering the
195 judgment. The motion must be filed within a reasonable time but
196 not later than 1 year after the entry of the judgment
197 terminating parental rights.

198 (b) No later than 30 days after the filing of a motion
199 under this subsection, the court shall conduct a preliminary
200 hearing to determine what contact, if any, will be permitted
201 between a ~~birth~~ parent and the child pending resolution of the
202 motion. Such contact may be allowed only if it is requested by a
203 parent who has appeared at the hearing and the court determines
204 that it is in the best interests ~~interest~~ of the child. If the
205 court orders contact between a ~~birth~~ parent and the child, the
206 order must be issued in writing as expeditiously as possible and
207 must state with specificity any provisions regarding contact
208 with persons other than those with whom the child resides.

209 (c) ~~At the preliminary hearing, The court, upon the motion~~
210 ~~of any party or upon its own motion, may not~~ order scientific
211 testing to determine the paternity or maternity of the minor
212 until such time as the court determines that a previously

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

213 entered judgment terminating the parental rights of that parent
214 is voidable pursuant to paragraph (a), unless all parties agree
215 that such testing is in the best interests of the child if the
216 ~~person seeking to set aside the judgment is alleging to be the~~
217 ~~child's birth parent but has not previously been determined by~~
218 ~~legal proceedings or scientific testing to be the birth parent.~~
219 Upon the filing of test results establishing that person's
220 maternity or paternity of the surrendered infant, the court may
221 order visitation only if it appears to be as it deems
222 ~~appropriate and~~ in the best interests ~~interest~~ of the child.

223 (d) Within 45 days after the preliminary hearing, the
224 court shall conduct a final hearing on the motion to set aside
225 the judgment and shall enter its written order as expeditiously
226 as possible thereafter.

227 Section 7. Section 63.0427, Florida Statutes, is amended
228 to read:

229 63.0427 Agreements for Adopted minor's right to continued
230 communication or contact between adopted child and with
231 siblings, parents, and other relatives.-

232 (1) A child whose parents have had their parental rights
233 terminated and whose custody has been awarded to the department
234 pursuant to s. 39.811, and who is the subject of a petition for
235 adoption under this chapter, shall have the right to have the
236 court consider the appropriateness of postadoption communication
237 or contact, including, but not limited to, visits, written
238 correspondence, or telephone calls, with his or her siblings or,
239 upon agreement of the adoptive parents, with the parents who
240 have had their parental rights terminated or other specified

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

241 biological relatives. The court shall consider the following in
242 making such determination:

243 (a) Any orders of the court pursuant to s. 39.811(7).

244 (b) Recommendations of the department, the foster parents
245 if other than the adoptive parents, and the guardian ad litem.

246 (c) Statements of the prospective adoptive parents.

247 (d) Any other information deemed relevant and material by
248 the court.

249

250 If the court determines that the child's best interests will be
251 served by postadoption communication or contact, the court shall
252 so order, stating the nature and frequency of ~~for~~ the
253 communication or contact. This order shall be made a part of the
254 final adoption order, but ~~in no event shall~~ the continuing
255 validity of the adoption may not be contingent upon such
256 postadoption communication or contact and, ~~nor shall~~ the ability
257 of the adoptive parents and child to change residence within or
258 outside the State of Florida may not be impaired by such
259 communication or contact.

260 (2) Notwithstanding ~~the provisions of~~ s. 63.162, the
261 adoptive parent may, at any time, petition for review of a
262 communication or contact order entered pursuant to subsection
263 (1), if the adoptive parent believes that the best interests of
264 the adopted child are being compromised, and the court may ~~shall~~
265 ~~have authority to~~ order the communication or contact to be
266 terminated or modified, as the court deems to be in the best
267 interests of the adopted child; however, the court may not
268 increase contact between the adopted child and siblings, birth

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

269 parents, or other relatives without the consent of the adoptive
270 parent or parents. As part of the review process, the court may
271 order the parties to engage in mediation. The department shall
272 not be required to be a party to such review.

273 Section 8. Subsections (1), (2), (3), and (6) of section
274 63.052, Florida Statutes, are amended to read:

275 63.052 Guardians designated; proof of commitment.—

276 (1) For minors who have been placed for adoption with ~~and~~
277 ~~permanently committed to~~ an adoption entity, other than an
278 intermediary, such adoption entity shall be the guardian of the
279 person of the minor and has the responsibility and authority to
280 provide for the needs and welfare of the minor.

281 (2) For minors who have been voluntarily surrendered to an
282 intermediary through an execution of a consent to adoption, the
283 intermediary shall be responsible for the minor until the time a
284 court orders preliminary approval of placement of the minor in
285 the prospective adoptive home, after which time the prospective
286 adoptive parents shall become guardians pending finalization of
287 adoption, subject to the intermediary's right and responsibility
288 to remove the child from the prospective adoptive home if the
289 removal is deemed by the intermediary to be in the best
290 interests interest of the child. The intermediary may not remove
291 the child without a court order unless the child is in danger of
292 imminent harm. The intermediary does not become responsible for
293 the minor child's medical bills that were incurred before taking
294 physical custody of the child after the execution of adoption
295 consents. Prior to the court's entry of an order granting
296 preliminary approval of the placement, the intermediary shall

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

297 have the responsibility and authority to provide for the needs
298 and welfare of the minor. A ~~No~~ minor may not ~~shall~~ be placed in
299 a prospective adoptive home until that home has received a
300 favorable preliminary home study, as provided in s. 63.092,
301 completed and approved within 1 year before such placement in
302 the prospective home. The provisions of s. 627.6578 shall remain
303 in effect notwithstanding the guardianship provisions in this
304 section.

305 (3) If a minor is surrendered to an adoption entity for
306 subsequent adoption and a suitable prospective adoptive home is
307 not available pursuant to s. 63.092 at the time the minor is
308 surrendered to the adoption entity, the minor must be placed in
309 a licensed foster care home, or with a person or family that has
310 received a favorable preliminary home study pursuant to
311 subsection (2), or with a relative until such a suitable
312 prospective adoptive home is available.

313 (6) Unless otherwise authorized by law or ordered by the
314 court, the department is not responsible for expenses incurred
315 by other adoption entities participating in a placement of a
316 minor.

317 Section 9. Subsections (2) and (3) of section 63.053,
318 Florida Statutes, are amended to read:

319 63.053 Rights and responsibilities of an unmarried
320 biological father; legislative findings.—

321 (2) The Legislature finds that the interests of the state,
322 the mother, the child, and the adoptive parents described in
323 this chapter outweigh the interest of an unmarried biological
324 father who does not take action in a timely manner to establish

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

325 and demonstrate a relationship with his child in accordance with
326 the requirements of this chapter. An unmarried biological father
327 has the primary responsibility to protect his rights and is
328 presumed to know that his child may be adopted without his
329 consent unless he strictly complies with ~~the provisions of~~ this
330 chapter and demonstrates a prompt and full commitment to his
331 parental responsibilities.

332 (3) The Legislature finds that a birth mother and a birth
333 father have a right of ~~to~~ privacy.

334 Section 10. Subsections (1), (2), (4), and (13) of section
335 63.054, Florida Statutes, are amended to read:

336 63.054 Actions required by an unmarried biological father
337 to establish parental rights; Florida Putative Father Registry.-

338 (1) In order to preserve the right to notice and consent
339 to an adoption under this chapter, an unmarried biological
340 father must, as the "registrant," file a notarized claim of
341 paternity form with the Florida Putative Father Registry
342 maintained by the Office of Vital Statistics of the Department
343 of Health which includes confirmation of his willingness and
344 intent to support the child for whom paternity is claimed in
345 accordance with state law. The claim of paternity may be filed
346 at any time before the child's birth, but may not be filed after
347 the date a petition is filed for termination of parental rights.
348 In each proceeding for termination of parental rights, the
349 petitioner must submit to the Office of Vital Statistics a copy
350 of the petition for termination of parental rights or a document
351 executed by the clerk of the court showing the style of the
352 case, the names of the persons whose rights are sought to be

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

353 terminated, and the date and time of the filing of the petition.

354 The Office of Vital Statistics may not record a claim of
355 paternity after the date a petition for termination of parental
356 rights is filed. The failure of an unmarried biological father
357 to file a claim of paternity with the registry before the date a
358 petition for termination of parental rights is filed also bars
359 him from filing a paternity claim under chapter 742.

360 (a) An unmarried biological father is excepted from the
361 time limitations for filing a claim of paternity with the
362 registry or for filing a paternity claim under chapter 742, if:

363 1. The mother identifies him to the adoption entity as a
364 potential biological father by the date she executes a consent
365 for adoption; and

366 2. He is served with a notice of intended adoption plan
367 pursuant to s. 63.062(3) and the 30-day mandatory response date
368 is later than the date the petition for termination of parental
369 rights is filed with the court.

370 (b) If an unmarried biological father falls within the
371 exception provided by paragraph (a), the petitioner shall also
372 submit to the Office of Vital Statistics a copy of the notice of
373 intended adoption plan and proof of service of the notice on the
374 potential biological father.

375 (c) An unmarried biological father who falls within the
376 exception provided by paragraph (a) may not file a claim of
377 paternity with the registry or a paternity claim under chapter
378 742 after the 30-day mandatory response date to the notice of
379 intended adoption plan has expired. The Office of Vital

Amendment No.

380 Statistics may not record a claim of paternity 30 days after
381 service of the notice of intended adoption plan.

382 (2) By filing a claim of paternity form with the Office of
383 Vital Statistics, the registrant expressly consents to submit to
384 and pay for DNA testing upon the request of any party, the
385 registrant, or the adoption entity with respect to the child
386 referenced in the claim of paternity.

387 (4) Upon initial registration, or at any time thereafter,
388 the registrant may designate a physical ~~an~~ address other than
389 his residential address for sending any communication regarding
390 his registration. Similarly, upon initial registration, or at
391 any time thereafter, the registrant may designate, in writing,
392 an agent or representative to receive any communication on his
393 behalf and receive service of process. The agent or
394 representative must file an acceptance of the designation, in
395 writing, in order to receive notice or service of process. The
396 failure of the designated representative or agent of the
397 registrant to deliver or otherwise notify the registrant of
398 receipt of correspondence from the Florida Putative Father
399 Registry is at the registrant's own risk and may ~~shall~~ not serve
400 as a valid defense based upon lack of notice.

401 (13) The filing of a claim of paternity with the Florida
402 Putative Father Registry does not excuse or waive the obligation
403 of a petitioner to comply with the requirements of s. 63.088(4)
404 for conducting a diligent search and required inquiry with
405 respect to the identity of an unmarried biological father or
406 legal father which are set forth in this chapter.

Amendment No.

407 Section 11. Paragraph (b) of subsection (1), subsections
408 (2), (3), and (4), and paragraph (a) of subsection (8) of
409 section 63.062, Florida Statutes, are amended to read:

410 63.062 Persons required to consent to adoption; affidavit
411 of nonpaternity; waiver of venue.—

412 (1) Unless supported by one or more of the grounds
413 enumerated under s. 63.089(3), a petition to terminate parental
414 rights pending adoption may be granted only if written consent
415 has been executed as provided in s. 63.082 after the birth of
416 the minor or notice has been served under s. 63.088 to:

417 (b) The father of the minor, if:

418 1. The minor was conceived or born while the father was
419 married to the mother;

420 2. The minor is his child by adoption;

421 3. The minor has been adjudicated by the court to be his
422 child before ~~by~~ the date a petition ~~is filed~~ for termination of
423 parental rights is filed;

424 4. He has filed an affidavit of paternity pursuant to s.
425 382.013(2)(c) or he is listed on the child's birth certificate
426 before ~~by~~ the date a petition ~~is filed~~ for termination of
427 parental rights is filed; or

428 5. In the case of an unmarried biological father, he has
429 acknowledged in writing, signed in the presence of a competent
430 witness, that he is the father of the minor, has filed such
431 acknowledgment with the Office of Vital Statistics of the
432 Department of Health within the required timeframes, and has
433 complied with the requirements of subsection (2).

434

Amendment No.

435 The status of the father shall be determined at the time of the
436 filing of the petition to terminate parental rights and may not
437 be modified, except as otherwise provided in s. 63.0423(9)(a),
438 for purposes of his obligations and rights under this chapter by
439 acts occurring after the filing of the petition to terminate
440 parental rights.

441 (2) In accordance with subsection (1), the consent of an
442 unmarried biological father shall be necessary only if the
443 unmarried biological father has complied with the requirements
444 of this subsection.

445 (a)1. With regard to a child who is placed with adoptive
446 parents more than 6 months after the child's birth, an unmarried
447 biological father must have developed a substantial relationship
448 with the child, taken some measure of responsibility for the
449 child and the child's future, and demonstrated a full commitment
450 to the responsibilities of parenthood by providing reasonable
451 and regular financial support to the child in accordance with
452 the unmarried biological father's ability, if not prevented from
453 doing so by the person or authorized agency having lawful
454 custody of the child, and either:

455 a. Regularly visited the child at least monthly, when
456 physically and financially able to do so and when not prevented
457 from doing so by the birth mother or the person or authorized
458 agency having lawful custody of the child; or

459 b. Maintained regular communication with the child or with
460 the person or agency having the care or custody of the child,
461 when physically or financially unable to visit the child or when

Amendment No.

462 not prevented from doing so by the birth mother or person or
463 authorized agency having lawful custody of the child.

464 ~~2. The mere fact that an unmarried biological father~~
465 ~~expresses a desire to fulfill his responsibilities towards his~~
466 ~~child which is unsupported by acts evidencing this intent does~~
467 ~~not preclude a finding by the court that the unmarried~~
468 ~~biological father failed to comply with the requirements of this~~
469 ~~subsection.~~

470 ~~2.3.~~ An unmarried biological father who openly lived with
471 the child for at least 6 months within the 1-year period
472 following the birth of the child and immediately preceding
473 placement of the child with adoptive parents and who openly held
474 himself out to be the father of the child during that period
475 shall be deemed to have developed a substantial relationship
476 with the child and to have otherwise met the requirements of
477 this paragraph.

478 (b) With regard to a child who is ~~younger than~~ 6 months of
479 age or younger at the time the child is placed with the adoptive
480 parents, an unmarried biological father must have demonstrated a
481 full commitment to his parental responsibility by having
482 performed all of the following acts prior to the time the mother
483 executes her consent for adoption:

484 1. Filed a notarized claim of paternity form with the
485 Florida Putative Father Registry within the Office of Vital
486 Statistics of the Department of Health, which form shall be
487 maintained in the confidential registry established for that
488 purpose and shall be considered filed when the notice is entered
489 in the registry of notices from unmarried biological fathers.

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

490 2. Upon service of a notice of an intended adoption plan
491 or a petition for termination of parental rights pending
492 adoption, executed and filed an affidavit in that proceeding
493 stating that he is personally fully able and willing to take
494 responsibility for the child, setting forth his plans for care
495 of the child, and agreeing to a court order of child support and
496 a contribution to the payment of living and medical expenses
497 incurred for the mother's pregnancy and the child's birth in
498 accordance with his ability to pay.

499 3. If he had knowledge of the pregnancy, paid a fair and
500 reasonable amount of the living and medical expenses incurred in
501 connection with the mother's pregnancy and the child's birth, in
502 accordance with his financial ability and when not prevented
503 from doing so by the birth mother or person or authorized agency
504 having lawful custody of the child. The responsibility of the
505 unmarried biological father to provide financial assistance to
506 the birth mother during her pregnancy and to the child after
507 birth is not abated because support is being provided to the
508 birth mother or child by the adoption entity, a prospective
509 adoptive parent, or a third party, nor does it serve as a basis
510 to excuse the birth father's failure to provide support.

511 (c) The mere fact that a father expresses a desire to
512 fulfill his responsibilities towards his child which is
513 unsupported by acts evidencing this intent does not meet the
514 requirements of this section.

515 (d)-(e) The petitioner shall file with the court a
516 certificate from the Office of Vital Statistics stating that a
517 diligent search has been made of the Florida Putative Father

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

518 Registry of notices from unmarried biological fathers described
519 in subparagraph (b)1. and that no filing has been found
520 pertaining to the father of the child in question or, if a
521 filing is found, stating the name of the putative father and the
522 time and date of filing. That certificate shall be filed with
523 the court prior to the entry of a final judgment of termination
524 of parental rights.

525 ~~(e)(d)~~ An unmarried biological father who does not comply
526 with each of the conditions provided in this subsection is
527 deemed to have waived and surrendered any rights in relation to
528 the child, including the right to notice of any judicial
529 proceeding in connection with the adoption of the child, and his
530 consent to the adoption of the child is not required.

531 (3) Pursuant to chapter 48, an adoption entity shall serve
532 a notice of intended adoption plan upon any known and locatable
533 unmarried biological father who is identified to the adoption
534 entity by the mother by the date she signs her consent for
535 adoption if the child is 6 months of age or less at the time the
536 consent is executed ~~or who is identified by a diligent search of~~
537 ~~the Florida Putative Father Registry, or upon an entity whose~~
538 ~~consent is required~~. Service of the notice of intended adoption
539 plan is not required ~~mandatory~~ when the unmarried biological
540 father signs a consent for adoption or an affidavit of
541 nonpaternity or when the child is more than 6 months of age at
542 the time of the execution of the consent by the mother. The
543 notice may be served at any time before the child's birth or
544 before placing the child in the adoptive home. The recipient of
545 the notice may waive service of process by executing a waiver

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

546 and acknowledging receipt of the plan. The notice of intended
547 adoption plan must specifically state that if the unmarried
548 biological father desires to contest the adoption plan he must,
549 within 30 days after service, file with the court a verified
550 response that contains a pledge of commitment to the child in
551 substantial compliance with subparagraph (2)(b)2. and a claim of
552 paternity form with the Office of Vital Statistics, and must
553 provide the adoption entity with a copy of the verified response
554 filed with the court and the claim of paternity form filed with
555 the Office of Vital Statistics. The notice must also include
556 instructions for submitting a claim of paternity form to the
557 Office of Vital Statistics and the address to which the claim
558 must be sent. If the party served with the notice of intended
559 adoption plan is an entity whose consent is required, the notice
560 must specifically state that the entity must file, within 30
561 days after service, a verified response setting forth a legal
562 basis for contesting the intended adoption plan, specifically
563 addressing the best interests ~~interest~~ of the child.

564 (a) If the unmarried biological father or entity whose
565 consent is required fails to timely and properly file a verified
566 response with the court and, in the case of an unmarried
567 biological father, a claim of paternity form with the Office of
568 Vital Statistics, the court shall enter a default judgment
569 against the ~~any~~ unmarried biological father or entity and the
570 consent of that unmarried biological father or entity shall no
571 longer be required under this chapter and shall be deemed to
572 have waived any claim of rights to the child. To avoid an entry

Amendment No.

573 of a default judgment, within 30 days after receipt of service
574 of the notice of intended adoption plan:

575 1. The unmarried biological father must:

576 a. File a claim of paternity with the Florida Putative
577 Father Registry maintained by the Office of Vital Statistics;

578 b. File a verified response with the court which contains
579 a pledge of commitment to the child in substantial compliance
580 with subparagraph (2)(b)2.; and

581 c. Provide support for the birth mother and the child.

582 2. The entity whose consent is required must file a
583 verified response setting forth a legal basis for contesting the
584 intended adoption plan, specifically addressing the best
585 interests ~~interest~~ of the child.

586 (b) If the mother identifies a potential unmarried
587 biological father within the timeframes required by the statute,
588 whose location is unknown, the adoption entity shall conduct a
589 diligent search pursuant to s. 63.088. If, upon completion of a
590 diligent search, the potential unmarried biological father's
591 location remains unknown and a search of the Florida Putative
592 Father Registry fails to reveal a match, the adoption entity
593 shall request in the petition for termination of parental rights
594 pending adoption that the court declare the diligent search to
595 be in compliance with s. 63.088, that the adoption entity has no
596 further obligation to provide notice to the potential unmarried
597 biological father, and that the potential unmarried biological
598 father's consent to the adoption is not required.

599 (4) Any person whose consent is required under paragraph
600 (1)(b), or any other man, may execute an irrevocable affidavit

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

601 of nonpaternity in lieu of a consent under this section and by
602 doing so waives notice to all court proceedings after the date
603 of execution. An affidavit of nonpaternity must be executed as
604 provided in s. 63.082. The affidavit of nonpaternity may be
605 executed prior to the birth of the child. The person executing
606 the affidavit must receive disclosure under s. 63.085 prior to
607 signing the affidavit. For purposes of this chapter, an
608 affidavit of nonpaternity is sufficient if it contains a
609 specific denial of parental obligations and does not need to
610 deny the existence of a biological relationship.

611 (8) A petition to adopt an adult may be granted if:

612 (a) Written consent to adoption has been executed by the
613 adult and the adult's spouse, if any, unless the spouse's
614 consent is waived by the court for good cause.

615 Section 12. Subsection (2) of section 63.063, Florida
616 Statutes, is amended to read:

617 63.063 Responsibility of parents for actions; fraud or
618 misrepresentation; contesting termination of parental rights and
619 adoption.-

620 (2) Any person injured by a fraudulent representation or
621 action in connection with an adoption may pursue civil or
622 criminal penalties as provided by law. A fraudulent
623 representation is not a defense to compliance with the
624 requirements of this chapter and is not a basis for dismissing a
625 petition for termination of parental rights or a petition for
626 adoption, for vacating an adoption decree, or for granting
627 custody to the offended party. Custody and adoption

Amendment No.

628 determinations must be based on the best interests ~~interest~~ of
629 the child in accordance with s. 61.13.

630 Section 13. Paragraph (d) of subsection (1), paragraphs
631 (c) and (d) of subsection (3), paragraphs (a), (d), and (e) of
632 subsection (4), and subsections (6) and (7) of section 63.082,
633 Florida Statutes, are amended to read:

634 63.082 Execution of consent to adoption or affidavit of
635 nonpaternity; family social and medical history; revocation
636 ~~withdrawal~~ of consent.—

637 (1)

638 (d) The ~~notice and~~ consent provisions of this chapter as
639 they relate to the father ~~birth~~ of a child ~~or to legal fathers~~
640 do not apply in cases in which the child is conceived as a
641 result of a violation of the criminal laws of this or another
642 state or country, including, but not limited to, sexual battery,
643 unlawful sexual activity with certain minors under s. 794.05,
644 lewd acts perpetrated upon a minor, or incest. Notice shall be
645 provided to the father of a child, alleged to have been
646 conceived as a result of a violation of the criminal laws of
647 this or another state or country, if no criminal charges have
648 been filed. A criminal conviction is not required for the court
649 to find that the child was conceived as a result of a violation
650 of the criminal laws of this state or another state or country.

651 (3)

652 (c) If any person who is required to consent is
653 unavailable because the person cannot be located, an ~~the~~
654 ~~petition to terminate parental rights pending adoption must be~~

Amendment No.

655 ~~accompanied by the~~ affidavit of diligent search required under
656 s. 63.088 shall be filed.

657 (d) If any person who is required to consent is
658 unavailable because the person is deceased, the petition to
659 terminate parental rights pending adoption must be accompanied
660 by a certified copy of the death certificate. In an adoption of
661 a stepchild or a relative, the certified copy of the death
662 certificate of the person whose consent is required ~~may~~ must be
663 attached to the petition for adoption if a separate petition for
664 termination of parental rights is not being filed.

665 (4) (a) An affidavit of nonpaternity may be executed before
666 the birth of the minor; however, the consent to an adoption may
667 ~~shall~~ not be executed before the birth of the minor except in a
668 preplanned adoption pursuant to s. 63.213.

669 (d) The consent to adoption or the affidavit of
670 nonpaternity must be signed in the presence of two witnesses and
671 be acknowledged before a notary public who is not signing as one
672 of the witnesses. The notary public must legibly note on the
673 consent or the affidavit the date and time of execution. The
674 witnesses' names must be typed or printed underneath their
675 signatures. The witnesses' home or business addresses must be
676 included. The person who signs the consent or the affidavit has
677 the right to have at least one of the witnesses be an individual
678 who does not have an employment, professional, or personal
679 relationship with the adoption entity or the prospective
680 adoptive parents. The adoption entity must give reasonable
681 advance notice to the person signing the consent or affidavit of
682 the right to select a witness of his or her own choosing. The

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

683 person who signs the consent or affidavit must acknowledge in
684 writing on the consent or affidavit that such notice was given
685 and indicate the witness, if any, who was selected by the person
686 signing the consent or affidavit. The adoption entity must
687 include its name, address, and telephone number on the consent
688 to adoption or affidavit of nonpaternity.

689 (e) A consent to adoption being executed by the birth
690 parent must be in at least 12-point boldfaced type and shall
691 contain the following recitation of rights in substantially the
692 following form:

693 CONSENT TO ADOPTION

694
695 YOU HAVE THE RIGHT TO SELECT AT LEAST ONE PERSON WHO DOES NOT
696 HAVE AN EMPLOYMENT, PROFESSIONAL, OR PERSONAL RELATIONSHIP WITH
697 THE ADOPTION ENTITY OR THE PROSPECTIVE ADOPTIVE PARENTS TO BE
698 PRESENT WHEN THIS AFFIDAVIT IS EXECUTED AND TO SIGN IT AS A
699 WITNESS. YOU MUST ACKNOWLEDGE ON THIS FORM THAT YOU WERE
700 NOTIFIED OF THIS RIGHT AND YOU MUST INDICATE THE WITNESS OR
701 WITNESSES YOU SELECTED, IF ANY.

702
703 YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU MAY DO ANY OF THE
704 FOLLOWING INSTEAD OF SIGNING THIS CONSENT OR BEFORE SIGNING THIS
705 CONSENT:

- 706
- 707 1. CONSULT WITH AN ATTORNEY;
 - 708 2. HOLD, CARE FOR, AND FEED THE CHILD UNLESS OTHERWISE
 - 709 LEGALLY PROHIBITED;

Amendment No.

710 3. PLACE THE CHILD IN FOSTER CARE OR WITH ANY FRIEND OR
711 FAMILY MEMBER YOU CHOOSE WHO IS WILLING TO CARE FOR THE
712 CHILD;

713 4. TAKE THE CHILD HOME UNLESS OTHERWISE LEGALLY
714 PROHIBITED; AND

715 5. FIND OUT ABOUT THE COMMUNITY RESOURCES THAT ARE
716 AVAILABLE TO YOU IF YOU DO NOT GO THROUGH WITH THE
717 ADOPTION.

718

719 IF YOU DO SIGN THIS CONSENT, YOU ARE GIVING UP ALL RIGHTS TO
720 YOUR CHILD. YOUR CONSENT IS VALID, BINDING, AND IRREVOCABLE
721 EXCEPT UNDER SPECIFIC LEGAL CIRCUMSTANCES. IF YOU ARE GIVING UP
722 YOUR RIGHTS TO A NEWBORN CHILD WHO IS TO BE IMMEDIATELY PLACED
723 FOR ADOPTION UPON THE CHILD'S RELEASE FROM A LICENSED HOSPITAL
724 OR BIRTH CENTER FOLLOWING BIRTH, A WAITING PERIOD WILL BE
725 IMPOSED UPON THE BIRTH MOTHER BEFORE SHE MAY SIGN THE CONSENT
726 FOR ADOPTION. A BIRTH MOTHER MUST WAIT 48 HOURS FROM THE TIME OF
727 BIRTH, OR UNTIL THE DAY THE BIRTH MOTHER HAS BEEN NOTIFIED IN
728 WRITING, EITHER ON HER PATIENT CHART OR IN RELEASE PAPERS, THAT
729 SHE IS FIT TO BE RELEASED FROM A LICENSED HOSPITAL OR BIRTH
730 CENTER, WHICHEVER IS SOONER, BEFORE THE CONSENT FOR ADOPTION MAY
731 BE EXECUTED. ANY MAN MAY EXECUTE A CONSENT AT ANY TIME AFTER THE
732 BIRTH OF THE CHILD. ONCE YOU HAVE SIGNED THE CONSENT, IT IS
733 VALID, BINDING, AND IRREVOCABLE AND CANNOT BE INVALIDATED
734 ~~WITHDRAWN~~ UNLESS A COURT FINDS THAT IT WAS OBTAINED BY FRAUD OR
735 DURESS.

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Amendment No.

737 IF YOU BELIEVE THAT YOUR CONSENT WAS OBTAINED BY FRAUD OR DURESS
738 AND YOU WISH TO INVALIDATE ~~REVOKE~~ THAT CONSENT, YOU MUST:

739

740 1. NOTIFY THE ADOPTION ENTITY, BY WRITING A LETTER, THAT
741 YOU WISH TO WITHDRAW YOUR CONSENT; AND

742 2. PROVE IN COURT THAT THE CONSENT WAS OBTAINED BY FRAUD
743 OR DURESS.

744

745 This statement of rights is not required for the adoption of a
746 relative, an adult, a stepchild, or a child older than 6 months
747 of age. A consent form for the adoption of a child older than 6
748 months of age at the time of the execution of consent must
749 contain a statement outlining the revocation rights provided in
750 paragraph (c).

751 (6) (a) If a parent executes a consent for placement of a
752 minor with an adoption entity or qualified prospective adoptive
753 parents and the minor child is in the custody of the department,
754 but parental rights have not yet been terminated, the adoption
755 consent is valid, binding, and enforceable by the court.

756 (b) Upon execution of the consent of the parent, the
757 adoption entity shall be permitted to ~~may~~ intervene in the
758 dependency case as a party in interest and must provide the
759 court that acquired ~~having~~ jurisdiction over the minor, pursuant
760 to the shelter or dependency petition filed by the department, a
761 copy of the preliminary home study of the prospective adoptive
762 parents and any other evidence of the suitability of the
763 placement. The preliminary home study must be maintained with
764 strictest confidentiality within the dependency court file and

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

765 the department's file. A preliminary home study must be provided
766 to the court in all cases in which an adoption entity has
767 intervened pursuant to this section. Unless the court has
768 concerns regarding the qualifications of the home study
769 provider, or concerns that the home study may not be adequate to
770 determine the best interests of the child, the home study
771 provided by the adoption entity shall be deemed to be sufficient
772 and no additional home study needs to be performed by the
773 department.

774 (c) If an adoption entity files a motion to intervene in
775 the dependency case in accordance with this chapter, the
776 dependency court shall promptly grant a hearing to determine
777 whether the adoption entity has filed the required documents to
778 be permitted to intervene and whether a change of placement of
779 the child is appropriate.

780 (d)~~(e)~~ Upon a determination by the court that the
781 prospective adoptive parents are properly qualified to adopt the
782 minor child and that the adoption appears to be in the best
783 interests ~~interest~~ of the minor child, the court shall
784 immediately order the transfer of custody of the minor child to
785 the prospective adoptive parents, under the supervision of the
786 adoption entity. The adoption entity shall thereafter provide
787 monthly supervision reports to the department until finalization
788 of the adoption. If the child has been determined to be
789 dependent by the court, the department shall provide information
790 to the prospective adoptive parents at the time they receive
791 placement of the dependent child regarding approved parent
792 training classes available within the community. An

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

793 acknowledgement of receipt of the information regarding approved
794 parent training classes available within the community shall be
795 filed with the court by the department.

796 (e)-(d) In determining whether the best interests ~~interest~~
797 of the child are ~~is~~ served by transferring the custody of the
798 minor child to the prospective adoptive parent selected by the
799 parent, the court shall consider the rights of the parent to
800 determine an appropriate placement for the child, the permanency
801 offered, the child's bonding with any potential adoptive home
802 that the child has been residing in, and the importance of
803 maintaining sibling relationships, if possible.

804 (f) The adoption entity shall be responsible for keeping
805 the dependency court informed of the status of the adoption
806 proceedings at least every 90 days from the date of the order
807 changing placement of the child until the date of finalization
808 of the adoption.

809 (g) In all dependency proceedings, it shall be the
810 responsibility of the department and the court to advise the
811 biological parent of the right to participate in a private
812 adoption plan at the time the petition for termination of
813 parental rights is filed.

814 (7) If a person is seeking to revoke ~~withdraw~~ consent for
815 a child older than 6 months of age ~~who has been placed with~~
816 ~~prospective adoptive parents:~~

817 (a) The person seeking to revoke ~~withdraw~~ consent must, in
818 accordance with paragraph (4)(c), notify the adoption entity in
819 writing by certified mail, return receipt requested, within 3
820 business days after execution of the consent. As used in this

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

821 subsection, the term "business day" means any day on which the
822 United States Postal Service accepts certified mail for
823 delivery.

824 (b) Upon receiving timely written notice from a person
825 whose consent to adoption is required of that person's desire to
826 revoke ~~withdraw~~ consent, the adoption entity must contact the
827 prospective adoptive parent to arrange a time certain for the
828 adoption entity to regain physical custody of the minor, unless,
829 upon a motion for emergency hearing by the adoption entity, the
830 court determines in written findings that placement of the minor
831 with the person who had legal or physical custody of the child
832 immediately before the child was placed for adoption may
833 endanger the minor or that the person who desires to revoke
834 ~~withdraw~~ consent is not required to consent to the adoption, has
835 been determined to have abandoned the child, or is otherwise
836 subject to a determination that the person's consent is waived
837 under this chapter.

838 (c) If the court finds that the placement may endanger the
839 minor, the court shall enter an order continuing the placement
840 of the minor with the prospective adoptive parents pending
841 further proceedings if they desire continued placement. If the
842 prospective adoptive parents do not desire continued placement,
843 the order must include, but need not be limited to, a
844 determination of whether temporary placement in foster care,
845 with the person who had legal or physical custody of the child
846 immediately before placing the child for adoption, or with a
847 relative is in the best interests ~~interest~~ of the child and
848 whether an investigation by the department is recommended.

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Page 31 of 62

Amendment No.

849 (d) If the person revoking ~~withdrawing~~ consent claims to
850 be the father of the minor but has not been established to be
851 the father by marriage, court order, or scientific testing, the
852 court may order scientific paternity testing and reserve ruling
853 on removal of the minor until the results of such testing have
854 been filed with the court.

855 (e) The adoption entity must return the minor within 3
856 business days after timely and proper notification of the
857 revocation ~~withdrawal~~ of consent or after the court determines
858 that revocation ~~withdrawal~~ is timely and in accordance with the
859 requirements of this chapter ~~valid and binding~~ upon
860 consideration of an emergency motion, as filed pursuant to
861 paragraph (b), to the physical custody of the person revoking
862 ~~withdrawing~~ consent or the person directed by the court. If the
863 person seeking to revoke ~~withdraw~~ consent claims to be the
864 father of the minor but has not been established to be the
865 father by marriage, court order, or scientific testing, the
866 adoption entity may return the minor to the care and custody of
867 the mother, if she desires such placement and she is not
868 otherwise prohibited by law from having custody of the child.

869 (f) Following the revocation period ~~for withdrawal of~~
870 ~~consent~~ described in paragraph (a), ~~or the placement of the~~
871 ~~child with the prospective adoptive parents, whichever occurs~~
872 later, consent may be set aside ~~withdrawn~~ only when the court
873 finds that the consent was obtained by fraud or duress.

874 (g) An affidavit of nonpaternity may be set aside
875 ~~withdrawn~~ only if the court finds that the affidavit was
876 obtained by fraud or duress.

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

877 (h) If the consent of one parent is set aside or revoked
878 in accordance with this chapter, any other consents executed by
879 the other parent or a third party whose consent is required for
880 the adoption of the child may not be used by the parent who
881 consent was revoked or set aside to terminate or diminish the
882 rights of the other parent or third party whose consent was
883 required for the adoption of the child.

884 Section 14. Subsection (1) and paragraph (a) of subsection
885 (2) of section 63.085, Florida Statutes, are amended, and
886 paragraph (c) is added to subsection (2) of that section, to
887 read:

888 63.085 Disclosure by adoption entity.—

889 (1) DISCLOSURE REQUIRED TO PARENTS AND PROSPECTIVE
890 ADOPTIVE PARENTS.—Within 14 days after a person seeking to adopt
891 a minor or a person seeking to place a minor for adoption
892 contacts an adoption entity in person or provides the adoption
893 entity with a mailing address, the entity must provide a written
894 disclosure statement to that person if the entity agrees or
895 continues to work with the person. The adoption entity shall
896 also provide the written disclosure to the parent who did not
897 initiate contact with the adoption entity within 14 days after
898 that parent is identified and located. For purposes of providing
899 the written disclosure, a person is considered to be seeking to
900 place a minor for adoption if that person has sought information
901 or advice from the adoption entity regarding the option of
902 adoptive placement. The written disclosure statement must be in
903 substantially the following form:

904

Amendment No.

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ADOPTION DISCLOSURE

THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE PROVIDED TO ALL PERSONS CONSIDERING ADOPTING A MINOR OR SEEKING TO PLACE A MINOR FOR ADOPTION, TO ADVISE THEM OF THE FOLLOWING FACTS REGARDING ADOPTION UNDER FLORIDA LAW:

1. The name, address, and telephone number of the adoption entity providing this disclosure is:

Name:

Address:

Telephone Number:

2. The adoption entity does not provide legal representation or advice to parents or anyone signing a consent for adoption or affidavit of nonpaternity, and parents have the right to consult with an attorney of their own choosing to advise them.

3. With the exception of an adoption by a stepparent or relative, a child cannot be placed into a prospective adoptive home unless the prospective adoptive parents have received a favorable preliminary home study, including criminal and child abuse clearances.

4. A valid consent for adoption may not be signed by the birth mother until 48 hours after the birth of the child, or the day the birth mother is notified, in writing, that she is fit for discharge from the licensed hospital or birth center. Any man may sign a valid consent for adoption at any time after the birth of the child.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

932 5. A consent for adoption signed before the child attains
933 the age of 6 months is binding and irrevocable from the moment
934 it is signed unless it can be proven in court that the consent
935 was obtained by fraud or duress. A consent for adoption signed
936 after the child attains the age of 6 months is valid from the
937 moment it is signed; however, it may be revoked up to 3 business
938 days after it was signed.

939 6. A consent for adoption is not valid if the signature of
940 the person who signed the consent was obtained by fraud or
941 duress.

942 7. An unmarried biological father must act immediately in
943 order to protect his parental rights. Section 63.062, Florida
944 Statutes, prescribes that any father seeking to establish his
945 right to consent to the adoption of his child must file a claim
946 of paternity with the Florida Putative Father Registry
947 maintained by the Office of Vital Statistics of the Department
948 of Health by the date a petition to terminate parental rights is
949 filed with the court, or within 30 days after receiving service
950 of a Notice of Intended Adoption Plan. If he receives a Notice
951 of Intended Adoption Plan, he must file a claim of paternity
952 with the Florida Putative Father Registry, file a parenting plan
953 with the court, and provide financial support to the mother or
954 child within 30 days following service. An unmarried biological
955 father's failure to timely respond to a Notice of Intended
956 Adoption Plan constitutes an irrevocable legal waiver of any and
957 all rights that the father may have to the child. A claim of
958 paternity registration form for the Florida Putative Father
959 Registry may be obtained from any local office of the Department

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

960 of Health, Office of Vital Statistics, the Department of
961 Children and Families, the Internet websites for these agencies,
962 and the offices of the clerks of the Florida circuit courts. The
963 claim of paternity form must be submitted to the Office of Vital
964 Statistics, Attention: Adoption Unit, P.O. Box 210,
965 Jacksonville, FL 32231.

966 8. There are alternatives to adoption, including foster
967 care, relative care, and parenting the child. There may be
968 services and sources of financial assistance in the community
969 available to parents if they choose to parent the child.

970 9. A parent has the right to have a witness of his or her
971 choice, who is unconnected with the adoption entity or the
972 adoptive parents, to be present and witness the signing of the
973 consent or affidavit of nonpaternity.

974 10. A parent 14 years of age or younger must have a
975 parent, legal guardian, or court-appointed guardian ad litem to
976 assist and advise the parent as to the adoption plan and to
977 witness consent.

978 11. A parent has a right to receive supportive counseling
979 from a counselor, social worker, physician, clergy, or attorney.

980 12. The payment of living or medical expenses by the
981 prospective adoptive parents before the birth of the child does
982 not, in any way, obligate the parent to sign the consent for
983 adoption.

984 (2) DISCLOSURE TO ADOPTIVE PARENTS.—

985 (a) At the time that an adoption entity is responsible for
986 selecting prospective adoptive parents for a born or unborn
987 child whose parents are seeking to place the child for adoption

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

988 or whose rights were terminated pursuant to chapter 39, the
989 adoption entity must provide the prospective adoptive parents
990 with information concerning the background of the child to the
991 extent such information is disclosed to the adoption entity by
992 the parents, legal custodian, or the department. This subsection
993 applies only if the adoption entity identifies the prospective
994 adoptive parents and supervises the ~~physical~~ placement of the
995 child in the prospective adoptive parents' home. If any
996 information cannot be disclosed because the records custodian
997 failed or refused to produce the background information, the
998 adoption entity has a duty to provide the information if it
999 becomes available. An individual or entity contacted by an
1000 adoption entity to obtain the background information must
1001 release the requested information to the adoption entity without
1002 the necessity of a subpoena or a court order. In all cases, the
1003 prospective adoptive parents must receive all available
1004 information by the date of the final hearing on the petition for
1005 adoption. The information to be disclosed includes:

- 1006 1. A family social and medical history form completed
1007 pursuant to s. 63.162(6).
- 1008 2. The biological mother's medical records documenting her
1009 prenatal care and the birth and delivery of the child.
- 1010 3. A complete set of the child's medical records
1011 documenting all medical treatment and care since the child's
1012 birth and before placement.
- 1013 4. All mental health, psychological, and psychiatric
1014 records, reports, and evaluations concerning the child before
1015 placement.

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

1016 5. The child's educational records, including all records
1017 concerning any special education needs of the child before
1018 placement.

1019 6. Records documenting all incidents that required the
1020 department to provide services to the child, including all
1021 orders of adjudication of dependency or termination of parental
1022 rights issued pursuant to chapter 39, any case plans drafted to
1023 address the child's needs, all protective services
1024 investigations identifying the child as a victim, and all
1025 guardian ad litem reports filed with the court concerning the
1026 child.

1027 7. Written information concerning the availability of
1028 adoption subsidies for the child, if applicable.

1029 (c) If the prospective adoptive parents waive the receipt
1030 of any of the records described in paragraph (a), a copy of the
1031 written notification of the waiver to the adoption entity shall
1032 be filed with the court.

1033 Section 15. Subsection (6) of section 63.087, Florida
1034 Statutes, is amended to read:

1035 63.087 Proceeding to terminate parental rights pending
1036 adoption; general provisions.—

1037 (6) ANSWER AND APPEARANCE REQUIRED.—An answer to the
1038 petition or any pleading requiring an answer must be filed in
1039 accordance with the Florida Family Law Rules of Procedure.
1040 Failure to file a written response to the petition constitutes
1041 grounds upon which the court may terminate parental rights.
1042 Failure to personally appear at the hearing constitutes grounds
1043 upon which the court may terminate parental rights. Any person

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

1044 present at the hearing to terminate parental rights pending
1045 adoption whose consent to adoption is required under s. 63.062
1046 must:

1047 (a) Be advised by the court that he or she has a right to
1048 ask that the hearing be reset for a later date so that the
1049 person may consult with an attorney; and

1050 (b) Be given an opportunity to admit or deny the
1051 allegations in the petition.

1052 Section 16. Subsection (4) of section 63.088, Florida
1053 Statutes, is amended to read:

1054 63.088 Proceeding to terminate parental rights pending
1055 adoption; notice and service; diligent search.—

1056 (4) REQUIRED INQUIRY.—In proceedings initiated under s.
1057 63.087, the court shall conduct an inquiry of the person who is
1058 placing the minor for adoption and of any relative or person
1059 having legal custody of the minor who is present at the hearing
1060 and likely to have the following information regarding the
1061 identity of:

1062 (a) Any man to whom the mother of the minor was married at
1063 any time when conception of the minor may have occurred or at
1064 the time of the birth of the minor;

1065 (b) Any man who has filed an affidavit of paternity
1066 pursuant to s. 382.013(2)(c) before the date that a petition for
1067 termination of parental rights is filed with the court;

1068 (c) Any man who has adopted the minor;

1069 (d) Any man who has been adjudicated by a court as the
1070 father of the minor child before the date a petition for
1071 termination of parental rights is filed with the court; and

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

1072 (e) Any man whom the mother identified to the adoption
1073 entity as a potential biological father before the date she
1074 signed the consent for adoption.

1075
1076 The information sought under this subsection may be provided to
1077 the court in the form of a sworn affidavit by a person having
1078 personal knowledge of the facts, addressing each inquiry
1079 enumerated in this subsection, except that, if the inquiry
1080 identifies a father under paragraph (a), paragraph (b), ~~or~~
1081 paragraph (c), or paragraph (d), the inquiry may not continue
1082 further. The inquiry required under this subsection may be
1083 conducted before the birth of the minor.

1084 Section 17. Paragraph (d) of subsection (3), paragraph (b)
1085 of subsection (4), and subsections (5) and (7) of section
1086 63.089, Florida Statutes, are amended to read:

1087 63.089 Proceeding to terminate parental rights pending
1088 adoption; hearing; grounds; dismissal of petition; judgment.—

1089 (3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING
1090 ADOPTION.—The court may enter a judgment terminating parental
1091 rights pending adoption if the court determines by clear and
1092 convincing evidence, supported by written findings of fact, that
1093 each person whose consent to adoption is required under s.
1094 63.062:

1095 (d) Has been properly served notice of the proceeding in
1096 accordance with the requirements of this chapter and has failed
1097 to file a written answer or personally appear at the evidentiary
1098 hearing resulting in the judgment terminating parental rights
1099 pending adoption;

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

1100 (4) FINDING OF ABANDONMENT.—A finding of abandonment
1101 resulting in a termination of parental rights must be based upon
1102 clear and convincing evidence that a parent or person having
1103 legal custody has abandoned the child in accordance with the
1104 definition contained in s. 63.032. A finding of abandonment may
1105 also be based upon emotional abuse or a refusal to provide
1106 reasonable financial support, when able, to a birth mother
1107 during her pregnancy, or whether the person alleged to have
1108 abandoned the child, while being able, failed to establish
1109 contact with the child or accept responsibility for the child's
1110 welfare.

1111 (b) The child has been abandoned when the parent of a
1112 child is incarcerated on or after October 1, 2001, in a federal,
1113 state, or county correctional institution and:

1114 1. The period of time for which the parent has been or is
1115 expected to be incarcerated will constitute a significant
1116 portion of the child's minority. In determining whether the
1117 period of time is significant, the court shall consider the
1118 child's age and the child's need for a permanent and stable
1119 home. The period of time begins on the date that the parent
1120 enters into incarceration;

1121 2. The incarcerated parent has been determined by a court
1122 of competent jurisdiction to be a violent career criminal as
1123 defined in s. 775.084, a habitual violent felony offender as
1124 defined in s. 775.084, convicted of child abuse as defined in s.
1125 827.03, or a sexual predator as defined in s. 775.21; has been
1126 convicted of first degree or second degree murder in violation
1127 of s. 782.04 or a sexual battery that constitutes a capital,

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

1128 life, or first degree felony violation of s. 794.011; or has
1129 been convicted of a substantially similar offense in another
1130 jurisdiction. As used in this section, the term "substantially
1131 similar offense" means any offense that is substantially similar
1132 in elements and penalties to one of those listed in this
1133 subparagraph, and that is in violation of a law of any other
1134 jurisdiction, whether that of another state, the District of
1135 Columbia, the United States or any possession or territory
1136 thereof, or any foreign jurisdiction; or

1137 3. The court determines by clear and convincing evidence
1138 that continuing the parental relationship with the incarcerated
1139 parent would be harmful to the child and, for this reason,
1140 termination of the parental rights of the incarcerated parent is
1141 in the best interests ~~interest~~ of the child.

1142 (5) DISMISSAL OF PETITION.—If the court does not find by
1143 clear and convincing evidence that parental rights of a parent
1144 should be terminated pending adoption, the court must dismiss
1145 the petition and that parent's parental rights that were the
1146 subject of such petition shall remain in full force under the
1147 law. The order must include written findings in support of the
1148 dismissal, including findings as to the criteria in subsection
1149 (4) if rejecting a claim of abandonment.

1150 (a) Parental rights may not be terminated based upon a
1151 consent that the court finds has been timely revoked ~~withdrawn~~
1152 under s. 63.082 or a consent to adoption or affidavit of
1153 nonpaternity that the court finds was obtained by fraud or
1154 duress.

Amendment No.

1155 (b) The court must enter an order based upon written
1156 findings providing for the placement of the minor, but the court
1157 may not proceed to determine custody between competing eligible
1158 parties. The placement of the child should revert to the parent
1159 or guardian who had physical custody of the child at the time of
1160 the placement for adoption unless the court determines upon
1161 clear and convincing evidence that this placement is not in the
1162 best interests of the child or is not an available option for
1163 the child. The court may not change the placement of a child who
1164 has established a bonded relationship with the current caregiver
1165 without providing for a reasonable transition plan consistent
1166 with the best interests of the child. The court may direct the
1167 parties to participate in a reunification or unification plan
1168 with a qualified professional to assist the child in the
1169 transition. The court may order scientific testing to determine
1170 the paternity of the minor only if the court has determined that
1171 the consent of the alleged father would be required, unless all
1172 parties agree that such testing is in the best interests of the
1173 child. The court may not order scientific testing to determine
1174 paternity of an unmarried biological father if the child has a
1175 father as described in s. 63.088(4)(a)-(d) whose rights have not
1176 been previously terminated at any time during which the court
1177 has jurisdiction over the minor. Further proceedings, if any,
1178 regarding the minor must be brought in a separate custody action
1179 under chapter 61, a dependency action under chapter 39, or a
1180 paternity action under chapter 742.

1181 (7) RELIEF FROM JUDGMENT TERMINATING PARENTAL RIGHTS.-

Amendment No.

1182 (a) A motion for relief from a judgment terminating
1183 parental rights must be filed with the court originally entering
1184 the judgment. The motion must be filed within a reasonable time,
1185 but not later than 1 year after the entry of the judgment. An
1186 unmarried biological father does not have standing to seek
1187 relief from a judgment terminating parental rights if the mother
1188 did not identify him to the adoption entity before the date she
1189 signed a consent for adoption or if he was not located because
1190 the mother failed or refused to provide sufficient information
1191 to locate him.

1192 (b) No later than 30 days after the filing of a motion
1193 under this subsection, the court must conduct a preliminary
1194 hearing to determine what contact, if any, shall be permitted
1195 between a parent and the child pending resolution of the motion.
1196 Such contact shall be considered only if it is requested by a
1197 parent who has appeared at the hearing and may not be awarded
1198 unless the parent previously established a bonded relationship
1199 with the child and the parent has pled a legitimate legal basis
1200 and established a prima facia case for setting aside the
1201 judgment terminating parental rights. If the court orders
1202 contact between a parent and child, the order must be issued in
1203 writing as expeditiously as possible and must state with
1204 specificity any provisions regarding contact with persons other
1205 than those with whom the child resides.

1206 (c) At the preliminary hearing, the court, upon the motion
1207 of any party or upon its own motion, may order scientific
1208 testing to determine the paternity of the minor if the person
1209 seeking to set aside the judgment is alleging to be the child's

Amendment No.

1210 father and that fact has not previously been determined by
1211 legitimacy or scientific testing. The court may order visitation
1212 with a person for whom scientific testing for paternity has been
1213 ordered and who has previously established a bonded relationship
1214 with the child.

1215 (d) Unless otherwise agreed between the parties or for
1216 good cause shown, the court shall conduct a final hearing on the
1217 motion for relief from judgment within 45 days after the filing
1218 and enter its written order as expeditiously as possible
1219 thereafter.

1220 (e) If the court grants relief from the judgment
1221 terminating parental rights and no new pleading is filed to
1222 terminate parental rights, the placement of the child should
1223 revert to the parent or guardian who had physical custody of the
1224 child at the time of the original placement for adoption unless
1225 the court determines upon clear and convincing evidence that
1226 this placement is not in the best interests of the child or is
1227 not an available option for the child. The court may not change
1228 the placement of a child who has established a bonded
1229 relationship with the current caregiver without providing for a
1230 reasonable transition plan consistent with the best interests of
1231 the child. The court may direct the parties to participate in a
1232 reunification or unification plan with a qualified professional
1233 to assist the child in the transition. The court may not direct
1234 the placement of a child with a person other than the adoptive
1235 parents without first obtaining a favorable home study of that
1236 person and any other persons residing in the proposed home and
1237 shall take whatever additional steps are necessary and

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

1238 appropriate for the physical and emotional protection of the
1239 child.

1240 Section 18. Subsection (3) of section 63.092, Florida
1241 Statutes, is amended to read:

1242 63.092 Report to the court of intended placement by an
1243 adoption entity; at-risk placement; preliminary study.—

1244 (3) PRELIMINARY HOME STUDY.—Before placing the minor in
1245 the intended adoptive home, a preliminary home study must be
1246 performed by a licensed child-placing agency, a child-caring
1247 agency registered under s. 409.176, a licensed professional, or
1248 agency described in s. 61.20(2), unless the adoptee is an adult
1249 or the petitioner is a stepparent or a relative. If the adoptee
1250 is an adult or the petitioner is a stepparent or a relative, a
1251 preliminary home study may be required by the court for good
1252 cause shown. The department is required to perform the
1253 preliminary home study only if there is no licensed child-
1254 placing agency, child-caring agency registered under s. 409.176,
1255 licensed professional, or agency described in s. 61.20(2), in
1256 the county where the prospective adoptive parents reside. The
1257 preliminary home study must be made to determine the suitability
1258 of the intended adoptive parents and may be completed prior to
1259 identification of a prospective adoptive minor. A favorable
1260 preliminary home study is valid for 1 year after the date of its
1261 completion. Upon its completion, a signed copy of the home study
1262 must be provided to the intended adoptive parents who were the
1263 subject of the home study. A minor may not be placed in an
1264 intended adoptive home before a favorable preliminary home study
1265 is completed unless the adoptive home is also a licensed foster

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

1266 home under s. 409.175. The preliminary home study must include,
1267 at a minimum:

1268 (a) An interview with the intended adoptive parents;

1269 (b) Records checks of the department's central abuse
1270 registry and criminal records correspondence checks under s.
1271 39.0138 through the Department of Law Enforcement on the
1272 intended adoptive parents;

1273 (c) An assessment of the physical environment of the home;

1274 (d) A determination of the financial security of the
1275 intended adoptive parents;

1276 (e) Documentation of counseling and education of the
1277 intended adoptive parents on adoptive parenting;

1278 (f) Documentation that information on adoption and the
1279 adoption process has been provided to the intended adoptive
1280 parents;

1281 (g) Documentation that information on support services
1282 available in the community has been provided to the intended
1283 adoptive parents; and

1284 (h) A copy of each signed acknowledgment of receipt of
1285 disclosure required by s. 63.085.

1286 If the preliminary home study is favorable, a minor may be
1287 placed in the home pending entry of the judgment of adoption. A
1288 minor may not be placed in the home if the preliminary home
1289 study is unfavorable. If the preliminary home study is
1290 unfavorable, the adoption entity may, within 20 days after
1291 receipt of a copy of the written recommendation, petition the
1292 court to determine the suitability of the intended adoptive
1293 home. A determination as to suitability under this subsection

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

1294 does not act as a presumption of suitability at the final
1295 hearing. In determining the suitability of the intended adoptive
1296 home, the court must consider the totality of the circumstances
1297 in the home. ~~A~~ ~~No~~ minor may not be placed in a home in which
1298 there resides any person determined by the court to be a sexual
1299 predator as defined in s. 775.21 or to have been convicted of an
1300 offense listed in s. 63.089(4)(b)2.

1301 Section 19. Subsection (7) is added to section 63.097,
1302 Florida Statutes, to read:

1303 63.097 Fees.—

1304 (7) In determining reasonable attorney fees, courts shall
1305 use the following criteria:

1306 (a) The time and labor required, the novelty and
1307 difficulty of the question involved, and the skill requisite to
1308 perform the legal service properly.

1309 (b) The likelihood, if apparent to the client, that the
1310 acceptance of the particular employment will preclude other
1311 employment by the attorney.

1312 (c) The fee customarily charged in the locality for
1313 similar legal services.

1314 (d) The amount involved in the subject matter of the
1315 representation, the responsibility involved in the
1316 representation, and the results obtained.

1317 (e) The time limitations imposed by the client or by the
1318 circumstances and, as between attorney and client, any
1319 additional or special time demands or requests of the attorney
1320 by the client.

Amendment No.

1321 (f) The nature and length of the professional relationship
1322 with the client.

1323 (g) The experience, reputation, diligence, and ability of
1324 the attorney or attorneys performing the service and the skill,
1325 expertise, or efficiency of effort reflected in the actual
1326 providing of such services.

1327 (h) Whether the fee is fixed or contingent.

1328 Section 20. Section 63.152, Florida Statutes, is amended
1329 to read:

1330 63.152 Application for new birth record.—Within 30 days
1331 after entry of a judgment of adoption, the clerk of the court or
1332 the adoption entity shall transmit a certified statement of the
1333 entry to the state registrar of vital statistics on a form
1334 provided by the registrar. A new birth record containing the
1335 necessary information supplied by the certificate shall be
1336 issued by the registrar on application of the adopting parents
1337 or the adopted person.

1338 Section 21. Subsection (7) of section 63.162, Florida
1339 Statutes, is amended to read:

1340 63.162 Hearings and records in adoption proceedings;
1341 confidential nature.—

1342 (7) The court may, upon petition of an adult adoptee or
1343 birth parent, for good cause shown, appoint an intermediary or a
1344 licensed child-placing agency to contact a birth parent or adult
1345 adoptee, as applicable, who has not registered with the adoption
1346 registry pursuant to s. 63.165 and advise both them of the
1347 availability of the intermediary or agency and that the birth

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

1348 parent or adult adoptee, as applicable, wishes to establish
1349 contact same.

1350 Section 22. Paragraph (c) of subsection (2) of section
1351 63.167, Florida Statutes, is amended to read:

1352 63.167 State adoption information center.—

1353 (2) The functions of the state adoption information center
1354 shall include:

1355 (c) Operating a toll-free telephone number to provide
1356 information and referral services. The state adoption
1357 information center shall provide contact information for all
1358 adoption entities in the caller's county or, if no adoption
1359 entities are located in the caller's county, the number of the
1360 nearest adoption entity when contacted for a referral to make an
1361 adoption plan and shall rotate the order in which the names of
1362 adoption entities are provided to callers.

1363 Section 23. Subsection (1) of section 63.202, Florida
1364 Statutes, is amended to read:

1365 63.202 Authority to license; adoption of rules.—

1366 (1) The Department of Children and Family Services is
1367 authorized and empowered to license child ~~welfare~~ placement
1368 agencies that it determines to be qualified to place minors for
1369 adoption.

1370 Section 24. Paragraph (g) of subsection (1) and
1371 subsections (2) and (8) of section 63.212, Florida Statutes, are
1372 amended to read:

1373 63.212 Prohibited acts; penalties for violation.—

1374 (1) It is unlawful for any person:

Amendment No.

1375 (g) Except an adoption entity, to advertise or offer to
1376 the public, in any way, by any medium whatever that a minor is
1377 available for adoption or that a minor is sought for adoption;
1378 and, further, it is unlawful for any person to publish or
1379 broadcast any such advertisement or assist an unlicensed person
1380 or entity in publishing or broadcasting any such advertisement
1381 without including a Florida license number of the agency or
1382 attorney placing the advertisement.

1383 1. Only a person who is an attorney licensed to practice
1384 law in this state or an adoption entity licensed under the laws
1385 of this state may place a paid advertisement or paid listing of
1386 the person's telephone number, on the person's own behalf, in a
1387 telephone directory that:

1388 a. A child is offered or wanted for adoption; or
1389 b. The person is able to place, locate, or receive a child
1390 for adoption.

1391 2. A person who publishes a telephone directory that is
1392 distributed in this state:

1393 a. Shall include, at the beginning of any classified
1394 heading for adoption and adoption services, a statement that
1395 informs directory users that only attorneys licensed to practice
1396 law in this state and licensed adoption entities may legally
1397 provide adoption services under state law.

1398 b. May publish an advertisement described in subparagraph
1399 1. in the telephone directory only if the advertisement contains
1400 the following:

1401 (I) For an attorney licensed to practice law in this
1402 state, the person's Florida Bar number.

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

1403 (II) For a child placing agency licensed under the laws of
1404 this state, the number on the person's adoption entity license.

1405 (2) Any person who is a birth mother, or a woman who holds
1406 herself out to be a birth mother, who is interested in making an
1407 adoption plan and who knowingly or intentionally benefits from
1408 the payment of adoption-related expenses in connection with that
1409 adoption plan commits adoption deception if:

1410 (a) The person knows or should have known that the person
1411 is not pregnant at the time the sums were requested or received;

1412 (b) The person accepts living expenses assistance from a
1413 prospective adoptive parent or adoption entity without
1414 disclosing that she is receiving living expenses assistance from
1415 another prospective adoptive parent or adoption entity at the
1416 same time in an effort to adopt the same child; or

1417 (c) The person knowingly makes false representations to
1418 induce the payment of living expenses and does not intend to
1419 make an adoptive placement. It is unlawful for:

1420 ~~(a) Any person or adoption entity under this chapter to:~~

1421 ~~1. Knowingly provide false information; or~~

1422 ~~2. Knowingly withhold material information.~~

1423 ~~(b) A parent, with the intent to defraud, to accept~~
1424 ~~benefits related to the same pregnancy from more than one~~
1425 ~~adoption entity without disclosing that fact to each entity.~~

1426

1427 Any person who willfully commits adoption deception violates any
1428 provision of this subsection commits a misdemeanor of the second
1429 degree, punishable as provided in s. 775.082 or s. 775.083, if
1430 the sums received by the birth mother or woman holding herself

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

1431 out to be a birth mother do not exceed \$300, and a felony of the
1432 third degree, punishable as provided in s. 775.082, s. 775.083,
1433 or s. 775.084, if the sums received by the birth mother or woman
1434 holding herself out to be a birth mother exceed \$300. In
1435 addition, the person is liable for damages caused by such acts
1436 or omissions, including reasonable attorney ~~attorney's~~ fees and
1437 costs incurred by the adoption entity or the prospective
1438 adoptive parent. Damages may be awarded through restitution in
1439 any related criminal prosecution or by filing a separate civil
1440 action.

1441 (8) Unless otherwise indicated, a person who willfully and
1442 with criminal intent violates any provision of this section,
1443 excluding paragraph (1)(g), commits a felony of the third
1444 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1445 775.084. A person who willfully and with criminal intent
1446 violates paragraph (1)(g) commits a misdemeanor of the second
1447 degree, punishable as provided in s. 775.083; and each day of
1448 continuing violation shall be considered a separate offense. In
1449 addition, any person who knowingly publishes or assists with the
1450 publication of any advertisement or other publication which
1451 violates the requirements of paragraph (1)(g) commits a
1452 misdemeanor of the second degree, punishable as provided in s.
1453 775.083, and may be required to pay a fine of up to \$150 per day
1454 for each day of continuing violation.

1455 Section 25. Paragraph (b) of subsection (1), paragraphs
1456 (a) and (e) of subsection (2), and paragraphs (b), (h), and (i)
1457 of subsection (6) of section 63.213, Florida Statutes, are
1458 amended to read:

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Page 53 of 62

Amendment No.

1459 63.213 Preplanned adoption agreement.-

1460 (1) Individuals may enter into a preplanned adoption
1461 arrangement as specified in this section, but such arrangement
1462 may not in any way:

1463 (b) Constitute consent of a mother to place her biological
1464 child for adoption until 48 hours after the ~~following~~ birth of
1465 the child and unless the court making the custody determination
1466 or approving the adoption determines that the mother was aware
1467 of her right to rescind within the 48-hour period after the
1468 ~~following~~ birth of the child but chose not to rescind such
1469 consent. The volunteer mother's right to rescind her consent in
1470 a preplanned adoption applies only when the child is genetically
1471 related to her.

1472 (2) A preplanned adoption agreement must include, but need
1473 not be limited to, the following terms:

1474 (a) That the volunteer mother agrees to become pregnant by
1475 the fertility technique specified in the agreement, to bear the
1476 child, and to terminate any parental rights and responsibilities
1477 to the child she might have through a written consent executed
1478 at the same time as the preplanned adoption agreement, subject
1479 to a right of rescission by the volunteer mother any time within
1480 48 hours after the birth of the child, if the volunteer mother
1481 is genetically related to the child.

1482 (e) That the intended father and intended mother
1483 acknowledge that they may not receive custody or the parental
1484 rights under the agreement if the volunteer mother terminates
1485 the agreement or if the volunteer mother rescinds her consent to
1486 place her child for adoption within 48 hours after the birth of

Amendment No.

1487 the child, if the volunteer mother is genetically related to the
1488 child.

1489 (6) As used in this section, the term:

1490 (b) "Child" means the child or children conceived by means
1491 of a fertility technique ~~an insemination~~ that is part of a
1492 preplanned adoption arrangement.

1493 (h) "Preplanned adoption arrangement" means the
1494 arrangement through which the parties enter into an agreement
1495 for the volunteer mother to bear the child, for payment by the
1496 intended father and intended mother of the expenses allowed by
1497 this section, for the intended father and intended mother to
1498 assert full parental rights and responsibilities to the child if
1499 consent to adoption is not rescinded after birth by a the
1500 volunteer mother who is genetically related to the child, and
1501 for the volunteer mother to terminate, subject to any ~~a~~ right of
1502 rescission, all her parental rights and responsibilities to the
1503 child in favor of the intended father and intended mother.

1504 (i) "Volunteer mother" means a female at least 18 years of
1505 age who voluntarily agrees, subject to a right of rescission if
1506 it is her biological child, that if she should become pregnant
1507 pursuant to a preplanned adoption arrangement, she will
1508 terminate her parental rights and responsibilities to the child
1509 in favor of the intended father and intended mother.

1510 Section 26. Section 63.222, Florida Statutes, is amended
1511 to read:

1512 63.222 Effect on prior adoption proceedings.—Any adoption
1513 made before July 1, 2012, ~~is the effective date of this act~~
1514 ~~shall be~~ valid, and any proceedings pending on that the

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Amendment No.

1515 ~~effective~~ date and any subsequent amendments thereto ~~of this act~~
1516 are not affected thereby unless the amendment is designated as a
1517 remedial provision.

1518 Section 27. Section 63.2325, Florida Statutes, is amended
1519 to read:

1520 63.2325 Conditions for invalidation ~~revocation~~ of a
1521 consent to adoption or affidavit of nonpaternity.—
1522 Notwithstanding the requirements of this chapter, a failure to
1523 meet any of those requirements does not constitute grounds for
1524 invalidation ~~revocation~~ of a consent to adoption or revocation
1525 ~~withdrawal~~ of an affidavit of nonpaternity unless the extent and
1526 circumstances of such a failure result in a material failure of
1527 fundamental fairness in the administration of due process, or
1528 the failure constitutes or contributes to fraud or duress in
1529 obtaining a consent to adoption or affidavit of nonpaternity.

1530 Section 28. This act shall take effect July 1, 2012

1531

1532

1533

T I T L E A M E N D M E N T

1534

1535 Remove the entire title and insert:

1536

A bill to be entitled

1537

An act relating to adoption; amending s. 39.802, F.S.; requiring
1538 the Department of Children and Families to inform the parents of
1539 a child of the availability of private placement of the child
1540 with an adoption entity in certain circumstances; amending s.
1541 63.022, F.S.; revising legislative intent to delete reference to
1542 reporting requirements for placements of minors and exceptions;

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

1543 amending s. 63.032, F.S.; revising definitions; amending s.
1544 63.037, F.S.; exempting adoption proceedings initiated under
1545 chapter 39, F.S., from a requirement for a search of the Florida
1546 Putative Father Registry; amending s. 63.039, F.S.; providing
1547 that all adoptions of minor children require the use of an
1548 adoption entity that will assume the responsibilities provided
1549 in specified provisions; providing an exception; amending s.
1550 63.0423, F.S.; revising terminology relating to surrendered
1551 infants; providing that an infant who tests positive for illegal
1552 drugs, narcotic prescription drugs, alcohol, or other
1553 substances, but shows no other signs of child abuse or neglect,
1554 shall be placed in the custody of an adoption entity; providing
1555 that a specified reporting requirement is not superseded;
1556 providing that when the Department of Children and Family
1557 Services is contacted regarding a surrendered infant who does
1558 not appear to have been the victim of actual or suspected child
1559 abuse or neglect, it shall provide instruction to contact an
1560 adoption entity and may not take custody of the infant;
1561 providing an exception; revising provisions relating to
1562 scientific testing to determine the paternity or maternity of a
1563 minor; amending s. 63.0427, F.S.; prohibiting a court from
1564 increasing contact between an adopted child and siblings, birth
1565 parents, or other relatives without the consent of the adoptive
1566 parent or parents; amending s. 63.052, F.S.; deleting a
1567 requirement that a minor be permanently committed to an adoption
1568 entity in order for the entity to be guardian of the person of
1569 the minor; limiting the circumstances in which an intermediary
1570 may remove a child; providing that an intermediary does not

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

1571 become responsible for a minor child's medical bills that were
1572 incurred before taking physical custody of the child; providing
1573 additional placement options for a minor surrendered to an
1574 adoption entity for subsequent adoption when a suitable
1575 prospective adoptive home is not available; amending s. 63.053,
1576 F.S.; requiring that an unmarried biological father strictly
1577 comply with specified provisions in order to protect his
1578 interests; amending s. 63.054, F.S.; authorizing submission of
1579 an alternative document to the Office of Vital Statistics by the
1580 petitioner in each proceeding for termination of parental
1581 rights; providing that by filing a claim of paternity form the
1582 registrant expressly consents to paying for DNA testing;
1583 requiring that an alternative address designated by a registrant
1584 be a physical address; providing that the filing of a claim of
1585 paternity with the Florida Putative Father Registry does not
1586 relieve a person from compliance with specified requirements;
1587 amending s. 63.062, F.S.; revising requirements for when a
1588 minor's father must be served prior to termination of parental
1589 rights; requiring that an unmarried biological father comply
1590 with specified requirements in order for his consent to be
1591 required for adoption; revising such requirements; providing
1592 that the mere fact that a father expresses a desire to fulfill
1593 his responsibilities towards his child which is unsupported by
1594 acts evidencing this intent does not meet the requirements;
1595 providing for the sufficiency of an affidavit of nonpaternity;
1596 providing an exception to a condition to a petition to adopt an
1597 adult; amending s. 63.063, F.S.; conforming terminology;
1598 amending s. 63.082, F.S.; revising language concerning

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

Page 58 of 62

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

1599 applicability of notice and consent provisions in cases in which
1600 the child is conceived as a result of a violation of criminal
1601 law; requiring notice to be provided to the father of child
1602 alleged to be conceived as a result of a violation of criminal
1603 law if charges are not filed; providing that a criminal
1604 conviction is not required for the court to find that the child
1605 was conceived as a result of a violation of criminal law;
1606 requiring an affidavit of diligent search to be filed whenever a
1607 person who is required to consent is unavailable because the
1608 person cannot be located; providing that in an adoption of a
1609 stepchild or a relative, a certified copy of the death
1610 certificate of the person whose consent is required may be
1611 attached to the petition for adoption if a separate petition for
1612 termination of parental rights is not being filed; authorizing
1613 the execution of an affidavit of nonpaternity before the birth
1614 of a minor in preplanned adoptions; revising language of a
1615 consent to adoption; providing that a home study provided by the
1616 adoption entity shall be deemed to be sufficient except in
1617 certain circumstances; providing for a hearing if an adoption
1618 entity moves to intervene in a dependency case; requiring the
1619 court to provided information to prospective adoptive parents
1620 regarding parent training classes in the community upon
1621 determining the child dependent; requiring acknowledgement of
1622 receipt of information to be filed with the court by the
1623 department; requiring the adoption entity to provide updates to
1624 the court every 90 days from the date of placement to the date
1625 of adoption finalization; requiring the court and the department
1626 to advise a biological parent of the right to participate in

536635 - h1163-strike.docx

Published On: 2/20/2012 8:43:53 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

1627 private adoption in all dependency cases at the time the
1628 petition to terminate parental rights is filed; revising
1629 language concerning seeking to revoke consent to an adoption of
1630 a child older than 6 months of age; providing that if the
1631 consent of one parent is set aside or revoked, any other
1632 consents executed by the other parent or a third party whose
1633 consent is required for the adoption of the child may not be
1634 used by the parent who consent was revoked or set aside to
1635 terminate or diminish the rights of the other parent or third
1636 party; amending s. 63.085, F.S.; revising language of an
1637 adoption disclosure statement; requiring that a copy of a waiver
1638 by prospective adoptive parents of receipt of certain records
1639 must be filed with the court; amending s. 63.087, F.S.;
1640 specifying that a failure to personally appear at a proceeding
1641 to terminate parental rights constitutes grounds for
1642 termination; amending s. 63.088, F.S.; providing that in a
1643 termination of parental rights proceeding if a required inquiry
1644 that identifies a father who has been adjudicated by a court as
1645 the father of the minor child before the date a petition for
1646 termination of parental rights is filed the inquiry must
1647 terminate at that point; amending s. 63.089, F.S.; specifying
1648 that it is a failure to personally appear that provides grounds
1649 for termination of parental rights in certain circumstances;
1650 providing additional grounds upon which a finding of abandonment
1651 may be made; revising provisions relating to dismissal of
1652 petitions to terminate parental rights; providing that contact
1653 between a parent seeking relief from a judgment terminating
1654 parental rights and a child may be awarded only in certain

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

1655 circumstances; providing for placement of a child in the event
1656 that a court grants relief from a judgment terminating parental
1657 rights and no new pleading is filed to terminate parental
1658 rights; amending s. 63.092, F.S.; requiring that a signed copy
1659 of the home study must be provided to the intended adoptive
1660 parents who were the subject of the study; amending s. 63.097,
1661 F.S.; providing guidelines for a court considering a reasonable
1662 attorney fee associated with adoption services; amending s.
1663 63.152, F.S.; authorizing an adoption entity to transmit a
1664 certified statement of the entry of a judgment of adoption to
1665 the state registrar of vital statistics; amending s. 63.162,
1666 F.S.; authorizing a birth parent to petition that court to
1667 appoint an intermediary or a licensed child-placing agency to
1668 contact an adult adoptee and advise both of the availability of
1669 the adoption registry and that the birth parent wishes to
1670 establish contact; amending s. 63.167, F.S.; requiring that the
1671 state adoption center provide contact information for all
1672 adoption entities in a caller's county or, if no adoption
1673 entities are located in the caller's county, the number of the
1674 nearest adoption entity when contacted for a referral to make an
1675 adoption plan; amending s. 63.202, F.S.; changing reference to
1676 child welfare agencies in licensing by department; amending s.
1677 63.212, F.S.; restricting who may place a paid advertisement or
1678 paid listing of the person's telephone number offering certain
1679 adoption services; requiring of publishers of telephone
1680 directories to include certain statements at the beginning of
1681 any classified heading for adoption and adoption services;
1682 providing requirements for such advertisements; providing

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Published On: 2/20/2012 8:43:53 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1163 (2012)

Amendment No.

1683 criminal penalties for violations; prohibiting the offense of
1684 adoption deception by a person who is a birth mother or a woman
1685 who holds herself out to be a birth mother; providing criminal
1686 penalties; providing liability by violators for certain damages;
1687 amending s. 63.213, F.S.; providing that a preplanned adoption
1688 arrangement does not constitute consent of a mother to place her
1689 biological child for adoption until 48 hours following birth;
1690 providing that a volunteer mother's right to rescind her consent
1691 in a preplanned adoption applies only when the child is
1692 genetically related to her; revising the definitions of the
1693 terms "child," "preplanned adoption arrangement," and "volunteer
1694 mother"; amending s. 63.222, F.S.; providing that provisions
1695 designated as remedial may apply to any proceedings pending on
1696 the effective date of the provisions; amending s. 63.2325, F.S.;
1697 revising terminology relating to revocation of consent to
1698 adoption; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1401 Public Assistance

SPONSOR(S): Health Care Appropriations Subcommittee; Health & Human Services Access Subcommittee; Plakon

TIED BILLS: IDEN./SIM. **BILLS:** SB 1658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	8 Y, 6 N, As CS	Batchelor	Schoolfield
2) Health Care Appropriations Subcommittee	9 Y, 5 N, As CS	Fontaine	Pridgeon
3) Health & Human Services Committee		Batchelor	Gormley

SUMMARY ANALYSIS

The bill amends ss. 402.82 and 414.095, F.S., relating to the Supplemental Nutrition Assistance Program and the Temporary Cash Assistance Program. The bill:

- Prohibits a recipient from using his or her electronic benefit transfer (EBT) card to access cash benefits outside this state, to purchase alcohol or tobacco products, to access automated teller machines (ATM) located in specific gambling and adult entertainment establishments, or to use the card for purchases in these establishments; and,
- Provides a list of establishments inside the state that a cash assistance recipient may not access cash benefits through an EBT card from an ATM.

The bill has an approximate fiscal impact of \$35,000 associated with the restriction of EBT cards at all ATMs located outside of Florida and at ATMs in certain establishments in Florida. This impact can be absorbed within existing departmental resources.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

History of the Food Stamp Program

The food stamp program began in 1939, providing a discount for surplus food to people on relief. From 1939-1943, those who qualified were able to purchase stamps redeemable for the purchase of food, and were given additional stamps redeemable only towards purchasing surplus food.¹ In 1961, the Pilot Food Stamp Program was created by President Kennedy. The pilot program used the original food stamp program, but did not limit the use of additional stamps toward surplus food; those stamps could be used for perishables as well.²

The Food Stamp Act of 1964 made the program permanent and expanded the use of food stamps to “all items eligible for consumption, with the exception of alcohol and imported foods.”³ Since then a number of changes and reforms to the program have taken place including changing the name of the program to the Supplemental Nutrition Assistance Program (SNAP), changing eligibility determinations and the introduction of the use of an Electronic Benefits Transaction card (EBT).⁴

Supplemental Nutrition Assistance Program-SNAP (Federal Program)

SNAP is a federal program that is administered by the individual states. SNAP aims to “provide children and low income people access to food, a healthy diet, and nutrition education.”⁵

The Food and Nutrition Act of 2008 defines “eligible food” as “any food or food product intended for human consumption except alcoholic beverages, tobacco, hot foods and hot food products prepared for immediate consumption.”⁶ Eligible food also includes seeds and plants to grow foods for personal consumption, as well as some additional exceptions to allow for hot food products ready for consumption in certain circumstances.⁷

Florida Food Assistance Program (SNAP)

The Florida Department of Children and Families (DCF) administers the state’s food assistance program.⁸ The Food Assistance Program is a 100 percent federally-funded program. The United States Department of Agriculture (USDA) determines the amount of food assistance benefits an individual or family receives, based on the families’ income and resources.⁹ Food assistance benefits are a supplement to a family’s food budget. Households may need to spend some of their own cash, along with their food assistance benefits, to buy enough food for a month.¹⁰ State law provides that DCF shall establish procedures in compliance with federal law for notifying the appropriate federal and state agencies of any violation of law regarding the food assistance program and the department must also notify the Department of Financial Services.¹¹

¹ A Short History of SNAP, USDA Food and Nutrition Service, available at: <http://www.fns.usda.gov/snap/rules/Legislation/about.htm>. (last visited 1/27/12).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Nutrition Assistance Programs, USDA Food and Nutrition Service, available at: <http://www.fns.usda.gov/fns/>. (last visited 1/27/12).

⁶ 7 C.F.R. s. 271.2.

⁷ P.L. 110-246, provides that certain individuals because of age, disability or living arrangement may purchase hot foods with their SNAP EBT card.

⁸ s. 414.31, F.S.

⁹ *Id.*

¹⁰ DCF Food Assistance Program Fact Sheet, www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf. (last visited 1/27/12).

¹¹ s. 414.33, F.S.

Currently, the state does not have any restrictions on the types of foods that can be purchased under the food assistance program¹², as the USDA does not allow for such restrictions.¹³ DCF reports that approximately 3,311,095 people are currently receiving food stamps at approximately \$450 million dollars annually.¹⁴

Temporary Assistance for Needy Families (TANF)

Under the welfare reform legislation of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PWRORA), Public Law 104-193, the Temporary Assistance for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children (AFDC), the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program. The law ended federal entitlement to assistance and instead created TANF as a block grant that provides States, territories and tribes federal funds each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized in February 2006 under the Deficit Reduction Act of 2005.¹⁵ States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. DCF administers the TANF program in conjunction with the Agency for Workforce Innovation.

Temporary Cash Assistance Program (Cash Assistance)

DCF administers the cash assistance program with TANF funds to help families become self-supporting while allowing children to remain in their own homes.¹⁶ Current law provides that families are eligible for temporary cash assistance for a lifetime cumulative total of 48 months (4 years).¹⁷ DCF reports that approximately 92,979 people are currently receiving temporary cash assistance.¹⁸ The FY 2011-2012 appropriation of TANF funds to support temporary cash assistance was \$177,522,123.

Use of the Electronic Benefits Card

Both temporary cash assistance and food assistance monies are placed on an Electronic Benefits Transaction (EBT) card. Once an individual applies for cash assistance or food assistance with DCF, they will receive an EBT card in the mail¹⁹, the card functions much like a credit card or debit card. Food assistance money can be used at any retail store that accepts the EBT SNAP card. Cash assistance money can be used to purchase a variety of items and may also be used at automatic teller machines (ATM's). Currently, there are no prohibitions on the use of the EBT card for out of state purchases. DCF estimates that on average approximately 200 cash assistance recipients use an EBT card out of state for more than 90 days, at approximately \$49,000 a month.²⁰ Current DCF rule²¹ provides that cash assistance benefits can continue for one month after an individual has left the state, if the recipient requests the extension.²² Additionally, DCF permits households who are temporarily absent from the state to access cash assistance for two months if they plan to return to the state.²³

¹² DCF Bill Analysis, HB 1401(2012). (on file with committee staff)

¹³ 7 C.F.R. s. 271.2.

¹⁴ DCF Standard Data Reports. <http://www.dcf.state.fl.us/programs/access/StandardDataReports.asp>. (last visited 1/27/12).

¹⁵ US Dept. of Health and Human Services, Administration on Children and Families

<http://www.acf.hhs.gov/programs/ofa/tanf/about.html> (last visited on 12/21/11).

¹⁶ DCF Food Assistance Program Fact Sheet, www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf .(last visited 1/4/12).

¹⁷ Section 414.105, F.S.

¹⁸ DCF Standard Data Reports. <http://www.dcf.state.fl.us/programs/access/StandardDataReports.asp>. (last visited 12/22/11).

¹⁹ Department of Children and Families Access Program. <http://www.dcf.state.fl.us/programs/access/foodassistance.shtml>. (last visited 1/27/12).

²⁰ DCF Bill Analysis, HB 1401(January 11, 2012). (on file with committee staff).

²¹ 65A-4.220(6). F.A.C.

²² *Id.*

²³ *Id.*

Effect of Proposed Changes

EBT Card Use Out of State

This bill provides that the EBT system shall prevent a recipient from using an EBT card to access cash benefits outside this state. DCF reports that this restriction can be accomplished through the card vendor JP Morgan, Inc²⁴. However, there would be no prohibition for recipients to access cash from the EBT card while in the state and then travel out of state. This limitation may also negatively impact families that live near the Alabama or Georgia border who frequent out of state vendors.

Certain situations may necessitate that beneficiaries leave the state, such as domestic violence relocations. While this bill prohibits the access of cash benefits from ATMs located out-of-state, nothing precludes beneficiaries from withdrawing funds before leaving Florida or establishing direct deposit to their financial institution.²⁵ The cash benefits can then be accessed from out-of-state ATMs as needed since the beneficiary's personal debit card is being used rather than the restricted EBT card.

Restrictions on Use of EBT Card Cash Assistance

Currently, the EBT card has both cash assistance and food assistance money on the same card. Neither federal law nor state law prohibits items that can be purchased with cash assistance.

The bill requires DCF to restrict the use of the EBT card, cash assistance portion, for the purchase of alcohol or tobacco products. DCF reports that the cash assistance portion of the card currently does not have the processing infrastructure to identify items being purchased which contain alcohol or tobacco products. DCF indicates they will need to implement contracts with various establishments that sell alcohol or tobacco products to prevent purchases from taking place.²⁶ The number of establishments that DCF would need to contract with is unknown and would include a range of establishments, including but not limited to, grocery stores and convenience stores. In addition, a recipient of cash assistance could still access an ATM and withdraw money from the card to purchase alcohol or tobacco products.

Restrictions on Use of ATMs or EBT Cards in Certain Establishments

The bill specifies that a recipient may not use an ATM in this state, if the ATM is located in certain establishments or facilities. In addition, the bill prohibits the use of an EBT card to purchase any service or good from certain establishments or facilities. The establishments or facilities include:

- An adult entertainment establishment;
- A pari-mutuel facility;
- A gaming facility under a tribal-state compact;
- A commercial bingo facility;
- Certain retail establishments licensed under the Beverage Law and bottle clubs;
- A gambling establishment – including internet cafés, corner store casinos, internet gambling café, etc.; or,
- A card room.

Many retail establishments sell restricted alcoholic and tobacco products alongside allowable food products. This bill specifies the establishments where cash benefits may not be accessed using an ATM by distinguishing retailers that are visited primarily to purchase restricted alcoholic products. This distinction will allow cash beneficiaries to continue using ATMs in places where permissible food items are available for purchase (e.g., supermarkets).

²⁴ Telephone interview with Ann Berner, Director, DCF ACCESS program, January 28, 2012

²⁵ Based on e-mail communication with Amanda Prater, Legislative Affairs Director, DCF. On file with committee staff and dated 02/13/2012.

²⁶ Telephone interview with Ann Berner, Director, DCF ACCESS program, January 28, 2012

DCF would need to work with Third Party Processors and Networks in order to prohibit the use of ATMs and terminals in gambling and adult entertainment establishments from processing EBT transactions.²⁷

General:

The bill clarifies in statute that cash assistance may be placed on an EBT card. DCF currently is placing cash assistance on EBT cards, in compliance with federal program changes.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.82, F.S., relating to Electronic benefit transfer program;

Section 2: Amends s. 414.095, F.S., relating to Determining eligibility for temporary cash assistance;

Section 3: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill restricts all use of EBT cards to access cash benefits via ATMs outside of Florida and ATMs in certain establishments located within Florida. DCF estimates the programmatic changes required of the EBT vendor to cost \$35,000. This expenditure can be absorbed within existing departmental resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to impact local government revenue.

2. Expenditures:

This bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to impact the private sector.

D. FISCAL COMMENTS:

This bill restricts all use of EBT cards at ATMs located outside of Florida and to ATMs in certain establishments located in Florida. DCF estimates the programmatic changes required of the EBT vendor to cost \$35,000. This expenditure can be absorbed within existing departmental resources.

²⁷ DCF Bill Analysis, HB 1401(January 11,2012). (on file with committee staff).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2012, the Health and Human Services Access Subcommittee adopted an amendment to House Bill 1401, which was reported favorably as a Committee Substitute. The amendment does the following:

- Removes the word “unhealthy” from the list of foods that may not be purchased with the Supplemental Nutrition Assistance Program;
- Removes the phrase “but not limited to” from the list of foods that may not be purchased with the Supplemental Nutrition Assistance Program;
- Replaces the word “Jello” with the phrase “gelatin dessert”.

On February 13, 2012, the Healthcare Appropriations Subcommittee adopted two amendments to Committee Substitute for House Bill 1401, which was reported favorably as a committee substitute for a committee substitute. This analysis is based on the two adopted amendments, which accomplish the following:

- Remove provisions in the original bill that prohibit certain foods for purchase with federal Supplemental Nutrition Assistance Program funds; prohibit the use of program benefits at restaurants; direct DCF to promote certain eating habits using culturally sensitive campaigns; seek federal approval to implement these state restrictions upon the federally-funded program; and,
- Further specify the type of establishment licensed under the Beverage Law where a cash recipient may not access benefits via an ATM using an electronic benefit transfer (EBT) card.

1 A bill to be entitled
 2 An act relating to public assistance; amending s.
 3 402.82, F.S.; restricting the use of an electronic
 4 benefit transfer card to prohibit accessing cash from
 5 outside the state; amending s. 414.095, F.S.; revising
 6 the method of payment of temporary cash assistance to
 7 include an electronic benefit transfer card;
 8 prohibiting a cash assistance recipient from using an
 9 electronic benefit transfer card for certain purposes
 10 or in certain locations, including accessing cash
 11 benefits through an electronic benefit transfer card
 12 from an automatic teller machine located in such
 13 locations; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 402.82, Florida Statutes, is amended to
 18 read:

19 402.82 Electronic benefit transfer program; federal
 20 Supplemental Nutrition Assistance Program.—

21 (1) The Department of Children and Family Services shall
 22 establish an electronic benefit transfer program for the
 23 dissemination of food assistance benefits and temporary cash
 24 assistance payments, including refugee cash assistance payments,
 25 asylum applicant payments, and child support disregard payments.
 26 Except to the extent prohibited by federal law, the electronic
 27 benefit transfer system designed and implemented pursuant to
 28 this chapter shall prevent a recipient from using the electronic

CS/CS/HB 1401

2012

29 benefit transfer card to access cash benefits outside this
 30 state, to purchase alcohol or tobacco products, or to use in,
 31 including accessing automatic teller machines located in,
 32 gambling establishments and adult entertainment establishments.
 33 This section does not prohibit the use of an electronic benefit
 34 transfer card to access federal Supplemental Nutrition
 35 Assistance Program (SNAP) benefits in any manner authorized by
 36 federal law.

37 (2) If the Federal Government does not enact legislation
 38 or regulations providing for dissemination of supplemental
 39 security income by electronic benefit transfer, the state may
 40 include supplemental security income in the electronic benefit
 41 transfer program.

42 (3)~~(2)~~ The department shall, in accordance with applicable
 43 federal laws and regulations, develop minimum program
 44 requirements and other policy initiatives for the electronic
 45 benefit transfer program.

46 (4)~~(3)~~ The department shall enter into public-private
 47 contracts for all provisions of electronic transfer of public
 48 assistance benefits.

49 Section 2. Paragraph (a) of subsection (13) of section
 50 414.095, Florida Statutes, is amended to read:

51 414.095 Determining eligibility for temporary cash
 52 assistance.—

53 (13) METHODS OF PAYMENT OF TEMPORARY CASH ASSISTANCE.—

54 Temporary cash assistance may be paid as follows:

55 (a) Direct payment through state warrant, electronic
 56 transfer of temporary cash assistance, electronic benefit

57 transfer card, or voucher. A cash assistance recipient may not:

58 1. Access cash benefits through an electronic benefit
 59 transfer card from an automated teller machine in this state
 60 located in:

61 a. An adult entertainment establishment as defined in s.
 62 847.001.

63 b. A pari-mutuel facility as defined in s. 550.002.

64 c. A gaming facility authorized under a tribal-state
 65 gaming compact under part II of chapter 285.

66 d. A commercial bingo facility that operates outside the
 67 provisions of s. 849.0931.

68 e. Any establishment licensed under the Beverage Law to
 69 sell distilled spirits containing 6 percent or more alcohol by
 70 volume as a vendor and restricted in the types of products that
 71 can be sold under ss. 565.04 and 565.045, or a bottle club.

72 f. A gambling establishment, including businesses referred
 73 to as casino-style Internet cafes, convenience casinos, corner
 74 store casinos, gambling halls, game parlors, Internet gambling
 75 café, Internet sweepstakes cafes, Internet sweepstakes parlors,
 76 Internet sweepstakes rooms, low-end casinos, neighborhood
 77 casinos, neighborhood gambling halls, pop-up casinos, simulated
 78 gambling centers, simulated slots centers, storefront casinos,
 79 strip mall casinos, sweepstakes casinos, sweepstakes parlors,
 80 virtual slot machine cafes, or any such business ceteris
 81 paribus.

82 g. A cardroom as defined in s. 849.086.

83 2. Use a benefit transfer card to purchase any good or
 84 service in any entity listed in subparagraph 1.

CS/CS/HB 1401

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85

Section 3. This act shall take effect July 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1401 (2012)

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Health & Human Services
2 Committee
3 Representative Pafford offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 29-30 and insert:
7 benefit transfer card to purchase alcohol or tobacco products or
8 to use in,
9

10
11 -----
12 **T I T L E A M E N D M E N T**

13 Remove lines 4-5 and insert:
14 benefit transfer card to prohibit the purchase of certain
15 products and its use in certain places; amending s. 414.095,
16 F.S.; revising
17

PCB HHSC 12-04

Section by Section Summary

Section 1

Amends s.394.4574 to apply to all mental health residents of ALFs, regardless of whether the ALF holds a limited mental health license. This ensures that each mental health resident of an ALF will have a community living support plan, a case manager and oversight by a mental health provider or Medicaid prepaid plan. (The requirement for a limited mental health license in s.429.075, when a facility has 3 or more mental health residents is unchanged.)

Provides authority to AHCA and DCF to impose contract penalties for mental health service providers and Medicaid prepaid plans who fail to comply with relevant provisions of s. 394.4574.

Directs DCF to have an agreement with AHCA to clarify responsibilities for enforcing provisions of s. 394.4574.

Section 2

Amends 395.1055 to require hospitals to follow specific infection control procedures.

Section 3

Clarifies that residents or their representative will receive information regarding the Long Term Care Ombudsman program and that complaints and complainants remain confidential.

Section 4

Amends s. 408.05 to revise the purposes of the Comprehensive Health Information System and direct the agency to assist quality improvement collaborative by releasing information to providers, payors and others representing providers and payors.

Section 5

Adds the Assisted Living Facility Administrator license to the list of licenses which must comply with the general provisions of health care licensing in chapter 408.

Section 6

Adds to the list of mandatory reporters of adult abuse in s.415.1034, the employees or agents of state or local agencies who have regulatory responsibility over state licensed facilities.

PCB HHSC 12-04

Section by Section Summary

Section 7

Authorizes the agency to develop and implement a performance-based payment system for hospitals, skilled nursing facilities, and prepaid health plans. Specifies the outcome measures and quality improvement activities that determine which providers qualify for positive payment adjustments. Permits rate increases up to 1 percent of the provider's rate based on their ranking for specific outcome measures and permits rate increases up to 0.25 percent of the provider's rate based on engagement in specific quality improvement activities.

Section 8

Adds the requirement that an ALF must have a licensed Assisted Living Facility Administrator effective July 1, 2013.

Section 9

Amends requirements for the Limited Mental Health facility license to provide specific reasons that would preclude a facility from obtaining a limited mental health license.

Provides that the training for administrators and staff of Limited Mental Health Facilities must be approved by DCF and that the trainer may charge a reasonable fee.

Section 10

Creates a section titled Mental Health Residents, to require ALFs with one or more mental health residents to have copies of community living support plans and to assist the resident in implementing the plans. The ALF must also have a cooperative agreement with the resident's mental health provider or Medicaid prepaid plan and maintain copies of required documents for inspection. (The requirement for a limited mental health license in s.429.075 when a facility has 3 or more mental health residents is unchanged)

Section 11

Amends provisions related to administrative fines to:

- require fines for class 1 violations and allow fines for class 2 violations notwithstanding the correction of the violations;
- Mandate a \$10,000 penalty for violations which result in resident death;
- Allow fines to be double in certain circumstances;
- Provide authority to levy fines for each violation under certain circumstances.

PCB HHSC 12-04

Section by Section Summary

Section 12

Establishes an advisory council and membership to review deaths and elopements in ALFs. The purpose of the council is to identify deficiencies, best practices and make recommendations to prevent unexpected deaths and elopements.

Section 13

Requires unannounced inspections in ALFs every 2 years or every 5 years for accredited facilities.

Provides for surveys of ALFs every 6 months under certain circumstances and grants authority to AHCA to assess fees for the additional surveys.

Section 14

Creates a requirement that ALF administrators must be licensed by AHCA and provides minimum qualifications for administrators, licensure fees and continuing education requirements. Also provides a “grandfathering” clause for existing administrators. This section also provides AHCA authority and circumstances in which a license may be denied or revoked.

Section 15

Increases the training requirements for ALF administrators. The Department of Elder Affairs (DOEA) is required to approve a core training curriculum which includes specific training topics. Supplemental course topics are also required for extended congregate care, limited mental health and business operations. A competency test is required for the administrator training.

DOEA is directed to approve continuing education curricula for ALF administrators that include specific topics.

Provides that training for ALF staff and administrators shall be through Florida College system institutions, private college and universities, and statewide associations that represents or provides technical assistance to ALFs.

Section 16

Provides that subject to the availability of funds that AHCA, DCF, DOEA, and APD will work together to develop or modify their IT systems and other procedures to support effective communication among the agencies.

PCB HHSC 12-04

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A bill to be entitled

An act relating to ; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 394.4574, Florida Statutes, is amended to read:

394.4574 Department responsibilities for a mental health resident who resides in an assisted living facility ~~that holds a limited mental health license.~~

(1) The term "mental health resident," for purposes of this section, means an individual who receives social security disability income due to a mental disorder as determined by the Social Security Administration or receives supplemental security income due to a mental disorder as determined by the Social Security Administration and receives optional state supplementation.

(2) The department must ensure that:

(a) A mental health resident has been assessed by a psychiatrist, clinical psychologist, clinical social worker, or psychiatric nurse, or an individual who is supervised by one of these professionals, and determined to be appropriate to reside in an assisted living facility. The documentation must be provided to the administrator of the facility within 30 days after the mental health resident has been admitted to the facility. An evaluation completed upon discharge from a state mental hospital meets the requirements of this subsection related to appropriateness for placement as a mental health

PCB HHSC 12-04

ORIGINAL

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29 resident if it was completed within 90 days prior to admission
 30 to the facility.

31 (b) A cooperative agreement, as required in s. 429.0751 ~~s.~~
 32 ~~429.075~~, is developed between the mental health care services
 33 provider that serves a mental health resident and the
 34 ~~administrator of the assisted living facility with a limited~~
 35 ~~mental health license~~ in which the mental health resident is
 36 living. Any entity that provides Medicaid prepaid health plans
 37 ~~services shall ensure the appropriate coordination of health~~
 38 ~~care services with an assisted living facility in cases where a~~
 39 ~~Medicaid recipient is both a member of the entity's prepaid~~
 40 ~~health plan and a resident of the assisted living facility. If~~
 41 ~~the entity is at risk for Medicaid targeted case management and~~
 42 ~~behavioral health services, the entity shall inform the assisted~~
 43 ~~living facility of the procedures to follow should an emergent~~
 44 ~~condition arise.~~

45 (c) The community living support plan, as defined in s.
 46 429.02, has been prepared by a mental health resident and a
 47 mental health case manager of that resident in consultation with
 48 the administrator of the facility or the administrator's
 49 designee. The plan must be provided to the administrator of the
 50 assisted living facility ~~with a limited mental health license~~ in
 51 which the mental health resident lives. The support plan and the
 52 agreement may be in one document.

53 (d) The assisted living facility with a limited mental
 54 health license is provided with documentation that the
 55 individual meets the definition of a mental health resident.

PCB HHSC 12-04

ORIGINAL

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56 (e) The mental health services provider assigns a case
 57 manager to each mental health resident who lives in an assisted
 58 living facility ~~with a limited mental health license~~. The case
 59 manager is responsible for coordinating the development of and
 60 implementation of the community living support plan defined in
 61 s. 429.02. The plan must be updated as needed, but at least
 62 annually, to ensure that the ongoing needs of the resident are
 63 addressed.

64 (3) Medicaid prepaid health plans shall ensure the
 65 appropriate coordination of health care services with an
 66 assisted living facility when a Medicaid recipient is both a
 67 member of the entity's prepaid health plan and a resident of the
 68 assisted living facility. If the Medicaid prepaid plan is
 69 responsible for Medicaid targeted case management and behavioral
 70 health services, the plan shall inform the assisted living
 71 facility of the procedures to follow should an emergent
 72 condition arise.

73 (4) The department shall establish and impose contract
 74 penalties for mental health service providers under contract
 75 with the department that fail to comply with the provisions of
 76 this section. The Agency for Health Care Administration shall
 77 establish and impose contract penalties for Medicaid prepaid
 78 plans that fail to comply with the provisions of this section.

79 (5) The department shall enter into an interagency
 80 agreement with the Agency for Health Care Administration that
 81 delineates responsibilities and procedures for enforcing the
 82 provisions of this section related to the requirements of
 83 facilities and mental health providers.

PCB HHSC 12-04

ORIGINAL

YEAR

84 (6) ~~(3)~~ The Secretary of Children and Family Services, in
 85 consultation with the Agency for Health Care Administration,
 86 shall annually require each district administrator to develop,
 87 with community input, detailed plans that demonstrate how the
 88 district will ensure the provision of state-funded mental health
 89 and substance abuse treatment services to residents of assisted
 90 living facilities that hold a limited mental health license.
 91 These plans must be consistent with the substance abuse and
 92 mental health district plan developed pursuant to s. 394.75 and
 93 must address case management services; access to consumer-
 94 operated drop-in centers; access to services during evenings,
 95 weekends, and holidays; supervision of the clinical needs of the
 96 residents; and access to emergency psychiatric care.

97 Section 2. Paragraph (b) of subsection (1) of section
 98 395.1055, Florida Statutes, is amended to read:

99 395.1055 Rules and enforcement.—

100 (1) The agency shall adopt rules pursuant to ss.
 101 120.536(1) and 120.54 to implement the provisions of this part,
 102 which shall include reasonable and fair minimum standards for
 103 ensuring that:

104 (b) Infection control, housekeeping, sanitary conditions,
 105 and medical record procedures that will adequately protect
 106 patient care and safety are established and implemented. These
 107 procedures shall require housekeeping and sanitation staff to
 108 wear masks and gloves when cleaning patient rooms, to disinfect
 109 environmental surfaces in patient rooms in accordance with the
 110 time instructions on the label of the disinfectant used by the
 111 hospital, and to document compliance with this paragraph. The

PCB HHSC 12-04

ORIGINAL

YEAR

112 agency may impose an administrative fine for each day that a
 113 violation of this paragraph occurs.

114 Section 3. Subsection (2) of section 400.0078, Florida
 115 Statutes, is amended to read:

116 400.0078 Citizen access to State Long-Term Care Ombudsman
 117 Program services.—

118 (2) ~~Every resident or representative of a resident shall~~
 119 ~~receive,~~ Upon admission to a long-term care facility, each
 120 resident or representative of a resident must receive
 121 information regarding the purpose of the State Long-Term Care
 122 Ombudsman Program, the statewide toll-free telephone number for
 123 receiving complaints, the confidentiality of the subject matter
 124 of a complaint and the complainant's name and identity, and
 125 other relevant information regarding how to contact the program.
 126 Residents or their representatives must be furnished additional
 127 copies of this information upon request.

128 Section 4. Subsection (3) of section 408.05, Florida
 129 Statutes, is amended to read:

130 408.05 Florida Center for Health Information and Policy
 131 Analysis.—

132 (3) COMPREHENSIVE HEALTH INFORMATION SYSTEM. ~~In order to~~
 133 The agency shall collect, compile, analyze, and distribute
 134 ~~produce comparable and uniform~~ health information and
 135 statistics. Such information shall be used for developing the
 136 ~~development of~~ policy recommendations, evaluating program and
 137 provider performance, and facilitating the independent and
 138 collaborative quality improvement activities of providers,
 139 payors, and others involved in the delivery of health services.

PCB HHSC 12-04

ORIGINAL

YEAR

140 The agency shall perform the following functions:

141 (a) Coordinate the activities of state agencies involved
 142 in the design and implementation of the comprehensive health
 143 information system.

144 (b) Undertake research, development, and evaluation
 145 respecting the comprehensive health information system.

146 (c) Review the statistical activities of state agencies to
 147 ensure that they are consistent with the comprehensive health
 148 information system.

149 (d) Develop written agreements with local, state, and
 150 federal agencies for the sharing of health-care-related data or
 151 using the facilities and services of such agencies. State
 152 agencies, local health councils, and other agencies under state
 153 contract shall assist the center in obtaining, compiling, and
 154 transferring health-care-related data maintained by state and
 155 local agencies. Written agreements must specify the types,
 156 methods, and periodicity of data exchanges and specify the types
 157 of data that will be transferred to the center.

158 (e) Establish by rule the types of data collected,
 159 compiled, processed, used, or shared. Decisions regarding center
 160 data sets should be made based on consultation with the State
 161 Consumer Health Information and Policy Advisory Council and
 162 other public and private users regarding the types of data which
 163 should be collected and their uses. The center shall establish
 164 standardized means for collecting health information and
 165 statistics under laws and rules administered by the agency.

166 (f) Establish minimum health-care-related data sets which
 167 are necessary on a continuing basis to fulfill the collection

PCB HHSC 12-04

ORIGINAL

YEAR

168 requirements of the center and which shall be used by state
 169 agencies in collecting and compiling health-care-related data.
 170 The agency shall periodically review ongoing health care data
 171 collections of the Department of Health and other state agencies
 172 to determine if the collections are being conducted in
 173 accordance with the established minimum sets of data.

174 (g) Establish advisory standards to ensure the quality of
 175 health statistical and epidemiological data collection,
 176 processing, and analysis by local, state, and private
 177 organizations.

178 (h) Prescribe standards for the publication of health-
 179 care-related data reported pursuant to this section which ensure
 180 the reporting of accurate, valid, reliable, complete, and
 181 comparable data. Such standards should include advisory warnings
 182 to users of the data regarding the status and quality of any
 183 data reported by or available from the center.

184 (i) Prescribe standards for the maintenance and
 185 preservation of the center's data. This should include methods
 186 for archiving data, retrieval of archived data, and data editing
 187 and verification.

188 (j) Ensure that strict quality control measures are
 189 maintained for the dissemination of data through publications,
 190 studies, or user requests.

191 (k) Develop, in conjunction with the State Consumer Health
 192 Information and Policy Advisory Council, and implement a long-
 193 range plan for making available health care quality measures and
 194 financial data that will allow consumers to compare health care
 195 services. The health care quality measures and financial data

PCB HHSC 12-04

ORIGINAL

YEAR

196 the agency must make available shall include, but is not limited
 197 to, pharmaceuticals, physicians, health care facilities, and
 198 health plans and managed care entities. The agency shall update
 199 the plan and report on the status of its implementation
 200 annually. The agency shall also make the plan and status report
 201 available to the public on its Internet website. As part of the
 202 plan, the agency shall identify the process and timeframes for
 203 implementation, any barriers to implementation, and
 204 recommendations of changes in the law that may be enacted by the
 205 Legislature to eliminate the barriers. As preliminary elements
 206 of the plan, the agency shall:

207 1. Make available patient-safety indicators, inpatient
 208 quality indicators, and performance outcome and patient charge
 209 data collected from health care facilities pursuant to s.
 210 408.061(1)(a) and (2). The terms "patient-safety indicators" and
 211 "inpatient quality indicators" shall be as defined by the
 212 Centers for Medicare and Medicaid Services, the National Quality
 213 Forum, the Joint Commission ~~on Accreditation of Healthcare~~
 214 ~~Organizations~~, the Agency for Healthcare Research and Quality,
 215 the Centers for Disease Control and Prevention, or a similar
 216 national entity that establishes standards to measure the
 217 performance of health care providers, or by other states. The
 218 agency shall determine which conditions, procedures, health care
 219 quality measures, and patient charge data to disclose based upon
 220 input from the council. When determining which conditions and
 221 procedures are to be disclosed, the council and the agency shall
 222 consider variation in costs, variation in outcomes, and
 223 magnitude of variations and other relevant information. When

PCB HHSC 12-04

ORIGINAL

YEAR

224 | determining which health care quality measures to disclose, the
 225 | agency:

226 | a. Shall consider such factors as volume of cases; average
 227 | patient charges; average length of stay; complication rates;
 228 | mortality rates; and infection rates, among others, which shall
 229 | be adjusted for case mix and severity, if applicable.

230 | b. May consider such additional measures that are adopted
 231 | by the Centers for Medicare and Medicaid Studies, National
 232 | Quality Forum, the Joint Commission ~~on Accreditation of~~
 233 | ~~Healthcare Organizations~~, the Agency for Healthcare Research and
 234 | Quality, Centers for Disease Control and Prevention, or a
 235 | similar national entity that establishes standards to measure
 236 | the performance of health care providers, or by other states.

237 |
 238 | When determining which patient charge data to disclose, the
 239 | agency shall include such measures as the average of
 240 | undiscounted charges on frequently performed procedures and
 241 | preventive diagnostic procedures, the range of procedure charges
 242 | from highest to lowest, average net revenue per adjusted patient
 243 | day, average cost per adjusted patient day, and average cost per
 244 | admission, among others.

245 | 2. Make available performance measures, benefit design,
 246 | and premium cost data from health plans licensed pursuant to
 247 | chapter 627 or chapter 641. The agency shall determine which
 248 | health care quality measures and member and subscriber cost data
 249 | to disclose, based upon input from the council. When determining
 250 | which data to disclose, the agency shall consider information
 251 | that may be required by either individual or group purchasers to

PCB HHSC 12-04

ORIGINAL

YEAR

252 assess the value of the product, which may include membership
 253 satisfaction, quality of care, current enrollment or membership,
 254 coverage areas, accreditation status, premium costs, plan costs,
 255 premium increases, range of benefits, copayments and
 256 deductibles, accuracy and speed of claims payment, credentials
 257 of physicians, number of providers, names of network providers,
 258 and hospitals in the network. Health plans shall make available
 259 to the agency any such data or information that is not currently
 260 reported to the agency or the office.

261 3. Determine the method and format for public disclosure
 262 of data reported pursuant to this paragraph. The agency shall
 263 make its determination based upon input from the State Consumer
 264 Health Information and Policy Advisory Council. At a minimum,
 265 the data shall be made available on the agency's Internet
 266 website in a manner that allows consumers to conduct an
 267 interactive search that allows them to view and compare the
 268 information for specific providers. The website must include
 269 such additional information as is determined necessary to ensure
 270 that the website enhances informed decisionmaking among
 271 consumers and health care purchasers, which shall include, at a
 272 minimum, appropriate guidance on how to use the data and an
 273 explanation of why the data may vary from provider to provider.

274 4. Publish on its website undiscounted charges for no
 275 fewer than 150 of the most commonly performed adult and
 276 pediatric procedures, including outpatient, inpatient,
 277 diagnostic, and preventative procedures.

278 (1) Assist quality improvement collaboratives by releasing
 279 information to the providers, payors, or entities representing

PCB HHSC 12-04

ORIGINAL

YEAR

280 and working on behalf of providers and payors. The agency shall
 281 release such data to quality improvement collaboratives for
 282 evaluation of the incidence of potentially preventable events,
 283 which is deemed necessary for the administration of the Medicaid
 284 program.

285 Section 5. Subsection (31) of section 408.802, Florida
 286 Statutes, is created to read:

287 408.802 Applicability.—The provisions of this part apply to
 288 the provision of services that require licensure as defined in
 289 this part and to the following entities licensed, registered, or
 290 certified by the agency, as described in chapters 112, 383, 390,
 291 394, 395, 400, 429, 440, 483, and 765:

292 (31) Assisted living facility administrator, as provided
 293 under part I of chapter 429.

294 Section 6. Paragraph (a) of subsection (1) of section
 295 415.1034, Florida Statutes, is amended to read:

296 415.1034 Mandatory reporting of abuse, neglect, or
 297 exploitation of vulnerable adults; mandatory reports of death.—

298 (1) MANDATORY REPORTING.—

299 (a) Any person, including, but not limited to, ~~any~~:

300 1. A physician, osteopathic physician, medical examiner,
 301 chiropractic physician, nurse, paramedic, emergency medical
 302 technician, or hospital personnel engaged in the admission,
 303 examination, care, or treatment of vulnerable adults;

304 2. A health professional or mental health professional
 305 other than one listed in subparagraph 1.;

306 3. A practitioner who relies solely on spiritual means for
 307 healing;

PCB HHSC 12-04

ORIGINAL

YEAR

308 4. Nursing home staff; assisted living facility staff;
 309 adult day care center staff; adult family-care home staff;
 310 social worker; or other professional adult care, residential, or
 311 institutional staff;

312 5. A state, county, or municipal criminal justice employee
 313 or law enforcement officer;

314 6. An employee of the Department of Business and
 315 Professional Regulation conducting inspections of public lodging
 316 establishments under s. 509.032;

317 7. A Florida advocacy council member or long-term care
 318 ombudsman council member; ~~or~~

319 8. A bank, savings and loan, or credit union officer,
 320 trustee, or employee; or

321 9. An employee or agent of a state or local agency who has
 322 regulatory responsibilities over, or who provides services to,
 323 persons residing in a state-licensed facility,

324
 325 who knows, or has reasonable cause to suspect, that a vulnerable
 326 adult has been or is being abused, neglected, or exploited must
 327 ~~shall~~ immediately report such knowledge or suspicion to the
 328 central abuse hotline.

329 Section 7. Section 409.986, Florida Statutes, is created
 330 to read:

331 409.986 Quality Adjustments to Medicaid Rates.-

332 (1) As used in this section, the term:

333 (a) "Expected rate" means the risk adjusted rate for each
 334 provider that accounts for the severity of illness, APR-DRG, and
 335 age of patients.

PCB HHSC 12-04

ORIGINAL

YEAR

336 (b) "Hospital acquired infections" means infections not
 337 present and without evidence of incubation at the time of
 338 admission to a hospital.

339 (c) "Observed rate" means the actual number for each
 340 provider of potentially preventable events divided by the number
 341 of cases in which potentially preventable events may have
 342 occurred.

343 (d) "Potentially preventable admission" means an admission
 344 of a person to a hospital that may have reasonably been
 345 prevented with adequate access to ambulatory care or health care
 346 coordination.

347 (e) "Potentially preventable ancillary service" means a
 348 health care service provided or ordered by a physician or other
 349 health care provider to supplement or support the evaluation or
 350 treatment of a patient, including a diagnostic test, laboratory
 351 test, therapy service, or radiology service, that may not be
 352 reasonably necessary for the provision of quality health care or
 353 treatment.

354 (f) "Potentially preventable complication" means a harmful
 355 event or negative outcome with respect to a person, including an
 356 infection or surgical complication, that:

357 1. occurs after the person's admission to a hospital or
 358 long-term care facility; and

359 2. may have resulted from the care, lack of care, or
 360 treatment provided during the hospital or long-term care
 361 facility stay rather than from a natural progression of an
 362 underlying disease.

PCB HHSC 12-04

ORIGINAL

YEAR

363 (g) "Potentially preventable emergency room visit" means
 364 treatment of a person in a hospital emergency room or
 365 freestanding emergency medical care facility for a condition
 366 that may not require emergency medical attention because the
 367 condition could be, or could have been, treated or prevented by
 368 a physician or other health care provider in a nonemergency
 369 setting.

370 (h) "Potentially preventable event" means a potentially
 371 preventable admission, a potentially preventable ancillary
 372 service, a potentially preventable complication, a potentially
 373 preventable emergency department visit, a potentially
 374 preventable readmission, or a combination of those events.

375 (i) "Potentially preventable readmission" means a return
 376 hospitalization of a person within 15 days that may have
 377 resulted from deficiencies in the care or treatment provided to
 378 the person during a previous hospital stay or from deficiencies
 379 in post-hospital discharge follow-up. The term does not include
 380 a hospital readmission necessitated by the occurrence of
 381 unrelated events after the discharge. The term includes the
 382 readmission of a person to a hospital for:

383 1. the same condition or procedure for which the person
 384 was previously admitted;

385 2. an infection or other complication resulting from care
 386 previously provided; or

387 3. a condition or procedure that indicates that a surgical
 388 intervention performed during a previous admission was
 389 unsuccessful in achieving the anticipated outcome.

PCB HHSC 12-04

ORIGINAL

YEAR

390 (j) "Quality collaborative" means a structured process
 391 involving multiple providers and subject matter experts to focus
 392 on a specific aspect of quality care in order to analyze past
 393 performance and plan, implement and evaluate specific
 394 improvement methods.

395 (2) The agency shall establish and implement methodologies
 396 to adjust Medicaid payment rates for hospitals, nursing homes
 397 and managed care plans based on evidence of improved patient
 398 outcomes. Payment adjustments shall be dependent on
 399 consideration of specific outcome measures for each provider
 400 category, documented activities by providers to improve
 401 performance, and evidence of significant improvement over time.
 402 Measurement of outcomes shall include appropriate risk
 403 adjustments, exclude cases that cannot be determined to be
 404 preventable, and waive adjustments for providers with too few
 405 cases to calculate reliable rates.

406 (a) Performance-based payment adjustments may be made up
 407 to 1 percent of each qualified provider's rate for hospital
 408 inpatient services, hospital outpatient services, nursing home
 409 care, and the plan specific capitation rate for prepaid health
 410 plans. Adjustments for activities to improve performance may be
 411 made up to 0.25 percent based on evidence of providers'
 412 engagement in activities specified in this section.

413 (b) Outcome measures shall be established for a base year
 414 which may be state fiscal year 2010-11 or a more recent 12-month
 415 period.

416 (3) Methodologies established pursuant to this section
 417 shall utilize existing databases, including Medicaid claims,

PCB HHSC 12-04

ORIGINAL

YEAR

418 encounter data compiled pursuant to s. 409.9122(14), and
 419 hospital discharge data compiled pursuant to s. 408.061(1)(a).
 420 To the extent possible, the agency shall use methods for
 421 determining outcome measures in use by other payors.

422 (4) The agency shall seek any necessary federal approval
 423 for the performance payment system and implement the system in
 424 state fiscal year 2015-16.

425 (5) The agency may appoint a technical advisory panel for
 426 each provider category in order to solicit advice and
 427 recommendations during the development and implementation of the
 428 performance payment system.

429 (6) The performance payment system for hospitals will
 430 apply to general hospitals as defined in s. 395.002. The
 431 outcome measures used to allocate positive payment adjustments
 432 shall consist of one or more potentially preventable events such
 433 as potentially preventable readmissions and potentially
 434 preventable complications.

435 (a) For each 12-month period after the base year, the
 436 agency shall determine the expected rate and the observed rate
 437 for specific outcome indicators for each hospital. The
 438 difference between the expected and observed rates will be used
 439 to establish a performance rate for each hospital. Hospitals
 440 will be ranked based on performance rates.

441 (b) For at least the first three rate setting periods
 442 after implementing the performance payment system, a positive
 443 payment adjustment shall be made to hospitals in the top ten
 444 percentiles based on their performance rates and the ten
 445 hospitals with the best year-to-year improvement among those

PCB HHSC 12-04

ORIGINAL

YEAR

446 hospitals that did not rank in the top ten percentiles. After
 447 the third period of performance payment, the agency may replace
 448 these criteria with quantified benchmarks for determining which
 449 providers qualify for positive payment adjustments.

450 (c) Quality improvement activities that may earn positive
 451 payment adjustments include:

452 1. Complying with requirements that reduce hospital
 453 acquired infections pursuant to s. 395.1055(1)(b); or,

454 2. Actively engaging in a quality collaborative that
 455 focuses on reducing potentially preventable admissions or
 456 potentially preventable readmissions, or hospital acquired
 457 infections.

458 (7) The performance payment system for skilled nursing
 459 facilities will apply to facilities licensed pursuant to part II
 460 of chapter 400 with current Medicaid provider service
 461 agreements. The outcome measures used to allocate positive
 462 payment adjustments shall consist of one or more of the
 463 following: the rate of residents experiencing falls with major
 464 injuries, the rate of residents with potentially preventable
 465 hospital admissions, or the percent of residents with pressure
 466 ulcers that are new or worsened.

467 (a) For each 12-month period after the base year, the
 468 agency shall determine the expected rate and the observed rate
 469 for specific outcome indicators for each skilled nursing
 470 facility. The difference between the expected and observed
 471 rates will be used to establish a performance rate for each
 472 facility. Facilities will be ranked based on performance rates.

PCB HHSC 12-04

ORIGINAL

YEAR

473 (b) For at least the first three rate setting periods
 474 after implementing the performance payment system, a positive
 475 payment adjustment shall be made to facilities in the top three
 476 percentiles based on their performance rates and the ten
 477 facilities with the best year-to-year improvement among
 478 facilities that did not rank in the top three percentiles.
 479 After the third period of performance payment, the agency may
 480 replace these criteria with quantified benchmarks for
 481 determining which facilities qualify for positive payment
 482 adjustments.

483 (c) Quality improvement activities that may earn positive
 484 payment adjustments include:

485 1. Actively engaging in a comprehensive fall prevention
 486 program.

487 2. Actively engaging in a quality collaborative that
 488 focuses on reducing potentially preventable hospital admissions
 489 or reducing the percent of residents with pressure ulcers that
 490 are new or worsened.

491 (8) A performance payment system shall apply to all
 492 managed care plans. The outcome measures used to allocate
 493 positive payment adjustments shall consist of one or more
 494 potentially preventable events such as potentially preventable
 495 initial hospital admissions, potentially preventable emergency
 496 department visits, or potentially preventable ancillary
 497 services.

498 (a) For each 12-month period after the base year, the
 499 agency shall determine the expected rate and the observed rate
 500 for specific outcome indicators for each managed care plan. The

PCB HHSC 12-04

ORIGINAL

YEAR

501 difference between the expected and observed rates will be used
 502 to establish a performance rate for each plan. Plans will be
 503 ranked based on performance rates.

504 (b) For at least the first three rate setting periods after
 505 implementing the performance payment system, a positive payment
 506 adjustment shall be made to the top ten managed care plans.

507 After the third period of performance payment, the agency may
 508 replace these criteria with quantified benchmarks for
 509 determining which plans qualify for positive payment
 510 adjustments.

511 Section 8. Subsection (1) of section 429.07, Florida
 512 Statutes, is amended to read:

513 429.07 License required; fee.-

514 (1) The requirements of part II of chapter 408 apply
 515 to the provision of services that require licensure pursuant to
 516 this part and part II of chapter 408 and to entities licensed by
 517 or applying for such licensure from the agency pursuant to this
 518 part. A license issued by the agency is required in order to
 519 operate an assisted living facility in this state. Effective
 520 July 1, 2013, an assisted living facility may not operate in
 521 this state unless the facility is under the management of an
 522 assisted living facility administrator licensed pursuant to s.
 523 429.50.

524 Section 9. Section 429.075, Florida Statutes, is amended
 525 to read:

526 429.075 Limited mental health license.-In order to serve
 527 three or more mental health residents, an assisted living
 528 facility that serves three or more mental health residents must

PCB HHSC 12-04

ORIGINAL

YEAR

529 obtain a limited mental health license.

530 (1) To obtain a limited mental health license, a facility:

531 (a) Must hold a standard license as an assisted living

532 facility, and

533 (b) Must not have been subject to administrative sanctions

534 during the previous 2 years, or since initial licensure if the

535 facility has been licensed for less than 2 years, for any of the

536 following reasons:

537 1. One or more class I violations imposed by agency

538 action;

539 2. Three or more class II violations imposed by agency

540 action;

541 3. Five or more class III violations that were not

542 corrected in accordance with the provisions of s. 408.811(4);

543 4. A violation of resident care standards which resulted

544 in requiring the facility to employ the consultant services of a

545 licensed pharmacist or registered or licensed dietitian under s.

546 429.42;

547 5. Denial, suspension, or revocation of a license for

548 another facility licensed under this part in which the license

549 applicant had at least a 25 percent ownership interest; or

550 6. Imposition of a moratorium pursuant to this part or

551 part II of chapter 408 or initiation of injunctive proceedings.

552 ~~any current uncorrected deficiencies or violations, and must~~

553 ~~ensure that,~~

554 (2) Within 6 months after receiving a limited mental

555 health license, the facility administrator and the staff of the

556 facility who are in direct contact with mental health residents

PCB HHSC 12-04

ORIGINAL

YEAR

557 must complete training of no less than 6 hours related to their
 558 duties. This training shall be approved by the Department of
 559 Children and Families. A training provider may charge a
 560 reasonable fee for the training.

561 (3) Application for a limited mental health license ~~Such~~
 562 ~~designation~~ may be made at the time of initial licensure or
 563 relicensure or upon request in writing by a licensee under this
 564 part and part II of chapter 408. Notification of approval or
 565 denial of the license ~~such request~~ shall be made in accordance
 566 with this part, part II of chapter 408, and applicable rules.
 567 ~~This training will be provided by or approved by the Department~~
 568 ~~of Children and Family Services.~~

569 (4) ~~(2)~~ Facilities licensed to provide services to mental
 570 health residents shall provide appropriate supervision and
 571 staffing to provide for the health, safety, and welfare of such
 572 residents.

573 ~~(3) A facility that has a limited mental health license~~
 574 ~~must:~~

575 ~~(a) Have a copy of each mental health resident's community~~
 576 ~~living support plan and the cooperative agreement with the~~
 577 ~~mental health care services provider. The support plan and the~~
 578 ~~agreement may be combined.~~

579 ~~(b) Have documentation that is provided by the Department~~
 580 ~~of Children and Family Services that each mental health resident~~
 581 ~~has been assessed and determined to be able to live in the~~
 582 ~~community in an assisted living facility with a limited mental~~
 583 ~~health license.~~

584 ~~(c) Make the community living support plan available for~~

PCB HHSC 12-04

ORIGINAL

YEAR

585 ~~inspection by the resident, the resident's legal guardian, the~~
 586 ~~resident's health care surrogate, and other individuals who have~~
 587 ~~a lawful basis for reviewing this document.~~

588 ~~(d) Assist the mental health resident in carrying out the~~
 589 ~~activities identified in the individual's community living~~
 590 ~~support plan.~~

591 ~~(4) A facility with a limited mental health license may~~
 592 ~~enter into a cooperative agreement with a private mental health~~
 593 ~~provider. For purposes of the limited mental health license, the~~
 594 ~~private mental health provider may act as the case manager.~~

595 Section 10. Section 429.0751, Florida Statutes, is created
 596 to read:

597 429.0751 Mental Health Residents.— A facility that has one
 598 or more mental health residents must:

599 (1) Enter into a cooperative agreement with the mental
 600 health care services provider responsible for providing services
 601 to the mental health resident, including a mental health
 602 provider responsible for providing private pay services to the
 603 mental health resident, to ensure coordination of care.

604 (2) Consult with the mental health case manager and the
 605 mental health resident in the development of a community support
 606 living plan and maintain a copy of the each mental health
 607 resident's community support living plan.

608 (3) Make the community support plan available for
 609 inspection by the resident, the resident's legal guardian, the
 610 resident's health care surrogate, and other individuals who have
 611 a lawful basis for reviewing this document.

612 (4) Assist the mental health resident in carrying out the

PCB HHSC 12-04

ORIGINAL

YEAR

613 activities identified in the individual's community living
614 support plan.

615 (5) Have documentation that is provided by the Department
616 of Children and Family Services that each mental health resident
617 has been assessed and determined to be able to live in the
618 community in an assisted living facility.

619 Section 11. Subsection (2) of section 429.19, Florida
620 Statutes, is amended to read:

621 429.19 Violations; imposition of administrative fines;
622 grounds.—

623 (2) Each violation of this part and adopted rules shall be
624 classified according to the nature of the violation and the
625 gravity of its probable effect on facility residents.

626 (a) The agency shall indicate the classification on the
627 written notice of the violation as follows:

628 1. ~~(a)~~ Class "I" violations are defined in s. 408.813. The
629 agency shall impose an administrative fine for a cited class I
630 violation in an amount not less than \$5,000 and not exceeding
631 \$10,000 for each violation. A fine shall be levied
632 notwithstanding the correction of the violation.

633 2. ~~(b)~~ Class "II" violations are defined in s. 408.813.
634 The agency shall impose an administrative fine for a cited class
635 II violation in an amount not less than \$1,000 and not exceeding
636 \$5,000 for each violation. A fine may be levied notwithstanding
637 the correction of the violation.

638 3. ~~(c)~~ Class "III" violations are defined in s. 408.813.
639 The agency shall impose an administrative fine for a cited class
640 III violation in an amount not less than \$500 and not exceeding

PCB HHSC 12-04

ORIGINAL

YEAR

641 \$1,000 for each violation.

642 4. ~~(d)~~ Class "IV" violations are defined in s. 408.813.
 643 The agency shall impose an administrative fine for a cited class
 644 IV violation in an amount not less than \$100 and not exceeding
 645 \$200 for each violation.

646 (b) The agency shall impose a \$10,000 penalty for any
 647 violation which results in the death of a resident.

648 (c) Notwithstanding paragraph (a), if the facility is
 649 cited for a violation in the same class as a prior violation
 650 cited within the past 24 months, the agency shall double the
 651 fine for subsequent violation.

652 (d) Notwithstanding s. 408.813(2)(c), if a facility is
 653 cited for ten or more class III violations during an inspection
 654 or survey, the agency shall impose a fine for each violation.

655 Section 12. Section 429.231, Florida Statutes, is created
 656 to read:

657 429.231 Advisory council, membership, duties.—

658 (1) The department shall establish an advisory council to
 659 review the facts and circumstances of unexpected deaths in
 660 assisted living facilities and of elopements that result in harm
 661 to a resident. The purpose of this review shall be to:

662 (a) Achieve a greater understanding of the causes and
 663 contributing factors of the unexpected deaths and elopements.

664 (b) Identify any gaps, deficiencies, or problems in the
 665 delivery of services to the residents.

666 (2) Based on the review, the advisory council shall make
 667 recommendations for:

PCB HHSC 12-04

ORIGINAL

YEAR

668 (a) Industry best practices that could be used to prevent
 669 unexpected deaths and elopements.

670 (b) Training and educational requirements for employees
 671 and administrators of assisted living facilities.

672 (c) Changes in the law, rules, or other policies to
 673 prevent unexpected deaths and elopements.

674 (3) The advisory council shall prepare an annual
 675 statistical report on the incidence and causes of unexpected
 676 deaths in assisted living facilities and of elopements that
 677 result in harm to residents during the prior calendar year. The
 678 advisory council shall submit a copy of the report by December
 679 31 of each year to the Governor, the President of the Senate,
 680 and the Speaker of the House of Representatives. The report may
 681 make recommendations for state action, including specific
 682 policy, procedural, regulatory, or statutory changes, and any
 683 other recommended preventive action.

684 (3) The advisory council shall consist of the following
 685 members:

686 (a) The Secretary of the Department of Elderly Affairs, or
 687 a designee, who shall be the chair.

688 (b) The Secretary of the Agency for Health Care
 689 Administration, or a designee.

690 (c) The Secretary of the Department of Children and
 691 Families, or a designee.

692 (d) The State Long-Term Care Ombudsman, or a designee.

693 (e) The following, selected by the Governor:

694 1. An owner or administrator of an assisted living
 695 facility with fewer than 17 beds.

PCB HHSC 12-04

ORIGINAL

YEAR

696 2. An owner or administrator of an assisted living
 697 facility with 17 or more beds.

698 3. An owner or administrator of an assisted living
 699 facility with a limited mental health license.

700 4. A representative of a statewide association that
 701 represents assisted living facilities.

702 (3) The advisory council shall meet at the call of the
 703 chair, but at least twice each calendar year. The chair may
 704 appoint ad hoc committees as necessary to carry out the duties
 705 of the council.

706 (4) The members of the advisory council selected by the
 707 Governor shall be appointed to staggered terms of office which
 708 may not exceed 2 years. Members are eligible for reappointment.

709 (5) Members of the advisory council shall serve without
 710 compensation but are entitled to reimbursement for per diem and
 711 travel expenses incurred in the performance of their duties as
 712 provided in s. 112.061 and to the extent that funds are
 713 available.

714 Section 13. Section 429.34, Florida Statutes, is amended
 715 to read:

716 429.34 Right of entry and inspection.—

717 (1) In addition to the requirements of s. 408.811, any
 718 duly designated officer or employee of the department, the
 719 Department of Children and Family Services, the Medicaid Fraud
 720 Control Unit of the Office of the Attorney General, the state or
 721 local fire marshal, or a member of the state or local long-term
 722 care ombudsman council shall have the right to enter unannounced
 723 upon and into the premises of any facility licensed pursuant to

PCB HHSC 12-04

ORIGINAL

YEAR

724 | this part in order to determine the state of compliance with the
725 | provisions of this part, part II of chapter 408, and applicable
726 | rules. Data collected by the state or local long-term care
727 | ombudsman councils or the state or local advocacy councils may
728 | be used by the agency in investigations involving violations of
729 | regulatory standards.

730 | (2) In accordance with s. 408.811, every 24 months the
731 | agency shall conduct at least one unannounced inspection to
732 | determine compliance with this chapter, chapter 408, part II,
733 | and related rules; however, if the facility is accredited by the
734 | Joint Commission, the Council on Accreditation, or the
735 | Commission on Accreditation of Rehabilitation Facilities, the
736 | agency may conduct inspections less frequently, but in no event
737 | less than once every five years.

738 | (a) Two additional surveys shall be conducted every 6
739 | months for the next year if the facility has been cited for a
740 | class I deficiency or two or more class II deficiencies arising
741 | from separate surveys or investigations within a 60-day period.
742 | In addition to any fines imposed on a facility under s. 429.19,
743 | the agency shall assess a fee of \$69 per bed for each of the
744 | additional two surveys, not to exceed \$12,000 each.

745 | (b) The agency shall verify through subsequent inspections
746 | that any deficiency identified during an inspection is
747 | corrected. However, the agency may verify the correction of a
748 | class III or class IV deficiency unrelated to resident rights or
749 | resident care without reinspection if the facility submits
750 | adequate written documentation that the deficiency has been
751 | corrected.

PCB HHSC 12-04

ORIGINAL

YEAR

752 Section 14. Section 429.50, Florida Statutes, is created
753 to read:

754 429.50 .- Assisted living facility administrator;
755 qualifications, licensure, fees, continuing education.-

756 (1) The requirements of part II of chapter 408 apply to
757 the provision of services that require licensure pursuant to
758 this section. Effective July 1, 2013, a license issued by the
759 agency is required in order to perform as an assisted living
760 facility administrator in this state.

761 (2) To be eligible to be licensed as an assisted living
762 facility administrator, an applicant must:

763 (a) Be at least 21 years old;

764 (b) Meet the following educational or experience
765 requirements:

766 1. A 4-year baccalaureate degree that includes coursework
767 in health care, gerontology, or geriatrics;

768 2. A 2-year associate degree that includes coursework in
769 health care, gerontology, or geriatrics and at least 2 years of
770 direct care or management experience in an assisted living
771 facility or nursing home; or

772 3. At least 5 years of direct care and management
773 experience in an assisted living facility or nursing home.

774 (c) Complete the training requirements in s. 429.52;

775 (d) Pass the competency test required in s. 429.52 with a
776 minimum score of 80;

777 (e) Complete background screening pursuant to s. 429.174;

778 and

779 (f) Otherwise meet the requirements of this part.

PCB HHSC 12-04

ORIGINAL

YEAR

780 (3) Notwithstanding paragraphs (b), (c) and (d) of
 781 subsection (2), the agency may grant a license to an applicant
 782 who:

783 (a) Has been employed as an administrator of a facility
 784 for 2 of the 5 years immediately preceding July 1, 2013, and is
 785 in compliance with the continuing education requirements in this
 786 part, and has not been an administrator of a facility that was
 787 cited for a class I or class II violation within the previous 2
 788 years.

789 (b) Is licensed in accordance with part II of chapter 468
 790 and is in compliance with the continuing education requirements
 791 in part II of chapter 468.

792 (4) The license shall be renewed biennially.

793 (5) The agency shall establish fees for licensure which
 794 may not exceed \$250 for the initial licensure or \$250 for each
 795 licensure renewal.

796 (6) A licensed administrator must participate in
 797 continuing education for a minimum of 18 hours every 2 years.

798 (7) The agency shall deny or revoke the license if the
 799 applicant or licensee:

800 (a) Was the administrator of record for or owner of a
 801 provider licensed by the agency under chapter 429, chapter 408,
 802 part II or authorizing statutes, when the provider was cited for
 803 deficiencies that resulted in denial or revocation of a license.

804 (b) Has a final agency action for unlicensed activity
 805 pursuant to chapter 429, chapter 408, part II, or authorizing
 806 statutes.

807 (8) The agency may deny or revoke the license if the

PCB HHSC 12-04

ORIGINAL

YEAR

808 applicant or licensee was the administrator of record for or
 809 owner of a provider licensed by the agency under chapter 429,
 810 chapter 408, part II or authorizing statues, when the provider
 811 was cited for deficiencies within the previous three years that
 812 resulted in a resident's death.

813 (9) The agency may adopt rules as necessary to administer
 814 this section.

815 Section 15. Section 429.52, Florida Statutes, is amended
 816 to read:

817 429.52 Staff, administrator, and administrator license
 818 applicant training and educational programs; core educational
 819 requirement.-

820 (1) Administrators, applicants to become administrators,
 821 and other assisted living facility staff must meet minimum
 822 training and education requirements established by the
 823 Department of Elderly Affairs by rule. This training and
 824 education is intended to assist facilities to appropriately
 825 respond to the needs of residents, to maintain resident care and
 826 facility standards, and to meet licensure requirements.

827 ~~(2) The department shall establish a competency test and a~~
 828 ~~minimum required score to indicate successful completion of the~~
 829 ~~training and educational requirements. The competency test must~~
 830 ~~be developed by the department in conjunction with the agency~~
 831 ~~and providers. For assisted living facility staff other than~~
 832 administrators, the required training and education must cover
 833 at least the following topics:

834 (a) State law and rules relating to assisted living
 835 facilities.

PCB HHSC 12-04

ORIGINAL

YEAR

836 (b) Resident rights and identifying and reporting abuse,
837 neglect, and exploitation.

838 (c) Special needs of elderly persons, persons with mental
839 illness, and persons with developmental disabilities and how to
840 meet those needs.

841 (d) Nutrition and food service, including acceptable
842 sanitation practices for preparing, storing, and serving food.

843 (e) Medication management, recordkeeping, and proper
844 techniques for assisting residents with self-administered
845 medication.

846 (f) Firesafety requirements, including fire evacuation
847 drill procedures and other emergency procedures.

848 (g) Care of persons with Alzheimer's disease and related
849 disorders.

850 ~~(3) Effective January 1, 2004, a new facility~~
851 ~~administrator must complete the required training and education,~~
852 ~~including the competency test, within a reasonable time after~~
853 ~~being employed as an administrator, as determined by the~~
854 ~~department. Failure to do so is a violation of this part and~~
855 ~~subjects the violator to an administrative fine as prescribed in~~
856 ~~s. 429.19. Administrators licensed in accordance with part II of~~
857 ~~chapter 468 are exempt from this requirement. Other licensed~~
858 ~~professionals may be exempted, as determined by the department~~
859 ~~by rule.~~

860 ~~(4) Administrators are required to participate in~~
861 ~~continuing education for a minimum of 12 contact hours every 2~~
862 ~~years.~~

863 (3) ~~(5)~~ Staff involved with the management of medications

PCB HHSC 12-04

ORIGINAL

YEAR

864 and assisting with the self-administration of medications under
 865 s. 429.256 must complete a minimum of 4 additional hours of
 866 training provided by a registered nurse, licensed pharmacist, or
 867 department staff. The department shall establish by rule the
 868 minimum requirements of this additional training.

869 ~~(6)~~ Other Facility staff shall participate in training
 870 relevant to their job duties as specified by rule of the
 871 department.

872 (4) ~~(7)~~ If the department or the agency determines that
 873 there are problems in a facility that could be reduced through
 874 specific staff training or education beyond that already
 875 required under this section, the department or the agency may
 876 require, and provide, or cause to be provided, the training or
 877 education of any personal care staff in the facility.

878 (5) The department, in consultation with the agency, the
 879 Department of Children and Family Services, and stakeholders,
 880 shall approve a standardized core training curriculum that must
 881 be completed by an applicant for licensure as an assisted living
 882 facility administrator. The curriculum must be offered in
 883 English and Spanish and timely updated to reflect changes in the
 884 law, rules, and best practices. The required training must
 885 cover, at a minimum, the following topics:

886 1. State law and rules relating to assisted living
 887 facilities.

888 2. Residents' rights and procedures for identifying and
 889 reporting abuse, neglect, and exploitation.

890 3. Special needs of elderly persons, persons who have
 891 mental illness, and persons who have developmental disabilities

PCB HHSC 12-04

ORIGINAL

YEAR

- 892 and how to meet those needs.
- 893 4. Nutrition and food service, including acceptable
- 894 sanitation practices for preparing, storing, and serving food.
- 895 5. Medication management, recordkeeping, and proper
- 896 techniques for assisting residents who self-administer
- 897 medication.
- 898 6. Firesafety requirements, including procedures for fire
- 899 evacuation drills and other emergency procedures.
- 900 7. Care of persons who have Alzheimer's disease and
- 901 related disorders.
- 902 8. Elopement prevention.
- 903 9. Aggression and behavior management, deescalation
- 904 techniques, and proper protocols and procedures of the Baker Act
- 905 as provided in part I of chapter 394.
- 906 10. Do not resuscitate orders.
- 907 11. Infection control.
- 908 12. Admission, continuing residency, and best practices in
- 909 the industry.
- 910 13. Phases of care and interacting with residents.
- 911 (6) The department in consultation with the agency, the
- 912 Department of Children and Family Services, and stakeholders,
- 913 shall approve a supplemental course consisting of topics related
- 914 to extended congregate care, limited mental health, and business
- 915 operations, including human resources, financial management, and
- 916 supervision of staff, which must completed by an applicant for
- 917 licensure as an assisted living facility administrator.
- 918 (7) The department shall approve a competency test for
- 919 applicants for licensure as an administrator which tests the

PCB HHSC 12-04

ORIGINAL

YEAR

920 individual's comprehension of the training required in
 921 subsections (6) and (7). The competency test must be reviewed
 922 annually and timely updated to reflect changes in the law,
 923 rules, and best practices. The competency test must be offered
 924 in English and Spanish and may be made available through testing
 925 centers.

926 (8) The department, in consultation with the agency and
 927 stakeholders, shall approve curricula for continuing education
 928 for administrators and staff members of an assisted living
 929 facility. Continuing education shall include topics similar to
 930 that of the core training required for staff members and
 931 applicants for licensure as assisted living facility
 932 administrators. Continuing education may be offered through
 933 online courses, and any fees associated to the online service
 934 shall be borne by the licensee or the facility. Required
 935 continuing education must, at a minimum, cover the following
 936 topics:

- 937 1. Elopement prevention;
- 938 2. Deescalation techniques; and
- 939 3. Phases of care and interacting with residents.

940 (9) Effective January 1, 2013, the training required by
 941 this part shall be conducted by:

- 942 (a) Any Florida College System institution;
- 943 (b) Any nonpublic postsecondary institutions licensed or
 944 exempted from licensure pursuant to chapter 1005; or

945 (b) Any statewide association which contracts with the
 946 department to provide training. For the purposes of this
 947 section, "statewide association" means any statewide entity

PCB HHSC 12-04

ORIGINAL

YEAR

948 which represents and provides technical assistance to assisted
 949 living facilities.

950 (10) Assisted living trainers shall keep a record of
 951 individuals who complete training and shall submit the record to
 952 the agency within 30 days after the completion of a course.

953 (11) The department shall adopt rules as necessary to
 954 administer this section.

955 ~~(8) The department shall adopt rules related to these~~
 956 ~~training requirements, the competency test, necessary~~
 957 ~~procedures, and competency test fees and shall adopt or contract~~
 958 ~~with another entity to develop a curriculum, which shall be used~~
 959 ~~as the minimum core training requirements. The department shall~~
 960 ~~consult with representatives of stakeholder associations and~~
 961 ~~agencies in the development of the curriculum.~~

962 ~~(9) The training required by this section shall be~~
 963 ~~conducted by persons registered with the department as having~~
 964 ~~the requisite experience and credentials to conduct the~~
 965 ~~training. A person seeking to register as a trainer must provide~~
 966 ~~the department with proof of completion of the minimum core~~
 967 ~~training education requirements, successful passage of the~~
 968 ~~competency test established under this section, and proof of~~
 969 ~~compliance with the continuing education requirement in~~
 970 ~~subsection (4).~~

971 ~~(10) A person seeking to register as a trainer must also:~~

972 ~~(a) Provide proof of completion of a 4-year degree from an~~
 973 ~~accredited college or university and must have worked in a~~
 974 ~~management position in an assisted living facility for 3 years~~
 975 ~~after being core certified;~~

PCB HHSC 12-04

ORIGINAL

YEAR

976 . ~~(b) Have worked in a management position in an assisted~~
 977 ~~living facility for 5 years after being core certified and have~~
 978 ~~1 year of teaching experience as an educator or staff trainer~~
 979 ~~for persons who work in assisted living facilities or other~~
 980 ~~long term care settings;~~

981 ~~(c) Have been previously employed as a core trainer for~~
 982 ~~the department; or~~

983 ~~(d) Meet other qualification criteria as defined in rule,~~
 984 ~~which the department is authorized to adopt.~~

985 ~~(11) The department shall adopt rules to establish trainer~~
 986 ~~registration requirements.~~

987 Section 16. Section 429.54, Florida Statutes, is amended
 988 to read:

989 429.54 Collection of information; local subsidy;
 990 interagency communication.-

991 (1) To enable the department to collect the information
 992 requested by the Legislature regarding the actual cost of
 993 providing room, board, and personal care in assisted living
 994 facilities, the department may ~~is authorized to~~ conduct field
 995 visits and audits of facilities as ~~may be~~ necessary. The owners
 996 of randomly sampled facilities shall submit such reports,
 997 audits, and accountings of cost as the department may require by
 998 rule; however, ~~provided that~~ such reports, audits, and
 999 accountings may not be more than shall be the minimum necessary
 1000 to implement the provisions of this subsection ~~section~~. Any
 1001 facility selected to participate in the study shall cooperate
 1002 with the department by providing cost of operation information
 1003 to interviewers.

PCB HHSC 12-04

ORIGINAL

YEAR

1004 (2) Local governments or organizations may contribute to
1005 the cost of care of local facility residents by further
1006 subsidizing the rate of state-authorized payment to such
1007 facilities. Implementation of local subsidy shall require
1008 departmental approval and may ~~shall~~ not result in reductions in
1009 the state supplement.

1010 (3) Subject to the availability of funds, the agency, the
1011 department, the Department of Children and Family Services, and
1012 the Agency for Persons with Disabilities shall develop or modify
1013 electronic systems of communication among state-supported
1014 automated systems to ensure that relevant information pertaining
1015 to the regulation of assisted living facilities and facility
1016 staff is timely and effectively communicated among agencies in
1017 order to facilitate the protection of residents.

1018 Section 17. This act shall take effect July 1, 2012.