

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HCAS 11-03 Correctional Medical Authority

SPONSOR(S): Health Care Appropriations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Care Appropriations Subcommittee		Clark	Pridgeon

SUMMARY ANALYSIS

The bill makes statutory changes to conform to the funding decisions included in the House proposed General Appropriations Act (GAA) for Fiscal Year 2011-2012.

Specifically, the bill repeals sections of statute creating and establishing the duties of the Correctional Medical Authority which monitors the quality of the physical and mental health care services provided to inmates in Florida's correctional institutions.

The House proposed GAA for FY 2011-2012 reduces recurring general revenue expenditures by \$717,680 and 6.0 FTE as a result of eliminating the Correctional Medical Authority.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Correctional Medical Authority (CMA) was created in 1986.¹ The CMA is housed within the Department of Health (DOH) for administrative purposes but is not subject to the control or supervision of DOH or the Department of Corrections.²

The governing board of the authority is composed of nine persons appointed by the Governor subject to confirmation by the Senate. Members of the CMA are not compensated for performance of their duties but are paid expenses incurred while engaged in the performance of such duties pursuant to s. 112.061, F.S.³

According to section 945.603, F.S.:

The purpose of the authority is to assist in the delivery of health care services for inmates in the Department of Corrections by advising the Secretary of Corrections on the professional conduct of primary, convalescent, dental, and mental health care and the management of costs consistent with quality care, by advising the Governor and the Legislature on the status of the Department of Corrections' health care delivery system, and by assuring that adequate standards of physical and mental health care for inmates are maintained at all Department of Corrections institutions.

Pursuant to this section, the CMA is authorized to:

1. Review and advise the Secretary of Corrections on cost containment measures the Department of Corrections could implement.
2. Review and make recommendations regarding health care for the delivery of health care services including, but not limited to, acute hospital-based services and facilities, primary and tertiary care services, ancillary and clinical services, dental services, mental health services, intake and screening services, medical transportation services, and the use of nurse practitioner and physician assistant personnel to act as physician extenders as these relate to inmates in the Department of Corrections.
3. Develop and recommend to the Governor and the Legislature an annual budget for all or part of the operation of the State of Florida prison health care system.
4. Review and advise the Secretary of Corrections on contracts between the Department of Corrections and third parties for quality management programs.
5. Review and advise the Secretary of Corrections on minimum standards needed to ensure that an adequate physical and mental health care delivery system is maintained by the Department of Corrections.
6. Review and advise the Secretary of Corrections on the sufficiency, adequacy, and effectiveness of the Department of Corrections' Office of Health Services' quality management program.
7. Review and advise the Secretary of Corrections on the projected medical needs of the inmate population and the types of programs and resources required to meet such needs.
8. Review and advise the Secretary of Corrections on the adequacy of preservice, inservice, and continuing medical education programs for all health care personnel and, if necessary, recommend changes to such programs within the Department of Corrections.
9. Identify and recommend to the Secretary of Corrections the professional incentives required to attract and retain qualified professional health care staff within the prison health care system.
10. Coordinate the development of prospective payment arrangements as described in s. 408.50 when appropriate for the acquisition of inmate health care services.

¹ Ch. 86-183, L.O.F.

² s. 945.602, F.S.

³ Id.

11. Review the Department of Corrections' health services plan and advise the Secretary of Corrections on its implementation.
12. Sue and be sued in its own name and plead and be impleaded.
13. Make and execute agreements of lease, contracts, deeds, mortgages, notes, and other instruments necessary or convenient in the exercise of its powers and functions under this act.
14. Employ or contract with health care providers, medical personnel, management consultants, consulting engineers, architects, surveyors, attorneys, accountants, financial experts, and such other employees, entities, or agents as may be necessary in its judgment to carry out the mandates of the Correctional Medical Authority and fix their compensation.
15. Recommend to the Legislature such performance and financial audits of the Office of Health Services in the Department of Corrections as the authority considers advisable.

Section 945.6031, F.S. requires the CMA to submit reports to the Governor and Legislature on the status of DOC's health care delivery system.⁴ This section also requires CMA to conduct surveys of the physical and mental health care system at each correctional institution and report the survey findings for each institution to the Secretary of Corrections. A process by which DOC must respond to such surveys is set forth in this section.

Sections 945.6035 and 945.6036, F.S.; sets forth a process to resolve any disputes which arise between the authority and the department regarding the physical and mental health care of inmates.

The PCB repeals sections of statute which establish and set forth the duties of the Correctional Medical Authority. The PCB also removes references to the CMA from various sections of statute.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.90, F.S. relating to Health Information Systems Council; legislative intent; creation; appointment; duties.

Section 2. Amends s. 766.101, F.S. relating to medical review committee.

Section 3. Amends s. 944.8041, F.S. relating to elderly offenders; annual review.

Section 4. Amends s. 945.35, F.S. relating to requirement for education on human immunodeficiency virus, acquired immune deficiency syndrome, and other communicable diseases.

Section 5. Repeals s. 945.601, F.S. relating to Correctional Medical Authority.

Section 6. Repeals s. 945.602, F.S. relating to State of Florida Correctional Medical Authority; creation; members.

Section 7. Repeals s. 945.603, F.S. relating to powers and duties of authority.

Section 8. Repeals s. 945.6031, F.S. relating to required reports and surveys.

Section 9. Repeals s. 945.6032, F.S. relating to quality management program requirements.

Section 10. Amends s. 945.6034, F.S. relating to minimum health care standards

Section 11. Repeals s. 945.6035, F.S. relating to dispute resolution.

Section 12. Repeals s. 945.6036, F.S. relating to enforcement.

Section 13. Amends s. 951.27, F.S. relating to blood tests of inmates.

⁴ <http://www.doh.state.fl.us/cma/reports/index.html>

Section 14. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Repeal of the Correctional Medical Authority will result in a reduction of 6.0 FTE and a General Revenue savings of \$717,680.

6.0 FTE with Salary Rate of \$376,338

Salaries/Benefits \$493,580

Expenses \$168,775

OPS \$52,145

OCO \$168

Contracted Services \$1,491

Transfer DMS/HR Svs \$1,521

TOTAL \$717,680

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 government.

2. Other:

Costello litigation: In 1972, a complaint was filed in the U.S. District Court of the Middle District of Florida, by inmates named Michael Costello and Roberto Celestineo. This is commonly referred to

as the Costello v. Wainwright case. The suit alleged violations of the Eighth and Fourteenth Amendments due to inadequate physical and mental health care by what was then the Division of Corrections within the Department of Health and Human Services. As a result of the case, the federal court oversaw the delivery of inmate health care in the Florida correctional system from 1972 to 1993.

In March 1993, Judge Susan Black signed an order closing the Costello lawsuit and relinquishing oversight of Florida's prison health care system. As part of the order, the judge stated the following:

Federal supervision of state functions is a difficult feature of federalism. The federal courts have struggled for years to disentangle themselves from state functions without jeopardizing resolution of the basic constitutional issues achieved by the litigation. The CMA is an innovative solution to the recurring problem of institutionalizing the changes effected by prison litigation, thereby permitting termination of federal involvement. The CMA provides independent, objective verification of the Department's activities and actions.

Florida's creation of an independent state entity to address potential problems in the delivery of physical and mental health care, as well as in overcrowding, made it possible two years ago for this Court to relinquish the prison monitoring and oversight function it had performed for the last twenty years. See Order Relinquishing Physical Health Care Survey and Monitoring Responsibilities to the Florida Correctional Medical Authority, entered on December 11, 1990. Furthermore, the CMA's statutory responsibility to report to the Governor, the Cabinet, and the Florida Legislature gives it a moral and legal authority which, as long as it is appropriately funded and staffed, should make future involvement of the federal courts unnecessary in the Florida correctional system.

It is exemplary that a major state such as Florida, with its significant prison population, would take such a creative step. Without innovations such as the CMA, there is little hope for satisfactory withdrawal of federal supervision.

Celestineo v. Singletary 147 F.R.D. 258, 263 (M.D.Fla.,1993)

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES